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Short Title: Freedom to Work/OLB Reform.

(Public)

Sponsors:

Referred to:

April 16, 2019

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND SIMPLIFY A LICENSEE'S QUALIFICATIONS FOR  
LICENSURE AND TO REQUIRE RECOGNITION BY LICENSING BOARDS OF  
CERTAIN APPRENTICESHIP AND TRAINING EXPERIENCES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-173.2(d) reads as rewritten:

"(d) Unless modified or revoked, a Certificate of Relief relieves all collateral sanctions, except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law, and any others specifically excluded in the certificate. A Certificate of Relief does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding ~~may~~ shall consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification."

**SECTION 2.** G.S. 93B-1 reads as rewritten:

**§ 93B-1. Definitions.**

As used in this ~~Chapter~~ Chapter, the following definitions apply:

~~"License" means any~~

(1) License. – Any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation.

~~"Occupational licensing board" means any~~

(2) Occupational licensing board. – Any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, ~~and/or~~ and the conduct of persons within, a particular profession or occupation, and which is authorized to issue ~~licenses;~~ licenses. The phrase "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses.

(3) State agency licensing board. – Any State agency staffed by full-time State employees, which as part of their regular functions issue licenses. This section does not apply to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission. The following is a nonexclusive list of State



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- 1 agency licensing boards and the profession or occupation for which the board,  
2 agency, or officer may issue licenses:
- 3 a. The Department of Agriculture and Consumer Services.  
4 1. Commissioner of Agriculture.  
5 I. Scale Technician. Article 6 of Chapter 81A of the  
6 General Statutes.  
7 II. Seed Dealer. Article 31 of Chapter 106 of the General  
8 Statutes.  
9 III. Livestock Dealer. Article 35B of Chapter 106 of the  
10 General Statutes.  
11 2. North Carolina Pesticide Board.  
12 I. Pesticide Applicators and Pesticide Dealers. Parts 3 and  
13 4 of Article 52 of Chapter 143 of the General Statutes.  
14 3. North Carolina Board of Agriculture.  
15 I. Boarding Kennel Operator and Pet Shop Owner.  
16 Article 3 of Chapter 19A of the General Statutes.  
17 II. Poultry, Hatcheries, and Chick Dealers. Article 40 of  
18 Chapter 106 of the General Statutes.  
19 4. Structural Pest Control Committee.  
20 I. Exterminator and Structural Pest Control Applicator.  
21 Article 4C of Chapter 106 of the General Statutes.
- 22 b. The Department of Environmental Quality.  
23 1. Well Contractors Certification Commission.  
24 I. Well Contractor. Article 7A of Chapter 87 of the  
25 General Statutes.
- 26 c. The Department of Health and Human Services.  
27 1. North Carolina Medical Care Commission.  
28 I. Ambulance Attendant, Emergency Medical  
29 Technician. Article 7 of Chapter 131E of the General  
30 Statutes.
- 31 d. The Department of Insurance.  
32 1. Commissioner of Insurance.  
33 I. Bail Bond Runner, Professional Bondsman, Surety  
34 Bondsman. Article 71 of Chapter 58 of the General  
35 Statutes.  
36 II. Insurance Agent, Insurance Company Adjuster, Motor  
37 Vehicle Damage Appraiser, Self-Employed Insurance  
38 Adjuster. Article 33 of Chapter 58 of the General  
39 Statutes.  
40 2. Code Officials Qualifications Board.  
41 I. Building Inspector, Code Enforcement Official,  
42 Electrical Inspector, Fire Inspector, Mechanical  
43 Inspector, Plumbing Inspector. Article 9C of Chapter  
44 58 of the General Statutes.  
45 3. Home Inspection Licensure Board.  
46 I. Home Inspector. Article 9F of Chapter 143 of the  
47 General Statutes.  
48 4. Manufactured Housing Board.  
49 I. Manufactured Housing Salesperson. Article 9A of  
50 Chapter 143 of the General Statutes.
- 51 e. The Department of Justice.

- 1                   1.     North Carolina Sheriffs' Education and Training Standards
- 2                   Commission.
- 3                   I.     Justice Officer. Chapter 17E of the General Statutes.
- 4                   2.     North Carolina Criminal Justice Education and Training
- 5                   Standards Commission.
- 6                   I.     Law Enforcement Officer. Article 1 of Chapter 17C of
- 7                   the General Statutes.
- 8                   f.     The Department of Labor.
- 9                   1.     Boiler Safety Bureau.
- 10                   I.     Boiler Inspector. Article 7A of Chapter 95 of the
- 11                   General Statutes.
- 12                   g.     The Department of Public Instruction.
- 13                   1.     State Board of Education.
- 14                   I.     Teacher, Principal, Superintendent. Article 71E of
- 15                   Chapter 115C of the General Statutes.
- 16                   h.     The Department of Public Safety.
- 17                   1.     Alcohol Law Enforcement Branch.
- 18                   I.     Boxer, Kickboxer, Mixed Martial Arts, Promoter.
- 19                   Article 8 of Chapter 143 of the General Statutes.
- 20                   2.     The Alcohol Beverage Control Board.
- 21                   I.     Alcoholic Beverage Distributor. Article 9 of Chapter
- 22                   18B.
- 23                   3.     Private Protective Services Board.
- 24                   I.     Counter Intelligence Licensee, Guard Dog Service
- 25                   Operator, Polygraph Examiner, Private Investigator,
- 26                   Psychological Stress Evaluator, Security Guard, and
- 27                   Patrol Licensee. Article 1 of Chapter 74C of the
- 28                   General Statutes.
- 29                   i.     The Department of the Secretary of State.
- 30                   1.     The Secretary of State.
- 31                   I.     Athletic Agent. Article 9 of Chapter 78C of the General
- 32                   Statutes.
- 33                   II.    Investment Advisor. Article 3 of Chapter 78C of the
- 34                   General Statutes.
- 35                   III.   Securities Broker, Securities Dealer, Security
- 36                   Salesman. Article 5 of Chapter 78A of the General
- 37                   Statutes.
- 38                   IV.   Professional Solicitor. Article 3 of Chapter 131F of the
- 39                   General Statutes.
- 40                   j.     The Department of Transportation.
- 41                   1.     Division of Motor Vehicles.
- 42                   I.     New and Used Motor Vehicle Dealer, Motor Vehicle
- 43                   Sales Representative, Distributor, Distributor Branch,
- 44                   Distributor Representative, Wholesaler. Article 12 of
- 45                   Chapter 20 of the General Statutes.
- 46                   II.    Commercial Driver, Truck Driver. Article 2 of Chapter
- 47                   20 of the General Statutes.
- 48                   III.   Safety Inspection Mechanic. Article 3A of Chapter 20
- 49                   of the General Statutes."
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**SECTION 3.** G.S. 93B-2 reads as rewritten:

1       "(a) No later than October 31 of each year, each occupational licensing board shall file  
2 electronically with the Secretary of State, the Attorney General, and the Joint Legislative  
3 Administrative Procedure Oversight Committee an annual report containing all of the following  
4 information:

5       ...

6       (9a) The number of applicants for a license and, of that number, the number  
7 granted a license.

8       (9b) The number of applicants with a conviction record and, of that number, the  
9 number granted a license, denied a license for any reason, and denied a license  
10 because of a conviction.

11       ...

12       (e) No later than October 31 of each year, each State agency licensing board shall file  
13 electronically with the Secretary of State, the Attorney General, and the Joint Legislative  
14 Administrative Procedure Oversight Committee an annual report containing all of the following  
15 information:

16       (1) The number of applicants for a license and, of that number, the number  
17 granted a license.

18       (2) The number of applicants with a conviction record and, of that number, the  
19 number granted a license, denied a license for any reason, and denied a license  
20 because of a conviction."

21       **SECTION 4.** G.S. 93B-8.1 reads as rewritten:

22       "**§ 93B-8.1. Use of criminal history records.**

23       (a) The following definitions apply in this section:

24       (1) Applicant. – A person who makes application for licensure from an  
25 occupational licensing board.

26       (2) Board. – An occupational licensing board or a State agency licensing board as  
27 defined in G.S. 93B-1.

28       (3) Criminal history record. – A State or federal history of conviction of a crime,  
29 whether a misdemeanor or felony, that bears upon an applicant's or a licensee's  
30 fitness to be licensed or disciplined.

31       (4) Licensee. – A person who has obtained a license to engage in or represent  
32 himself or herself to be a member of a particular profession or occupation.

33       (b) ~~Unless the law governing a particular occupational licensing board provides~~  
34 ~~otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal~~  
35 ~~history. If the board is authorized to deny a license to an applicant on the basis of conviction of~~  
36 ~~any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's~~  
37 ~~verified criminal history record reveals one or more convictions of any crime, the board may~~  
38 ~~deny the license if it finds that denial is warranted after consideration of the~~ Unless federal law  
39 governing a particular board provides otherwise, a board may deny an applicant on the basis of  
40 a conviction of a crime only if the board finds that the applicant's criminal conviction history is  
41 directly related to the duties and responsibilities for the licensed occupation or the conviction is  
42 for a crime that is violent or sexual in nature. Notwithstanding any other provision of law, a board  
43 shall not automatically deny licensure on the basis of an applicant's criminal history, and no board  
44 may deny an applicant a license based on a determination that a conviction is for a crime of moral  
45 turpitude. The board shall make its determination based on the factors specified in subsection  
46 (b1).

47       (b1) Before a board may deny an applicant a license due to a criminal conviction under  
48 subsection (b) of this section, the board must specifically consider all of the following factors:

49       (1) The level and seriousness of the crime.

50       (2) The date of the crime.

51       (3) The age of the person at the time of the crime.

- 1 (4) The circumstances surrounding the commission of the crime, if known.  
2 (5) The nexus between the criminal conduct and the prospective duties of the  
3 applicant as a licensee.  
4 (6) The prison, jail, probation, parole, rehabilitation, and employment records of  
5 the applicant since the date the crime was committed.  
6 (6a) The completion of, or active participation in, rehabilitative drug or alcohol  
7 treatment.  
8 (6b) A Certificate of Relief granted pursuant to G.S. 15A-173.2.  
9 (7) The subsequent commission of a crime by the applicant.  
10 (8) Any affidavits or other written documents, including character references.  
11 (b2) If the board denies an applicant a license under this section, the board shall:  
12 (1) Make written findings specifying the factors in subsection (b1) of this section  
13 the board deemed relevant to the applicant and explaining the reason for the  
14 denial. The board's presiding officer must sign the findings.  
15 (2) Provide or serve a signed copy of the written findings to the applicant within  
16 60 days of the denial.  
17 (3) Retain a signed copy of the written findings for no less than five years.  
18 (b3) Each board shall include in its application for licensure and on its public Web site all  
19 of the following information:  
20 (1) Whether the board requires applicants to consent to a criminal history record  
21 check.  
22 (2) The factors under subsection (b1) of this section which the board shall  
23 consider when making a determination of licensure.  
24 (3) The appeals process pursuant to Chapter 150B of the General Statutes if the  
25 board denies an applicant licensure in whole or in part because of a criminal  
26 conviction.  
27 (b4) If a board requires an applicant to submit a criminal history record, the board shall  
28 require the provider of the criminal history record to provide the applicant with access to the  
29 applicant's criminal history record or otherwise deliver a copy of the criminal history record to  
30 the applicant. If an applicant's criminal history includes matters that will or may prevent the board  
31 from issuing a license to the applicant, the board shall notify the applicant in writing of the  
32 specific issues in sufficient time for the applicant to provide additional documentation supporting  
33 the application for consideration by the board prior to any final decision to deny the application.  
34 After being notified of any potential issue with licensure due to criminal conviction(s), an  
35 applicant shall have 30 days to respond by either correcting any inaccuracy in the criminal history  
36 record or submitting evidence of mitigation or rehabilitation for consideration by the board.  
37 (b5) If, following a hearing, a board denies an application for licensure, the board's written  
38 order shall include specific reference to any criminal conviction(s) considered as part or all of  
39 any basis for the denial and the rationale for the denial, as well as a reference to the appeal process  
40 and the applicant's ability to reapply. No applicant shall be restricted from reapplying for  
41 licensure for more than two years from the date of the most recent application.  
42 (b6) Notwithstanding any other provisions in the law, an individual with a criminal history  
43 may petition a board at any time, including before an individual starts or completes any  
44 mandatory education or training requirements, for a predetermination of whether the individual's  
45 criminal history will likely disqualify the individual from obtaining a license. This petition shall  
46 include a criminal history record report obtained by the individual from a reporting service  
47 designated by the board, the cost of which shall be borne by the applicant. Criminal history  
48 records relating to a predetermination petition shall not be considered public records under  
49 Chapter 132 of the General Statutes. A board may predetermine that the petitioner's criminal  
50 history is likely grounds for denial of a license only after the board has applied the requirements  
51 of subsection (b) of this section. Each board shall delegate authority for such a predetermination

1 to its Executive Director or their equivalent, or a committee of the board, so that the  
2 predeterminations can be made in a timely manner. No board member having served on a  
3 predetermination committee for an individual shall be required to recuse in any later  
4 determinations or hearings involving the same applicant. The board shall inform the individual  
5 of the board's determination within 45 days of receiving the petition from the individual. The  
6 board may charge a fee to recoup its costs not to exceed forty-five dollars (\$45.00) for each  
7 petition. If the board determines an applicant would likely be denied licensure based on their  
8 criminal history, the board shall notify the individual in writing of the following:

9 (1) The grounds and reasons for the predetermination.

10 (2) That the petitioner has the right to complete any requirements for licensure  
11 and apply to the board and have their application considered by the board  
12 under its application process.

13 (3) That further evidence of rehabilitation will be considered upon application.

14 (b7) A predetermination made under this section that a petitioner's criminal history would  
15 likely prevent them from licensure is not a final agency decision and shall not entitle the  
16 individual to any right to judicial review under Article 4 of Chapter 150B of the General Statutes.

17 (b8) A predetermination made under subsection (b6) of this section that a petitioner is  
18 eligible for a license shall be binding if the petitioner applies for licensure and fulfills all other  
19 requirements for the occupational license and the applicant's submitted criminal history was  
20 correct and remains unchanged at the time of application for a license.

21 (c) The board may deny licensure to an applicant who refuses to consent to a criminal  
22 history record check or use of fingerprints or other identifying information required by the State  
23 or National Repositories of Criminal Histories.

24 (d) This section does not apply to The North Carolina Criminal Justice Education and  
25 Training Standards Commission and the North Carolina Sheriffs' Education and Training  
26 Standards Commission."

27 **SECTION 5.** Chapter 93B of the General Statutes is amended by adding a new  
28 section to read:

29 **"§ 93B-8.6. Recognition of apprenticeships and training.**

30 (a) The following definitions shall apply in this section:

31 (1) Apprenticeship. – A program that meets the federal guidelines for registered  
32 apprenticeships set out in 29 C.F.R. Part 29 and 29 U.S.C. § 50. An  
33 apprenticeship can be completed under a State-licensed practitioner of that  
34 occupation or at a State-licensed school.

35 (2) Career technical education. – Programs of study, clusters, and pathways  
36 approved by the North Carolina State Board of Education or the State Board  
37 of Community Colleges.

38 (3) Licensing. – Any required training, education, or fee to work in a specific  
39 profession.

40 (b) Unless otherwise required by federal law, including requirements pertaining to  
41 eligibility for federal grant funding, an occupational licensing board shall grant a license to any  
42 applicant who meets the following criteria:

43 (1) Completed an apprenticeship approved by the North Carolina State  
44 Approving Agency or federal Department of Labor, or otherwise permitted  
45 under State or federal law.

46 (2) Passed an examination, if one is deemed to be necessary by the licensing  
47 authority.

48 (3) With the exception of any prelicensing education requirements, has met any  
49 other requirements for licensure set forth in the law or rules related to the  
50 particular board.

1        (b1) This section shall not apply to occupational licensing boards governing professions  
2 requiring advanced knowledge acquired by a prolonged course of specialized intellectual study,  
3 including those requiring a bachelor's or advanced degree.

4        (c) Each occupational licensing board shall establish a passing score for the board's  
5 examinations which shall not exceed the passing score that is required under the board's standard  
6 licensing processes. If the relevant law or rule does not require an examination for the standard  
7 licensing process, no examination may be required for applicants who complete an  
8 apprenticeship in that occupation. Except as otherwise required by federal law, apprenticeships  
9 for an occupation shall not be required to exceed the number of hours required by the relevant  
10 licensing authority or statute for that occupation.

11        (d) Applicants for licensure shall be permitted to apply training hours earned through  
12 career technical education provided by North Carolina public schools and colleges towards the  
13 requirements for licensure in the same occupation in accordance with the standards and  
14 procedures authorized in accordance with this Chapter.

15        (e) The State Board of Community Colleges and occupational licensing boards shall  
16 adopt rules for the implementation of this section."

17        **SECTION 6.** This act becomes effective October 1, 2019, and applies to Certificates  
18 of Relief granted or applications for licensure submitted on or after that date.  
19