

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 705

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO CREATE THE FRESH START ACT OF 2021; TO HELP INDIVIDUALS WITH CRIMINAL RECORDS REENTER AND MOVE TO THE WORKFORCE AND STAY OUT OF PRISON; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE FRESH START ACT OF 2021;
AND TO HELP INDIVIDUALS WITH CRIMINAL
RECORDS REENTER AND MOVE TO THE WORKFORCE
AND STAY OUT OF PRISON.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title.

This act shall be known and may be cited as the "Fresh Start Act of 2021".

SECTION 2. Arkansas Code § 17-3-102 is amended to read as follows:

17-3-102. Licensing restrictions based on criminal records.

~~(a) An individual is not eligible to receive or hold a license issued by a licensing entity if that individual has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court, unless the conviction was lawfully sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., or otherwise previously sealed, pardoned or expunged under prior law:~~



- ~~(1) Capital murder as prohibited in § 5-10-101;~~
- ~~(2) Murder in the first degree and second degree as prohibited in §§ 5-10-102 and 5-10-103;~~
- ~~(3) Manslaughter as prohibited in § 5-10-104;~~
- ~~(4) Negligent homicide as prohibited in § 5-10-105;~~
- ~~(5) Kidnapping as prohibited in § 5-11-102;~~
- ~~(6) False imprisonment in the first degree as prohibited in § 5-11-103;~~
- ~~(7) Permanent detention or restraint as prohibited in § 5-11-106;~~
- ~~(8) Robbery as prohibited in § 5-12-102;~~
- ~~(9) Aggravated robbery as prohibited in § 5-12-103;~~
- ~~(10) Battery in the first degree as prohibited in § 5-13-201;~~
- ~~(11) Aggravated assault as prohibited in § 5-13-204;~~
- ~~(12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;~~
- ~~(13) Aggravated assault upon a law enforcement officer or an employee of a correctional facility as prohibited in § 5-13-211, if a Class Y felony;~~
- ~~(14) Terroristic threatening in the first degree as prohibited in § 5-13-301;~~
- ~~(15) Rape as prohibited in § 5-14-103;~~
- ~~(16) Sexual indecency with a child as prohibited in § 5-14-110;~~
- ~~(17) Sexual extortion as prohibited in § 5-14-113;~~
- ~~(18) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~
- ~~(19) Incest as prohibited in § 5-26-202;~~
- ~~(20) Offenses against the family as prohibited in §§ 5-26-303—5-26-306;~~
- ~~(21) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;~~
- ~~(22) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;~~
- ~~(23) Permitting the abuse of a minor as prohibited in § 5-27-221;~~
- ~~(24) Engaging children in sexually explicit conduct for use in~~

~~visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print media depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303—5-27-305, 5-27-402, and 5-27-403;~~

~~(25) Computer child pornography as prohibited in § 5-27-603;~~

~~(26) Computer exploitation of a child in the first degree as prohibited in § 5-27-605;~~

~~(27) Felony adult abuse as prohibited in § 5-28-103;~~

~~(28) Theft of property as prohibited in § 5-36-103;~~

~~(29) Theft by receiving as prohibited in § 5-36-106;~~

~~(30) Arson as prohibited in § 5-38-301;~~

~~(31) Burglary as prohibited in § 5-39-201;~~

~~(32) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., as prohibited in the former § 5-64-401, and §§ 5-64-419—5-64-442;~~

~~(33) Promotion of prostitution in the first degree as prohibited in § 5-70-104;~~

~~(34) Stalking as prohibited in § 5-71-229;~~

~~(35) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection; and~~

~~(36) All other crimes referenced in this title.~~

~~(b)(1) If an individual has been convicted of a crime listed in subsection (a) of this section, a licensing entity may waive disqualification or revocation of a license based on the conviction if a request for a waiver is made by:~~

~~(A) An affected applicant for a license; or~~

~~(B) The individual holding a license subject to revocation.~~

~~(2) A basis upon which a waiver may be granted includes without limitation:~~

~~(A) The age at which the offense was committed;~~

~~(B) The circumstances surrounding the offense;~~

~~(C) The length of time since the offense was committed;~~
~~(D) Subsequent work history since the offense was committed;~~

~~(E) Employment references since the offense was committed;~~
~~(F) Character references since the offense was committed;~~
~~(G) Relevance of the offense to the occupational license;~~
and

~~(H) Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.~~

~~(c) If an individual has a valid criminal conviction for an offense that could disqualify the individual from receiving a license, the disqualification shall not be considered for more than five (5) years from the date of conviction or incarceration or on which probation ends, whichever date is the latest, if the individual:~~

~~(A) Was not convicted for committing a violent or sexual offense; and~~

~~(B) Has not been convicted of any other offense during the five-year disqualification period.~~

(a) An individual shall not be disqualified from pursuing, practicing, or engaging in any occupation or profession for which licensure is required solely or in part because of a prior conviction of a crime, unless the crime for which the individual was convicted directly relates to the duties and responsibilities of the occupation or profession.

~~(d)(b)~~ A licensing entity shall not, as a basis upon which a license may be granted or denied:

(1) Use vague or generic terms, including without limitation the phrases “moral turpitude” and “good character”; or

(2) Consider arrests without a subsequent conviction.

~~(e) Due to the serious nature of the offenses, the following shall result in permanent disqualification for licensure:~~

~~(1) Capital murder as prohibited in § 5-10-101;~~

~~(2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;~~

~~(3) Kidnapping as prohibited in § 5-11-102;~~

~~(4) Aggravated assault upon a law enforcement officer or an employee of a correctional facility as prohibited in § 5-13-211, if a Class Y~~

felony;

~~(5) Rape as prohibited in § 5-14-103;~~

~~(6) Sexual extortion as prohibited in § 5-14-113;~~

~~(7) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~

~~(8) Incest as prohibited in § 5-26-202;~~

~~(9) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;~~

~~(10) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;~~

~~(11) Adult abuse that constitutes a felony as prohibited in § 5-28-103; and~~

~~(12) Arson as prohibited in § 5-38-301.~~

(c)(1) On or before one hundred twenty (120) days after the effective date of this chapter, a licensing entity shall revise existing rules concerning licensure to explicitly list the specific criminal convictions that could disqualify an applicant from receiving licensure for a particular occupation or profession.

(2) In its rulemaking, a licensing entity shall list only disqualifying criminal convictions that are specifically and directly related to the duties and responsibilities for the occupation or profession.

(d)(1) A licensing entity shall use the preponderance of the evidence standard of proof in examining the factors to determine whether an applicant with a disqualifying criminal conviction will be denied licensure.

(2) A licensing entity shall make a determination under subdivision (d)(1) of this section based on the following factors:

(A) The nature and seriousness of the offense for which the individual was convicted;

(B) The passage of time since the commission of the offense;

(C) The relationship of the offense to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation or profession; and

(D) Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against a direct relationship between an element of the offense for which an applicant was convicted and a

responsibility inherent to the particular occupation or profession.

(e)(1) Notwithstanding any other law, if an individual has a valid criminal conviction for an offense that could disqualify the individual from receiving licensure, the disqualification shall not be considered for more than five (5) years from the date of the conviction if the individual:

(A) Was not convicted of an offense that was violent or sexual in nature;

(B) Was not convicted more than one (1) time for any felony offense and does not have a criminal background that gives reason to believe that he or she might pose a grave, serious, or substantial risk concerning public safety that gives cause for denying licensure; or

(C) Has not been convicted of any other offense during the five-year disqualification period.

(2)(A) The potential disqualification period may last longer if an applicant with a disqualifying criminal conviction was incarcerated for an offense that was violent or sexual in nature at any time during the previous five (5) years.

(B) If the disqualification period lasts longer than the period specified under subdivision (e)(1) of this section, the disqualification shall last no longer than five (5) years from the date that the individual was released from incarceration.

(f) This section shall apply to any new occupational licensure created after the effective date of this chapter.

~~(f)(g)~~ This chapter does not preclude a licensing entity from taking emergency action against a licensee as authorized under § 25-15-211 for the sake of public health, safety, or welfare.

~~(g) The permanent disqualification for an offense listed in subsection (e) of this section does not apply to an individual who holds a valid license on July 24, 2019.~~

(h) This section does not apply to licensure or certification:

(1) Of professions not governed by this title;

(2) Of polygraph examiners and voice stress analysis examiners under § 17-39-101 et seq.; or

(3) Of private investigators and private security agencies under the Private Security Agency, Private Investigator, and School Security Licensing and Credentialing Act, § 17-40-101 et seq.

SECTION 3. Arkansas Code Title 17, Chapter 3, Subchapter 1, is amended to add an additional section to read as follows:

17-3-105. Petition for review of licensing entity decisions.

(a)(1) An individual with a criminal record may petition a licensing entity at any time for a determination of whether the criminal record of the individual will disqualify the individual from licensure.

(2) The petition shall include details on the criminal record of the individual.

(3) The licensing entity shall inform the individual of his or her standing within thirty (30) days of receiving the petition from the applicant.

(4) The licensing entity may charge a fee to recoup costs associated with the petition not to exceed twenty-five dollars (\$25.00) for each petition.

(b) If a licensing entity denies an individual licensure solely or in part because of a prior conviction of an offense by the individual, the licensing entity shall notify the individual in writing of the following:

(1) The grounds and reasons for the denial or disqualification;

(2) The right of the individual to a hearing to challenge the decision of the licensing entity;

(3) The earliest date that the individual may reapply for licensure; and

(4) The fact that evidence of rehabilitation may be considered upon reapplication.

(c) A licensing entity shall document a determination that a criminal conviction of an applicant is specifically listed as a disqualifying conviction and is directly related to the duties and responsibilities of the occupation or profession in written findings for each of the factors listed in § 17-3-102 by a preponderance of the evidence sufficient for a reviewing court.

(d) In an administrative hearing or civil litigation, the licensing entity shall carry the burden of proof regarding whether the criminal conviction directly relates to the occupation or profession for which licensure is sought.

SECTION 4. DO NOT CODIFY. Rules.

(a) A licensing entity shall adopt necessary rules for the implementation of this act.

(b)(1) When adopting the initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before January 1, 2022; or

(B) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(2) A licensing entity shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.