

House Engrossed

occupational licenses; convictions

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2429

AN ACT

AMENDING SECTIONS 41-1093.06 AND 41-1758.03, ARIZONA REVISED STATUTES;
RELATING TO OCCUPATIONAL REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1093.06, Arizona Revised Statutes, is amended
3 to read:

4 41-1093.06. Occupational licenses; drug offense or felony
5 conviction; eligibility; exceptions;
6 definitions

7 A. Notwithstanding any other law, an agency may not deny to an
8 otherwise qualified applicant ~~who has been convicted of an offense that~~
9 ~~involves a violation of title 13, chapter 34 or 34.1 or an offense~~
10 ~~committed in another jurisdiction that has the same elements as an offense~~
11 ~~listed in title 13, chapter 34 or 34.1~~ either of the following:

12 1. The regular occupational license for which the applicant
13 applied.

14 2. A provisional occupational license.

15 B. This section does not apply to the following:

16 1. The state board of education for the purposes of certification
17 of persons pursuant to section 15-501.01.

18 2. A health profession regulatory board as defined in section
19 32-3201.

20 3. The department of health services for the purposes of title 36,
21 chapter 28.1.

22 4. A law enforcement agency and the Arizona peace officer standards
23 and training board.

24 C. For the purposes of this section: ;

25 1. "Occupational license" means any agency permit, certificate,
26 approval, registration or charter or any similar form of permission that
27 allows an individual to use an occupational title or work in a lawful
28 occupation, trade or profession.

29 2. "OTHERWISE QUALIFIED APPLICANT" MEANS AN APPLICANT WHO HAS BEEN
30 CONVICTED OF EITHER:

31 (a) AN OFFENSE THAT INVOLVES A VIOLATION OF TITLE 13, CHAPTER 34 OR
32 34.1 OR AN OFFENSE COMMITTED IN ANOTHER JURISDICTION THAT HAS THE SAME
33 ELEMENTS AS AN OFFENSE LISTED IN TITLE 13, CHAPTER 34 OR 34.1.

34 (b) A MISDEMEANOR OR FELONY OFFENSE UNLESS THE APPLICANT WAS
35 CONVICTED OF A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105, A DANGEROUS
36 CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705 OR A SERIOUS OFFENSE
37 OR VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706.

38 (c) A MISDEMEANOR OR FELONY OFFENSE UNLESS THE APPLICANT WAS
39 CONVICTED OF AN OFFENSE INCLUDED IN TITLE 13, CHAPTER 20, 21 OR 22 OR
40 SECTION 13-2310 OR 13-2311 IF THE LICENSE, PERMIT, CERTIFICATE OR OTHER
41 STATE RECOGNITION IS FOR AN OCCUPATION IN WHICH THE APPLICANT WOULD OWE A
42 FIDUCIARY DUTY TO A CLIENT.

1 Sec. 2. Section 41-1758.03, Arizona Revised Statutes, is amended to
2 read:

3 41-1758.03. Fingerprint clearance cards; issuance; immunity

4 A. On receiving the state and federal criminal history record of a
5 person, the division shall compare the record with the list of criminal
6 offenses that preclude the person from receiving a fingerprint clearance
7 card. If the person's criminal history record does not contain any of the
8 offenses listed in subsections B and C of this section, the division shall
9 issue the person a fingerprint clearance card.

10 B. A person who is subject to registration as a sex offender in
11 this state or any other jurisdiction or who is awaiting trial on or who
12 has been convicted of committing or attempting, soliciting, facilitating
13 or conspiring to commit one or more of the following offenses in this
14 state or the same or similar offenses in another state or jurisdiction is
15 precluded from receiving a fingerprint clearance card pursuant to this
16 section:

- 17 1. Sexual abuse of a vulnerable adult.
- 18 2. Incest.
- 19 3. First or second degree murder.
- 20 4. Sexual assault.
- 21 5. Sexual exploitation of a minor.
- 22 6. Sexual exploitation of a vulnerable adult.
- 23 7. Commercial sexual exploitation of a minor.
- 24 8. Commercial sexual exploitation of a vulnerable adult.
- 25 9. Child sex trafficking as prescribed in section 13-3212.
- 26 10. Child abuse.
- 27 11. Abuse of a vulnerable adult.
- 28 12. Sexual conduct with a minor.
- 29 13. Molestation of a child.
- 30 14. Molestation of a vulnerable adult.
- 31 15. A dangerous crime against children as defined in section
32 13-705.
- 33 16. Exploitation of minors involving drug offenses.
- 34 17. Taking a child for the purpose of prostitution as prescribed in
35 section 13-3206.
- 36 18. Neglect or abuse of a vulnerable adult.
- 37 19. Sex trafficking.
- 38 20. Sexual abuse.
- 39 21. Production, publication, sale, possession and presentation of
40 obscene items as prescribed in section 13-3502.
- 41 22. Furnishing harmful items to minors as prescribed in section
42 13-3506.
- 43 23. Furnishing harmful items to minors by internet activity as
44 prescribed in section 13-3506.01.

- 1 24. Obscene or indecent telephone communications to minors for
2 commercial purposes as prescribed in section 13-3512.
- 3 25. Luring a minor for sexual exploitation.
- 4 26. Enticement of persons for purposes of prostitution.
- 5 27. Procurement by false pretenses of person for purposes of
6 prostitution.
- 7 28. Procuring or placing persons in a house of prostitution.
- 8 29. Receiving earnings of a prostitute.
- 9 30. Causing one's spouse to become a prostitute.
- 10 31. Detention of persons in a house of prostitution for debt.
- 11 32. Keeping or residing in a house of prostitution or employment in
12 prostitution.
- 13 33. Pandering.
- 14 34. Transporting persons for the purpose of prostitution, polygamy
15 and concubinage.
- 16 35. Portraying adult as a minor as prescribed in section 13-3555.
- 17 36. Admitting minors to public displays of sexual conduct as
18 prescribed in section 13-3558.
- 19 37. Unlawful sale or purchase of children.
- 20 38. Child bigamy.
- 21 39. Trafficking of persons for forced labor or services.
- 22 C. A person who is awaiting trial on or who has been convicted of
23 committing or attempting, soliciting, facilitating or conspiring to commit
24 one or more of the following offenses in this state or the same or similar
25 offenses in another state or jurisdiction is precluded from receiving a
26 fingerprint clearance card, except that the person may petition the board
27 of fingerprinting for a good cause exception pursuant to section
28 41-619.55:
 - 29 1. Manslaughter.
 - 30 2. Endangerment.
 - 31 3. Threatening or intimidating.
 - 32 4. Assault.
 - 33 5. Unlawfully administering intoxicating liquors, narcotic drugs or
34 dangerous drugs.
 - 35 6. Assault by vicious animals.
 - 36 7. Drive by shooting.
 - 37 8. Assaults on officers or fire fighters.
 - 38 9. Discharging a firearm at a structure.
 - 39 10. Indecent exposure.
 - 40 11. Public sexual indecency.
 - 41 12. Aggravated criminal damage.
 - 42 13. Theft.
 - 43 14. Theft by extortion.
 - 44 15. Shoplifting.
 - 45 16. Forgery.

- 1 17. Criminal possession of a forgery device.
- 2 18. Obtaining a signature by deception.
- 3 19. Criminal impersonation.
- 4 20. Theft of a credit card or obtaining a credit card by fraudulent
- 5 means.
- 6 21. Receipt of anything of value obtained by fraudulent use of a
- 7 credit card.
- 8 22. Forgery of a credit card.
- 9 23. Fraudulent use of a credit card.
- 10 24. Possession of any machinery, plate or other contrivance or
- 11 incomplete credit card.
- 12 25. False statement as to financial condition or identity to obtain
- 13 a credit card.
- 14 26. Fraud by persons authorized to provide goods or services.
- 15 27. Credit card transaction record theft.
- 16 28. Misconduct involving weapons.
- 17 29. Misconduct involving explosives.
- 18 30. Depositing explosives.
- 19 31. Misconduct involving simulated explosive devices.
- 20 32. Concealed weapon violation.
- 21 33. Possession and sale of peyote.
- 22 34. Possession and sale of a vapor-releasing substance containing a
- 23 toxic substance.
- 24 35. Sale of precursor chemicals.
- 25 36. Possession, use or sale of marijuana, dangerous drugs or
- 26 narcotic drugs.
- 27 37. Manufacture or distribution of an imitation controlled
- 28 substance.
- 29 38. Manufacture or distribution of an imitation prescription-only
- 30 drug.
- 31 39. Manufacture or distribution of an imitation over-the-counter
- 32 drug.
- 33 40. Possession or possession with intent to use an imitation
- 34 controlled substance.
- 35 41. Possession or possession with intent to use an imitation
- 36 prescription-only drug.
- 37 42. Possession or possession with intent to use an imitation
- 38 over-the-counter drug.
- 39 43. Manufacture of certain substances and drugs by certain means.
- 40 44. Adding poison or other harmful substance to food, drink or
- 41 medicine.
- 42 45. A criminal offense involving criminal trespass under title 13,
- 43 chapter 15.
- 44 46. A criminal offense involving burglary under title 13,
- 45 chapter 15.

- 1 47. A criminal offense under title 13, chapter 23.
- 2 48. Child neglect.
- 3 49. Misdemeanor offenses involving contributing to the delinquency
- 4 of a minor.
- 5 50. Offenses involving domestic violence.
- 6 51. Arson.
- 7 52. Kidnapping.
- 8 53. Felony offenses involving sale, distribution or transportation
- 9 of, offer to sell, transport or distribute or conspiracy to sell,
- 10 transport or distribute marijuana, dangerous drugs or narcotic drugs.
- 11 54. Robbery.
- 12 55. Aggravated assault.
- 13 56. Felony offenses involving contributing to the delinquency of a
- 14 minor.
- 15 57. Negligent homicide.
- 16 58. Criminal damage.
- 17 59. Misappropriation of charter school monies as prescribed in
- 18 section 13-1818.
- 19 60. Taking identity of another person or entity.
- 20 61. Aggravated taking identity of another person or entity.
- 21 62. Trafficking in the identity of another person or entity.
- 22 63. Cruelty to animals.
- 23 64. Prostitution.
- 24 65. Sale or distribution of material harmful to minors through
- 25 vending machines as prescribed in section 13-3513.
- 26 66. Welfare fraud.
- 27 D. A person who is awaiting trial on or who has been convicted of
- 28 committing or attempting to commit a misdemeanor or felony violation of
- 29 section 28-1381, 28-1382 or 28-1383 in this state or the same or similar
- 30 offense in another state or jurisdiction within five years from the date
- 31 of applying for a fingerprint clearance card is precluded from driving any
- 32 vehicle to transport employees or clients of the employing agency as part
- 33 of the person's employment. The division shall place a notation on the
- 34 fingerprint clearance card that indicates this driving restriction. This
- 35 subsection does not preclude a person from driving a vehicle alone as part
- 36 of the person's employment. This subsection does not apply to a person
- 37 who is licensed pursuant to title 32, chapter 20, except if the person is
- 38 employed by an agency as defined in section 41-1758.
- 39 E. Notwithstanding subsection C of this section, on receiving
- 40 written notice from the board of fingerprinting that a good cause
- 41 exception was granted pursuant to section 41-619.55, the division shall
- 42 issue a fingerprint clearance card to the person.
- 43 F. If the division denies a person's application for a fingerprint
- 44 clearance card pursuant to subsection C of this section and a good cause
- 45 exception is requested pursuant to section 41-619.55, the division shall

1 release, on request by the board of fingerprinting, the person's criminal
2 history record to the board of fingerprinting.

3 G. A person shall be granted a fingerprint clearance card if either
4 of the following applies:

5 1. An agency granted a good cause exception before August 16, 1999
6 and no new precluding offense is identified. The fingerprint clearance
7 card shall specify only the program that granted the good cause exception.
8 On the request of the applicant, the agency that granted the prior good
9 cause exception shall notify the division in writing of the date on which
10 the prior good cause exception was granted and the date of the conviction
11 and the name of the offense for which the good cause exception was
12 granted.

13 2. The board granted a good cause exception and no new precluding
14 offense is identified.

15 H. The licensee or contract provider shall assume the costs of
16 fingerprint checks and may charge these costs to persons who are required
17 to be fingerprinted.

18 I. A person who is under eighteen years of age or who is at least
19 ninety-nine years of age is exempt from the fingerprint clearance card
20 requirements of this section. At all times the person shall be under the
21 direct visual supervision of personnel who have valid fingerprint
22 clearance cards.

23 J. The division shall conduct periodic state criminal history
24 records checks and may conduct federal criminal history records checks
25 when authorized pursuant to federal law for the purpose of updating the
26 clearance status of current fingerprint clearance card holders and may
27 notify the board of fingerprinting and the agency employing the person of
28 the results of the records check.

29 K. The division shall revoke a person's fingerprint clearance card
30 on receipt of a written request for revocation from the board of
31 fingerprinting pursuant to section 41-619.55.

32 L. If a person's criminal history record contains an offense listed
33 in subsection B or C of this section and the final disposition is not
34 recorded on the record, the division shall conduct research to obtain the
35 disposition within thirty business days after receipt of the record. If
36 the division cannot determine, within thirty business days after receipt
37 of the person's state and federal criminal history record information,
38 whether the person is awaiting trial on or has been convicted of
39 committing or attempting, soliciting, facilitating or conspiring to commit
40 any of the offenses listed in subsection B or C of this section in this
41 state or the same or a similar offense in another state or jurisdiction,
42 the division shall not issue a fingerprint clearance card to the person.
43 If the division is unable to make the determination required by this
44 section and does not issue a fingerprint clearance card to a person, the
45 person may request a good cause exception pursuant to section 41-619.55.

1 M. Except as provided in subsection N of this section, if after
2 conducting a state and federal criminal history records check the division
3 determines that it is not authorized to issue a fingerprint clearance card
4 to a person, the division shall notify the agency that licenses or employs
5 the person that the division is not authorized to issue a fingerprint
6 clearance card. This notice shall include the criminal history
7 information on which the denial was based. This criminal history
8 information is subject to dissemination restrictions pursuant to section
9 41-1750 and Public Law 92-544.

10 N. If, after conducting a state and federal criminal history
11 records check on a person who requests a fingerprint clearance card
12 pursuant to section 15-1881, the division determines that it is not
13 authorized to issue a fingerprint clearance card to the person, the
14 division shall not notify the agency. The division shall notify the
15 person who requested the card that the division is not authorized to issue
16 a fingerprint clearance card. The notice shall include the criminal
17 history information on which the denial was based. This criminal history
18 information is subject to dissemination restrictions pursuant to section
19 41-1750 and Public Law 92-544.

20 O. The division is not liable for damages resulting from:

21 1. The issuance of a fingerprint clearance card to a person who is
22 later found to have been ineligible to receive a fingerprint clearance
23 card at the time the card was issued.

24 2. The denial of a fingerprint clearance card to a person who is
25 later found to have been eligible to receive a fingerprint clearance card
26 at the time issuance of the card was denied.

27 P. The issuance of a fingerprint clearance card does not entitle a
28 person to employment.

29 Q. Notwithstanding any law to the contrary, a person may apply for
30 and receive a level I fingerprint clearance card pursuant to section
31 41-1758.07 to satisfy a requirement that the person have a valid
32 fingerprint clearance card issued pursuant to this section.

33 R. NOTWITHSTANDING ANY OTHER LAW, THE DIVISION SHALL ISSUE A
34 FINGERPRINT CLEARANCE CARD IF ALL OF THE FOLLOWING APPLY:

35 1. THE PERSON IS APPLYING FOR A FINGERPRINT CLEARANCE CARD FOR THE
36 PURPOSE OF OBTAINING A LICENSE UNDER TITLE 32.

37 2. THE PERSON'S CRIMINAL HISTORY RECORD DOES NOT CONTAIN ANY OF THE
38 OFFENSES LISTED IN SUBSECTION B OF THIS SECTION.

39 3. THE PERSON'S CRIMINAL HISTORY RECORD CONTAINS AN OFFENSE LISTED
40 IN SUBSECTION C OF THIS SECTION AND THE CONVICTION HAS BEEN SET ASIDE
41 PURSUANT TO SECTION 13-905 OR THE RECORD HAS BEEN SEALED PURSUANT TO
42 SECTION 13-911.