

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1253

Introduced by

Representatives Kading, Blum, McWilliams, Schneider

Senator Kannianen

1 A BILL for an Act to amend and reenact section 12.1-33-02.1 of the North Dakota Century
2 Code, relating to a criminal conviction and state licensure.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 12.1-33-02.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-33-02.1. Prior conviction of a crime not bar to state licensures - Exceptions -**
7 **Petition.**

8 1. ~~A person~~An individual may not be automatically disqualified to practice, pursue, or
9 engage in any occupation, trade, or profession for which a license, permit, certificate,
10 or registration is required from any state agency, board, commission, ~~or department,~~or
11 other licensing entity solely because of prior conviction of an offense. However, ~~a~~
12 ~~person~~an individual may be denied a license, permit, certificate, or registration
13 because of prior conviction of an offense if it is determined ~~that such person~~the
14 individual has not been sufficiently rehabilitated; or ~~that~~ the offense has a direct
15 bearing upon ~~a person's~~an individual's ability to serve the public in the specific
16 occupation, trade, or profession.

17 2. A state agency, board, commission, ~~or department,~~or licensing entity shall consider
18 the following in determining sufficient rehabilitation:

- 19 a. The nature of the offense and whether ~~it~~the offense has a direct bearing upon the
20 qualifications, functions, or duties of the specific occupation, trade, or profession.
- 21 b. Information pertaining to the degree of rehabilitation of the convicted
22 ~~person~~individual.
- 23 c. The time elapsed since the conviction or release. Completion of a period of five
24 years after final discharge or release from any term of probation, parole or other

1 form of community corrections, or imprisonment, without subsequent conviction
2 shall be deemed is prima facie evidence of sufficient rehabilitation.

3 3. ~~If conviction of an offense is used in whole or in part as a basis for disqualification of a~~
4 ~~person, such disqualification shall~~An individual who is applying for a license that
5 requires an education or training period of not more than four years may petition a
6 state agency, board, commission, department, or other licensing entity before the
7 individual submits an application or enters a training program for a particular license
8 for a determination of whether the individual's criminal record will disqualify the
9 individual from obtaining state licensure.

10 4. A petition must include the individual's criminal record or authorize the state agency,
11 board, commission, department, or other licensing entity to obtain the individual's
12 criminal record. The petition may include, and the state agency, board, commission,
13 department, or other licensing entity may consider:

- 14 a. Completion of the criminal sentence.
- 15 b. A certificate of rehabilitation or good conduct.
- 16 c. Completion or active participation in drug or alcohol treatment.
- 17 d. Testimonials and recommendations, including a progress report from the
18 individual's probation or parole officer.
- 19 e. Evidence of sufficient rehabilitation under subsection 2.
- 20 f. Training.
- 21 g. Employment history.
- 22 h. Employment aspirations.
- 23 i. Personal information, including the age of the individual at the time the offense
24 was committed and the individual's current family responsibilities.

25 5. A state agency, board, commission, department, or other licensing entity may not
26 consider:

- 27 a. Nonconviction information, including information related to a deferred
28 adjudication, participation in a diversion program, or an arrest not followed by a
29 conviction;
- 30 b. A conviction that has been sealed, dismissed, expunged, or pardoned;
- 31 c. A juvenile adjudication;

- 1 d. A nonviolent misdemeanor; or
- 2 e. A conviction that occurred more than three years before the date of the petition,
- 3 except a conviction of a felony offense that is a:
- 4 (1) Violent offense, including a felony offense subject to section 12.1-32-09.1, a
- 5 felony offense subject to section 12.1-32-02.1, which involves the use of a
- 6 firearm or dangerous weapon, a second or subsequent violation of section
- 7 12.1-17-07.1, a second or subsequent violation of any domestic violence
- 8 protection order, a violation of chapter 12.1-41, or a violation of section
- 9 14-09-22; or
- 10 (2) A sex-related offense, including a felony sexual offense under chapter
- 11 12.1-20.
- 12 6. The state agency, board, commission, department, or other licensing entity may not
- 13 find an individual's criminal record disqualifies the individual from state licensure
- 14 unless the state agency, board, commission, department, or other licensing entity
- 15 determines the state's interest in protecting public safety is superior to the individual's
- 16 fundamental right to pursue a lawful occupation and the agency, board, commission,
- 17 department, or other licensing entity establishes by clear and convincing evidence:
- 18 a. The individual was convicted of a felony or violent misdemeanor, except as
- 19 otherwise provided in this section, which is directly, substantially, and adversely
- 20 related to the state's interest in protecting public safety; and
- 21 b. The granting of state licensure will put the individual in a position in which the
- 22 individual is more likely than not to reoffend and cause harm.
- 23 7. The state agency, board, commission, department, or other licensing entity shall issue
- 24 a decision within ninety days after a petition is submitted. The decision must be in
- 25 writing and shall~~must~~ specifically state the evidence presented and the reasons for
- 26 disqualification~~findings of fact and conclusions of law and may advise the individual of~~
- 27 actions the individual may take to remedy the disqualification. An individual who is
- 28 disqualified may submit a revised petition reflecting completion of the remedial actions
- 29 before a deadline to be set by the state agency, board, commission, department, or
- 30 other licensing entity in an alternative advisory decision. A copy of such disqualification
- 31 ~~shall~~the decision must be sent to the applicant by certified mail.

- 1 4.8. An ambiguity in an occupational regulation relating to the use of an individual's
2 criminal record must be resolved in favor of the individual. A state agency, board,
3 commission, department, or other licensing entity may not use an undefined term in an
4 occupational regulation relating to the individual's moral character, including a crime of
5 moral turpitude or character and fitness to disqualify an individual from state licensure.
- 6 9. An individual may submit a new petition to a state agency, board, commission,
7 department, or other licensing entity at least one year after a final judgment on the
8 initial petition.
- 9 10. A state agency, board, commission, department, or other licensing entity may rescind
10 a favorable decision at any time if the individual is convicted of an additional offense.
- 11 11. A state agency, board, commission, department, or other licensing entity may charge a
12 filing fee of no more than one hundred dollars for the processing of each petition.
- 13 12. A person desiring to appeal from a final decision by any state agency, board,
14 commission, or department shall follow the procedure provided by the chapter of this
15 code regulating the specific occupation, trade, or profession. If no appeal or review
16 procedure is provided by such chapter, an appeal may be taken in accordance with
17 chapter 28-32, except for attorneys disbarred or suspended under chapter 27-14.
- 18 13. The department of commerce shall create an annual reporting requirement to be
19 compiled and published on the department's website. The information must include:
- 20 a. The number of applicants petitioning each state agency, board, commission, or
21 other licensing entity;
- 22 b. The number of approvals and denials by each state agency, board, commission,
23 or other licensing entity;
- 24 c. The type of offenses for which each state agency, board, commission, or other
25 licensing entity approved or denied the petitions; and
- 26 d. Any other data the department of commerce deems necessary.
- 27 14. This section may not be construed to require a private or national certification
28 organization to grant or deny a private or national certification to an individual.
- 29 15. A state agency, board, commission, department, or other licensing entity that makes a
30 decision under this section and reverses the decision at a later date, may not be held
31 liable for the failure of an individual to obtain licensure.