COMMITTEE REPORT

March 15, 2022

**S. 295**

Introduced by Senators Climer, Fanning, Bennett and Allen

S. Printed 3/15/22--S. [SEC 3/16/22 4:15 PM]

Read the first time January 12, 2021.

**THE COMMITTEE ON LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 295) to amend Article 1, Chapter 1, Title 40 of the 1976 Code, relating to board regulation of professions and occupations, by adding Section 40-1-75 and, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words an inserting:

/ SECTION 1. Article 1, Chapter 1, Title 40 of the 1976 Code is amended by adding:

“Section 40-1-75. (A)(1) A regulatory board or commission may not solely or in part deny a license to an applicant because of a prior criminal conviction, unless the criminal conviction directly relates to the duties and responsibilities of the occupation or profession for which the applicant is seeking a license. Regulatory boards and commissions are prohibited from using vague or generic terms including, but not limited to, ‘moral turpitude’ or ‘good character’, and from considering arrests without a subsequent conviction as a justification for denying an applicant a license.

(2) An applicant who has completed relevant pre-licensing requirements may not be denied a license unless the appropriate regulatory board or commission has given the applicant an opportunity to appear at a hearing to determine the applicant’s fitness for the occupation or profession. The hearing must be scheduled within ninety days of the appropriate board or commission receiving notice that all relevant pre-licensing requirements have been completed.

(B)(1) In determining whether an applicant with a directly related criminal conviction shall be denied a license, the relevant regulatory board or commission shall apply a preponderance of the evidence standard that the applicant would pose a threat to public safety. The board or commission shall make its determination based upon the following factors:

(a) the nature and severity of the crime for which the applicant was convicted;

(b) the length of time since his conviction;

(c) the direct relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

(d) evidence of rehabilitation or treatment undertaken by the applicant that may mitigate the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation or profession; and

(e) any combination of the relevant factors identified in this subsection that the regulatory board or commission determines is necessary considering the totality of the circumstances.

(2) If a regulatory board or commission denies a license application solely or in part because of the applicant’s prior conviction of a crime, then the regulatory board or commission must notify the applicant in writing of its decision. The notice shall provide:

(a) the grounds for the denial;

(b) notice that the individual has the right to a hearing to challenge the denial;

(c) the earliest date that the applicant may again apply for licensure; and

(d) a statement that evidence of rehabilitation may be considered upon reapplication.”

SECTION 2. Chapter 1, Title 40 of the 1976 Code is amended by adding:

“Section 40-1-77. (A) This section may be cited and referred to as the ‘Earn and Learn Act of 2022’.

(B) The purpose of this section is to expand economic opportunities and build a skilled workforce according to industry standards by allowing a worker to earn a paycheck while he fulfills applicable licensing requirements.

(C) For the purposes of this section:

(1) ‘Apprenticeship’ means a United States Department of Labor approved registered apprenticeship or industry recognized apprenticeship that encompasses an occupation or profession licensed by a South Carolina regulatory board or commission.

(2) ‘Board’ means a government board, agency, department, or other governmental entity that regulates a profession or occupation and issues a license to an individual. This definition of ‘board’ does not include boards and commissions established and operating pursuant to Chapter 15, Title 54.

(3) ‘License’ means a license, certificate, registration, permit, or other evidence that an individual is qualified to engage in an occupation or profession before that person may engage in or represent himself as a member of an occupation or profession.

(4) ‘Scope of practice’ means the procedures, actions, processes, and work that a person may perform pursuant to a license issued by an occupation’s or profession’s regulatory board.

(D) A board shall issue a license to an applicant, if the applicant:

(1) completes an apprenticeship in an occupation or profession that has a similar scope of practice, as determined by the board, to an occupation or profession regulated by this State through license requirements;

(2) successfully passes requisite examinations; and

(3) pays all applicable fees.

(E) A license issued pursuant to this section is subject to the same provisions of law governing a license for the occupation or profession.

(F) A board shall not require an applicant pursuant to this section to complete an apprenticeship for a greater duration of time than that is required pursuant to federal law.

(G) A board may require an applicant pursuant to this section to successfully pass an examination only if the board imposes the same examination requirement on other license applicants. A board shall not require an applicant pursuant to this section to receive a higher score on an examination than the score required of other license applicants.

(H) A board may require an applicant pursuant to this section to pay a licensing fee only if the board imposes a licensing fee on other license applicants. A board shall not impose on an applicant pursuant to this section a licensing fee greater than the licensing fee imposed on other applicants.

(I) A board shall promulgate regulations necessary for the implementation of this act.”

SECTION 3. Section 40-1-140 of the 1976 Code, relating to the effect of prior convictions on license applications for professions and occupations, is repealed.

SECTION 4. This act takes effect January 1, 2024.

Renumber sections to conform.

Amend title to conform.

TOM C. DAVIS for Committee.

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 1, TITLE 40 OF THE 1976 CODE, RELATING TO BOARD REGULATION OF PROFESSIONS AND OCCUPATIONS, BY ADDING SECTION 40-1-75 AND SECTION 40-1-77, TO PROVIDE THAT PROFESSIONAL BOARDS AND COMMISSIONS MAY NOT SOLELY DENY A LICENSE APPLICATION BASED UPON AN APPLICANT’S PRIOR CRIMINAL CONVICTION UNLESS THE CONVICTION IS FOR A CRIME THAT DIRECTLY RELATES TO THE DUTIES AND RESPONSIBILITIES FOR THE SPECIFIC OCCUPATION OR PROFESSIONAL LICENSE BEING SOUGHT, TO PROVIDE THAT BOARDS AND COMMISSIONS MUST IDENTIFY CRIMES THAT WOULD LEAD TO AN AUTOMATIC DISQUALIFICATION FROM LICENSURE, TO PROVIDE THAT AN APPLICANT MAY OBTAIN A DETERMINATION FROM THE APPROPRIATE BOARD OR COMMISSION CONCERNING WHETHER HIS PRIOR CRIMINAL CONVICTION IS A DISQUALIFYING CONVICTION, TO PROVIDE NOTICE TO APPLICANTS WHO SEEK SUCH A DETERMINATION, TO PROVIDE FOR LICENSURE BY BOARDS AND COMMISSIONS FOR APPLICANTS WHO COMPLETE CERTAIN APPRENTICESHIP PROGRAMS, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 1, Title 40 of the 1976 Code is amended by adding:

“Section 40-1-75. (A) A regulatory board or commission may not solely or in part deny a license to an applicant because of a prior criminal conviction, unless the criminal conviction directly relates to the duties and responsibilities of the occupation or profession for which the applicant is seeking a license. Regulatory boards and commissions are prohibited from using vague or generic terms, including, but not limited to, ‘moral turpitude’ or ‘good character’, and from considering arrests without a subsequent conviction as a justification for denying an applicant a license.

(B) Each regulatory board or commission shall make available to all license applicants a comprehensive list of criminal convictions that are specific and directly related to the duties and responsibilities of the occupation or profession regulated by the board or commission.

(C)(1) In determining whether an applicant with a criminal conviction shall be denied a license, the relevant regulatory board or commission shall apply a clear and convincing standard of proof. The board or commission shall make its determination based upon the following factors:

(a) the nature and severity of the crime for which the applicant was convicted;

(b) the length of time since the applicant’s conviction;

(c) the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation for which the applicant is seeking licensure; and

(d) any evidence of rehabilitation or treatment undertaken by the applicant that may mitigate the relationship referred to in subitem (c).

(2) If an applicant has a criminal conviction for a crime that could disqualify him from being issued a license, then the disqualification shall not last longer than five years from his date of conviction, provided that the conviction is not for a violent crime or criminal sexual conduct and that the applicant has not been convicted of another disqualifying crime during that five-year period.

(3) An applicant with a criminal record may petition a regulatory board or commission for a determination of whether the applicant’s criminal record will disqualify him from being eligible for a license. This petition shall include details concerning the applicant’s criminal record. The regulatory board or commission shall notify the applicant of its determination not later than thirty days after receiving the applicant’s petition. The determination shall be binding unless the applicant has subsequent criminal convictions or failed to disclose relevant information in his petition. The regulatory board or commission may charge a reasonable fee for filing a petition. The determination shall be made based upon a clear and convincing evidentiary standard.

(4) If a regulatory board or commission denies a permit application solely or in part because of the applicant’s prior conviction of a crime, then the regulatory board or commission must notify the applicant in writing of its decision. The notice shall provide:

(a) the grounds for the denial;

(b) notice that the individual has the right to a hearing to challenge the denial;

(c) the earliest date that the applicant may again apply for licensure; and

(d) a statement that evidence of rehabilitation may be considered upon reapplication.

Section 40-1-77. (A) For the purposes of this section, ‘apprenticeship’ means a program that meets federal guidelines as provided in 29 C.F.R. Part 29 and 29 U.S.C. Section 50.

(B) Within the parameters established by the federal Labor Standards for the Registration of Apprenticeship Programs pursuant to 29 C.F.R. Part 29 and 29 U.S.C. Section 50, each regulatory board or commission within the department shall issue a license to an applicant who:

(1) successfully completed the eighth grade;

(2) completed an apprenticeship approved by the United States Department of Labor or as otherwise permitted pursuant to state or federal law. The apprenticeship may be completed under the supervision of a state-licensed practitioner or at a state-licensed school; and

(3) successfully passed an examination by the appropriate regulatory board or commission, if an exam is required by the appropriate regulatory board or commission.

(C) If a regulatory board or commission requires an examination pursuant to subsection (B)(3), then the board or commission shall establish a passing score for the examination, which shall not exceed any passing scores that are otherwise required for a non-apprenticeship license for that particular occupation or profession.

(D) The number of working hours required for a competency-based apprenticeship or a hybrid apprenticeship under 29 C.F.R. 29.5 shall not exceed the number of educational hours otherwise required for a non-apprenticeship license for that particular occupation or profession.”

SECTION 2. This act takes effect upon approval by the Governor.

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