

ASSEMBLY BILL NO. 363—ASSEMBLYWOMAN BRITTNEY MILLER

MARCH 21, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to professional and occupational licensing. (BDR 54-710)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to professional licensing; providing in skeleton form for restrictions on the aspects of the criminal history of an applicant that certain licensing entities are authorized to consider in determining whether to issue the applicant a license; providing in skeleton form for procedures that a licensing entity must follow to deny an applicant a license based on his or her criminal history; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires a board of county commissioners of a county, the
2 governing body of an incorporated city and various state agencies, boards and
3 commissions that are authorized to license and regulate a particular occupation or
4 profession to develop and implement a process by which a person may submit a
5 petition to determine whether the criminal history of the person would disqualify
6 the person from being issued certain licenses. (NRS 1.545, 240A.275, 244.33504,
7 361.2212, 379.00785, 435.3395, 445B.7776, 449.03008, 449.4316, 450B.169,
8 455C.125, 457.1825, 458.0258, 477.2233, 482.163, 487.006, 489.298, 490.195,
9 502.375, 503.5831, 504.391, 505.013, 534.1405, 544.147, 555.305, 557.225,
10 576.037, 581.1033, 582.035, 584.2165, 587.014, 599A.057, 599B.127, 618.357,
11 622.085, 706.4626)

12 This bill provides, in skeleton form, for: (1) restrictions on the aspects of the
13 criminal history of an applicant that a licensing entity is authorized to consider in
14 determining whether to issue the applicant a license; and (2) procedures that a
15 licensing entity must follow to deny an applicant a license based on his or her
16 criminal history. This bill would apply to each licensing entity that is required
17 under existing law to develop and implement a petition process for a determination
18 as to whether a person is disqualified for a license based on his or her criminal
19 history. Additionally, this bill would apply to the State Contractors’ Board and the
20 Private Investigator’s Licensing Board, which are two regulatory bodies that are



21 excluded from the requirement to establish such a petition process under existing
22 law. (NRS 622.085)

23 **Section 3** of this bill prohibits a regulatory body from denying a license to an
24 applicant on the basis of his or her criminal history except in accordance with the
25 procedures set forth in **sections 3-7** of this bill. **Section 3** prohibits a regulatory
26 body from requiring an applicant to disclose, and from considering in determining
27 whether to issue an applicant a license, any information concerning the criminal
28 history of the applicant except for information concerning a “potentially
29 disqualifying felony offense,” which **section 2** of this bill defines, in general, to
30 mean a felony for which a person: (1) was convicted; (2) is currently or was
31 previously imprisoned; and (3) if the person is not currently in prison, was released
32 from prison within the immediately preceding 3 years. **Section 8** of this bill makes
33 a conforming change to indicate the proper placement of **section 2** in the Nevada
34 Revised Statutes.

35 **Section 4** of this bill provides that an applicant is disqualified from obtaining a
36 license on the basis of his or her criminal history only if clear and convincing
37 evidence exists that: (1) the applicant has been convicted of a potentially
38 disqualifying felony offense; (2) the offense directly relates to the duties and
39 responsibilities of the occupation or profession for which the applicant seeks a
40 license; (3) the applicant has not been rehabilitated; and (4) issuing the applicant a
41 license would pose a direct and substantial risk to the public safety.

42 **Section 5** of this bill requires a regulatory body to direct the executive director
43 of the regulatory body or a designee of the regulatory body to render a preliminary
44 decision if it appears that an applicant for a license may be disqualified based on his
45 or her criminal history. **Section 5** entitles the applicant to an informal meeting with
46 the executive director or designee before he or she renders a preliminary decision.
47 **Section 6** of this bill sets forth certain requirements for the conduct of such an
48 informal meeting.

49 If the decision of the executive director or designee is not adverse to the
50 applicant, **section 7** of this bill requires the regulatory body to accept the decision.
51 If the decision is adverse to the applicant, **section 7** requires the regulatory body to
52 provide the applicant notice and an opportunity for a hearing before the regulatory
53 body is authorized to deny the applicant a license on the basis of his or her criminal
54 history.

55 Under existing law, if a person files a petition with a regulatory body for a
56 determination as to whether a person’s criminal history would disqualify the person
57 from being issued a license, the regulatory body’s determination is not binding on
58 the regulatory body. (NRS 622.085) **Section 9** of this bill prohibits a regulatory
59 body from rescinding a determination of qualification unless there has been a
60 material change in the criminal history of the person. If such a determination has
61 not been rescinded, **section 7** requires a regulatory body, before the regulatory body
62 may deny the person a license on the basis of his or her criminal history, to find that
63 a material change in the applicant’s criminal history has rendered the applicant
64 disqualified from obtaining a license.

65 Existing law authorizes a regulatory body to post on its Internet website a list of
66 crimes that would disqualify a person from obtaining a license from the regulatory
67 body. (NRS 622.085) **Section 9** removes that provision to reflect the fact that
68 **sections 3-7** require an individual determination as to whether a person’s criminal
69 history disqualifies the person from obtaining a license and no particular crime, in
70 and of itself, would disqualify an applicant from licensure. Instead, **section 9**
71 requires each regulatory body to post on its Internet website an explanation of the
72 procedures set forth in **sections 3-7**.

73 Existing law requires an applicant for a certificate of registration as a landscape
74 architect to be of good moral character to be issued a certificate. (NRS 623A.170)
75 Existing law provides that an applicant has good moral character if the applicant,



76 among other things: (1) has not been convicted of a felony, misdemeanor or gross
77 misdemeanor that is directly related to the practice of landscape architecture; and
78 (2) is not incarcerated in a jail or prison at the time of submitting an application for
79 a certificate. (NRS 623A.065) **Section 10** of this bill eliminates those provisions
80 which would automatically prohibit a person from being issued a certificate of
81 registration as a landscape architect on the basis of his or her criminal history to
82 conform with the procedures for the denial of licensure on the basis of criminal
83 history set forth in **sections 3-7**.

84 A full drafting of this bill would be considerable in length. Provisions setting
85 forth procedures comparable to those set forth in **sections 3-7** would be required to
86 be added to the bill for each applicable licensing entity. Additionally, numerous
87 provisions throughout the Nevada Revised Statutes which authorize an applicable
88 licensing entity to consider various aspects of the criminal history of an applicant or
89 which require the denial of a license to a person convicted of certain criminal
90 offenses would be required to be amended or repealed.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 622 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 7, inclusive, of this
3 act.

4 **Sec. 2.** *“Potentially disqualifying felony offense” means a*
5 *felony for which a person:*

- 6 1. *Has been found guilty or guilty but mentally ill or has*
7 *pleaded guilty, guilty but mentally ill or nolo contendere;*
- 8 2. *Is currently or was previously imprisoned; and*
- 9 3. *If the person is not currently imprisoned, was released*
10 *from prison within the immediately preceding 3 years.*

11 **Sec. 3.** 1. *A regulatory body shall not deny a license to an*
12 *applicant on the basis of the criminal history of the applicant*
13 *except in accordance with sections 3 to 7, inclusive, of this act.*

14 2. *A regulatory body shall not require an applicant for a*
15 *license to disclose, and shall not consider in determining whether*
16 *to issue an applicant a license, any information concerning the*
17 *criminal history of the applicant except for information*
18 *concerning a potentially disqualifying felony offense. Such*
19 *prohibited information includes, without limitation, information*
20 *concerning:*

21 (a) *An offense for which the applicant:*

- 22 (1) *Received a deferred judgment;*
- 23 (2) *Was assigned to a diversion program; or*
- 24 (3) *Has been pardoned;*

25 (b) *An offense which was dismissed;*

26 (c) *An arrest which did not result in a conviction for a*
27 *potentially disqualifying felony offense;*



1 (d) An offense for which related records have been sealed,
2 annulled or expunged;

3 (e) A juvenile adjudication; and

4 (f) A conviction of a misdemeanor, gross misdemeanor or
5 felony that is not a potentially disqualifying felony offense.

6 **Sec. 4. 1.** An applicant is disqualified from obtaining a
7 license on the basis of his or her criminal history only if clear and
8 convincing evidence exists that:

9 (a) The applicant has been convicted of a potentially
10 disqualifying felony offense;

11 (b) The potentially disqualifying felony offense directly and
12 specifically relates to the duties and responsibilities of the
13 occupation or profession for which the applicant seeks a license;

14 (c) The applicant has not been rehabilitated; and

15 (d) Issuing the applicant a license would pose a direct and
16 substantial risk to public safety because the applicant cannot
17 safely perform the duties and responsibilities of the occupation or
18 profession for which the applicant seeks licensure due to his or
19 her lack of rehabilitation.

20 2. In determining whether an applicant has been
21 rehabilitated for the purposes of subsection 1, the following must
22 be considered:

23 (a) The age of the applicant when he or she committed the
24 potentially disqualifying felony offense;

25 (b) The time that has elapsed since the commission of the
26 potentially disqualifying felony offense;

27 (c) The circumstances and nature of the potentially
28 disqualifying felony offense;

29 (d) Whether the applicant has been issued a certificate of
30 rehabilitation or certificate of good conduct;

31 (e) Whether the applicant has completed or actively
32 participated in any program for the treatment of alcohol or other
33 substance use disorders;

34 (f) Any favorable recommendations or testimonials concerning
35 the applicant from persons with relevant knowledge of the
36 applicant, including, without limitation, a probation or parole
37 officer of the applicant;

38 (g) Any relevant education and training of the applicant;

39 (h) The employment history and employment aspirations of the
40 applicant;

41 (i) The family responsibilities of the applicant;

42 (j) Whether the applicant will be required to be bonded as a
43 condition of licensure; and

44 (k) Any other evidence of rehabilitation provided by the
45 applicant.



1 **Sec. 5. 1.** *If it appears to a regulatory body that an*
2 *applicant may be disqualified from obtaining a license pursuant to*
3 *section 4 of this act, the regulatory body shall direct the executive*
4 *director of the regulatory body or, if the regulatory body does not*
5 *employ an executive director, a person designated by the*
6 *regulatory body to render a preliminary decision as to whether the*
7 *applicant is disqualified from obtaining a license pursuant to*
8 *section 4 of this act.*

9 **2.** *If a regulatory body directs the executive director or a*
10 *designee to render a preliminary decision pursuant to subsection*
11 *1, the executive director or designee shall provide written notice to*
12 *the applicant. The notice must inform the applicant that the*
13 *applicant:*

14 *(a) May be disqualified from obtaining a license on the basis*
15 *of his or her criminal history pursuant to section 4 of this act; and*

16 *(b) Is entitled to an informal meeting with the executive*
17 *director or designee if the applicant makes a written request for an*
18 *informal meeting as provided by subsection 3.*

19 **3.** *An applicant to whom notice has been given pursuant to*
20 *subsection 2 may request an informal meeting with the executive*
21 *director or designee. Such a request must be made in writing and*
22 *must be filed with the regulatory body within 15 days after the*
23 *receipt of the notice by the applicant.*

24 **4.** *If an applicant requests an informal meeting within the*
25 *time specified in subsection 3, the executive director or designee*
26 *shall conduct an informal meeting with the applicant in*
27 *accordance with section 6 of this act. The informal meeting must*
28 *be held not later than 45 days after the applicant files a request*
29 *pursuant to subsection 3.*

30 **5.** *Not later than 60 days after the conclusion of the informal*
31 *meeting or, if the applicant does not request an informal meeting*
32 *within the time specified in subsection 3, not later than 60 days*
33 *after notice is provided to the applicant pursuant to subsection 2,*
34 *the executive director or designee shall render a preliminary*
35 *decision as to whether the applicant is disqualified from obtaining*
36 *a license pursuant to section 4 of this act. The preliminary*
37 *decision must be in writing and transmitted to the regulatory body*
38 *for review.*

39 **6.** *If an applicant does not request an informal meeting*
40 *pursuant to subsection 3 or does not present witnesses at the*
41 *informal meeting, the executive director or designee shall not*
42 *consider that fact in rendering his or her preliminary decision.*

43 **7.** *As used in this section, "executive director" includes an*
44 *executive director, executive secretary or person employed by the*



1 *regulatory body in a position with powers and duties similar to*
2 *those of an executive director or executive secretary.*

3 **Sec. 6. 1.** *An informal meeting held pursuant to section 5*
4 *of this act may be conducted in person or by audio or video*
5 *teleconference.*

6 **2.** *At the informal meeting, the applicant must be allowed to*
7 *present witnesses to provide oral or written testimony relating to*
8 *the character of the applicant. Such witnesses may include,*
9 *without limitation, friends, family members, rehabilitation*
10 *counselors and probation or parole officers.*

11 **Sec. 7. 1.** *A regulatory body shall promptly review each*
12 *preliminary decision transmitted to the regulatory body pursuant*
13 *to subsection 5 of section 5 of this act.*

14 **2.** *If the preliminary decision is not adverse to the applicant,*
15 *the regulatory body shall, unless the preliminary decision is*
16 *clearly erroneous:*

17 *(a) Accept the preliminary decision;*

18 *(b) Render a final decision in writing in accordance with the*
19 *preliminary decision; and*

20 *(c) Provide a copy of the final decision to the applicant.*

21 **3.** *If the preliminary decision is adverse to the applicant or is*
22 *clearly erroneous, the regulatory body may deny a license to the*
23 *applicant on the basis of the criminal history of the applicant only*
24 *if, after notice and an opportunity for a hearing as provided in this*
25 *section, the regulatory body determines that:*

26 *(a) The applicant is disqualified from obtaining a license*
27 *pursuant to section 4 of this act; and*

28 *(b) If the regulatory body previously informed the applicant*
29 *that he or she was qualified to obtain a license pursuant to NRS*
30 *622.085 and that determination has not been rescinded, there has*
31 *been a material change in the criminal history of the applicant*
32 *that occurred after the date on which the applicant was informed*
33 *of his or her qualification to obtain a license which has rendered*
34 *the applicant disqualified from obtaining a license.*

35 **4.** *Before making a determination pursuant to subsection 3,*
36 *the regulatory body shall provide the applicant written notice. The*
37 *notice must inform the applicant of the preliminary decision and*
38 *that the applicant is entitled to a hearing before the regulatory*
39 *body if the applicant makes a written request for a hearing as*
40 *provided by subsection 5.*

41 **5.** *An applicant to whom notice has been given pursuant to*
42 *subsection 4 may request a hearing before the regulatory body.*
43 *Such a request must be in writing and must be filed with the*
44 *regulatory body within 15 days after the receipt of the notice by the*
45 *applicant. If a hearing is requested within the time allowed by this*



1 *subsection, the regulatory body shall, not later than 30 days after*
2 *the receipt of the request, conduct a hearing in compliance with*
3 *all applicable provisions of chapter 233B of NRS.*

4 *6. Not later than 30 days after the conclusion of a hearing*
5 *conducted pursuant to subsection 5, the regulatory body shall*
6 *render a final decision on the matter. The final decision must be*
7 *in writing and be provided to the applicant. The regulatory body*
8 *shall also provide to the applicant information concerning the*
9 *right of the applicant to judicial review of the decision.*

10 *7. An applicant who is aggrieved by the final decision of a*
11 *regulatory body pursuant to this section is entitled to judicial*
12 *review of the decision in the manner provided by chapter 233B of*
13 *NRS.*

14 **Sec. 8.** NRS 622.005 is hereby amended to read as follows:

15 622.005 As used in this chapter, unless the context otherwise
16 requires, the words and terms defined in NRS 622.020 to 622.060,
17 inclusive, *and section 2 of this act* have the meanings ascribed to
18 them in those sections.

19 **Sec. 9.** NRS 622.085 is hereby amended to read as follows:

20 622.085 1. Except as otherwise provided in chapters 624 and
21 648 of NRS, a regulatory body shall develop and implement a
22 process by which a person with a criminal history may petition the
23 regulatory body to review the criminal history of the person to
24 determine if the person's criminal history will disqualify the person
25 from obtaining a license from the regulatory body.

26 2. Not later than 90 days after a petition is submitted to a
27 regulatory body pursuant to subsection 1, a regulatory body shall
28 inform the person of the determination of the regulatory body of
29 whether the person's criminal history will disqualify the person
30 from obtaining a license. A regulatory body is not bound by its
31 determination of disqualification ~~for qualification~~ and may rescind
32 such a determination at any time. *A regulatory body is bound by its*
33 *determination of qualification to the extent provided in section 7*
34 *of this act and may rescind such a determination only if there has*
35 *been a material change in the criminal history of the person which*
36 *renders the person disqualified from obtaining a license.*

37 3. A regulatory body may provide instructions to a person who
38 receives a determination of disqualification *pursuant to subsection*
39 *2* to remedy the determination of disqualification. A person may
40 resubmit a petition pursuant to subsection 1 not earlier than 6
41 months after receiving instructions pursuant to this subsection if the
42 person remedies the determination of disqualification.

43 4. A person with a criminal history may petition the regulatory
44 body at any time, including, without limitation, before obtaining any



1 education or paying any fee required to obtain a license from the
2 regulatory body.

3 5. A person may submit a new petition to the regulatory body
4 not earlier than 2 years after the final determination of the initial
5 petition submitted to the regulatory body.

6 6. A regulatory body may impose a fee of up to \$50 upon the
7 person to fund the administrative costs in complying with the
8 provisions of this section. A regulatory body may waive such fees or
9 allow such fees to be covered by funds from a scholarship or grant.

10 7. A regulatory body ~~{may}~~ :

11 (a) ~~May~~ post on its Internet website ~~{~~

12 ~~—(a) The} the~~ requirements to obtain a license from the regulatory
13 body; and

14 (b) ~~{A list of crimes, if any, that would disqualify a person from~~
15 ~~obtaining a license from the regulatory body.} Shall post on its~~
16 ~~Internet website an explanation of the procedures by which the~~
17 ~~regulatory body may deny a license to an applicant on the basis of~~
18 ~~the criminal history of the applicant pursuant to sections 3 to 7,~~
19 ~~inclusive, of this act.~~

20 8. A regulatory body may request the criminal history record of
21 a person who petitions the regulatory body for a determination
22 pursuant to subsection 1. To the extent consistent with federal law,
23 if the regulatory body makes such a request of a person, the
24 regulatory body shall require the person to submit his or her
25 criminal history record which includes a report from:

26 (a) The Central Repository for Nevada Records of Criminal
27 History; and

28 (b) The Federal Bureau of Investigation.

29 9. A person who petitions a regulatory body for a
30 determination pursuant to subsection 1 shall not submit false or
31 misleading information to the regulatory body.

32 **Sec. 10.** NRS 623A.065 is hereby amended to read as follows:

33 623A.065 For the purposes of this chapter, a person has good
34 moral character if the person:

35 1. ~~{Has not been convicted of a felony, misdemeanor or gross~~
36 ~~misdemeanor that is directly related to the practice of landscape~~
37 ~~architecture;~~

38 ~~—2.} Has not committed an act involving dishonesty, fraud,~~
39 ~~misrepresentation, breach of a fiduciary duty, gross negligence or~~
40 ~~incompetence while engaged in the practice of landscape~~
41 ~~architecture;~~

42 ~~{3. Is not incarcerated in a jail or prison at the time of~~
43 ~~submitting an application for a certificate of registration or a~~
44 ~~certificate to practice as a landscape architect intern;~~



1 ~~4.]~~ 2. Has not committed fraud or misrepresentation in
2 connection with:

3 (a) The submission of an application for a certificate of
4 registration or certificate to practice as a landscape architect intern;
5 or

6 (b) The taking of one or more examinations pursuant to the
7 provisions of this chapter;

8 ~~5.]~~ 3. Has not had a certificate of registration suspended or
9 revoked by the Board or in any other state or country;

10 ~~6.]~~ 4. Has not, in lieu of receiving disciplinary action,
11 surrendered a certificate of registration or certificate to practice as a
12 landscape architect intern in this State or a certificate or license to
13 practice landscape architecture issued in another state or country;

14 ~~7.]~~ 5. Has not engaged in the practice of landscape
15 architecture in this State or in any other state or country without a
16 license or certificate of registration or certificate to practice as a
17 landscape architect intern within the 2 years immediately preceding
18 the filing of an application for a certificate of registration or
19 certificate to practice as a landscape architect intern pursuant to the
20 provisions of this chapter; or

21 ~~8.]~~ 6. Has not, within the 5 years immediately preceding the
22 filing of an application specified in subsection ~~7.]~~ 5, engaged in
23 unprofessional conduct in violation of the regulations adopted by the
24 Board.

