

REFERENCE TITLE: occupational licenses; convictions

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

HB 2429

Introduced by
Representative Wilmeth

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 FELONY OFFENSE UNLESS THE APPLICANT WAS CONVICTED OF A
35 DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705 OR A SERIOUS
36 OFFENSE OR VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706.

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

39 41-1758.03. Fingerprint clearance cards; issuance; immunity

40 A. On receiving the state and federal criminal history record of a
41 person, the division shall compare the record with the list of criminal
42 offenses that preclude the person from receiving a fingerprint clearance
43 card. If the person's criminal history record does not contain any of the
44 offenses listed in subsections B and C of this section, the division shall
45 issue the person a fingerprint clearance card.

- 1 B. A person who is subject to registration as a sex offender in
2 this state or any other jurisdiction or who is awaiting trial on or who
3 has been convicted of committing or attempting, soliciting, facilitating
4 or conspiring to commit one or more of the following offenses in this
5 state or the same or similar offenses in another state or jurisdiction is
6 precluded from receiving a fingerprint clearance card pursuant to this
7 section:
- 8 1. Sexual abuse of a vulnerable adult.
 - 9 2. Incest.
 - 10 3. First or second degree murder.
 - 11 4. Sexual assault.
 - 12 5. Sexual exploitation of a minor.
 - 13 6. Sexual exploitation of a vulnerable adult.
 - 14 7. Commercial sexual exploitation of a minor.
 - 15 8. Commercial sexual exploitation of a vulnerable adult.
 - 16 9. Child sex trafficking as prescribed in section 13-3212.
 - 17 10. Child abuse.
 - 18 11. Abuse of a vulnerable adult.
 - 19 12. Sexual conduct with a minor.
 - 20 13. Molestation of a child.
 - 21 14. Molestation of a vulnerable adult.
 - 22 15. A dangerous crime against children as defined in section
23 13-705.
 - 24 16. Exploitation of minors involving drug offenses.
 - 25 17. Taking a child for the purpose of prostitution as prescribed in
26 section 13-3206.
 - 27 18. Neglect or abuse of a vulnerable adult.
 - 28 19. Sex trafficking.
 - 29 20. Sexual abuse.
 - 30 21. Production, publication, sale, possession and presentation of
31 obscene items as prescribed in section 13-3502.
 - 32 22. Furnishing harmful items to minors as prescribed in section
33 13-3506.
 - 34 23. Furnishing harmful items to minors by internet activity as
35 prescribed in section 13-3506.01.
 - 36 24. Obscene or indecent telephone communications to minors for
37 commercial purposes as prescribed in section 13-3512.
 - 38 25. Luring a minor for sexual exploitation.
 - 39 26. Enticement of persons for purposes of prostitution.
 - 40 27. Procurement by false pretenses of person for purposes of
41 prostitution.
 - 42 28. Procuring or placing persons in a house of prostitution.
 - 43 29. Receiving earnings of a prostitute.
 - 44 30. Causing one's spouse to become a prostitute.
 - 45 31. Detention of persons in a house of prostitution for debt.

- 1 32. Keeping or residing in a house of prostitution or employment in
2 prostitution.
- 3 33. Pandering.
- 4 34. Transporting persons for the purpose of prostitution, polygamy
5 and concubinage.
- 6 35. Portraying adult as a minor as prescribed in section 13-3555.
- 7 36. Admitting minors to public displays of sexual conduct as
8 prescribed in section 13-3558.
- 9 37. Unlawful sale or purchase of children.
- 10 38. Child bigamy.
- 11 39. Trafficking of persons for forced labor or services.
- 12 C. A person who is awaiting trial on or who has been convicted of
13 committing or attempting, soliciting, facilitating or conspiring to commit
14 one or more of the following offenses in this state or the same or similar
15 offenses in another state or jurisdiction is precluded from receiving a
16 fingerprint clearance card, except that the person may petition the board
17 of fingerprinting for a good cause exception pursuant to section
18 41-619.55:
 - 19 1. Manslaughter.
 - 20 2. Endangerment.
 - 21 3. Threatening or intimidating.
 - 22 4. Assault.
 - 23 5. Unlawfully administering intoxicating liquors, narcotic drugs or
24 dangerous drugs.
 - 25 6. Assault by vicious animals.
 - 26 7. Drive by shooting.
 - 27 8. Assaults on officers or fire fighters.
 - 28 9. Discharging a firearm at a structure.
 - 29 10. Indecent exposure.
 - 30 11. Public sexual indecency.
 - 31 12. Aggravated criminal damage.
 - 32 13. Theft.
 - 33 14. Theft by extortion.
 - 34 15. Shoplifting.
 - 35 16. Forgery.
 - 36 17. Criminal possession of a forgery device.
 - 37 18. Obtaining a signature by deception.
 - 38 19. Criminal impersonation.
 - 39 20. Theft of a credit card or obtaining a credit card by fraudulent
40 means.
 - 41 21. Receipt of anything of value obtained by fraudulent use of a
42 credit card.
 - 43 22. Forgery of a credit card.
 - 44 23. Fraudulent use of a credit card.

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

- 1 53. Felony offenses involving sale, distribution or transportation
2 of, offer to sell, transport or distribute or conspiracy to sell,
3 transport or distribute marijuana, dangerous drugs or narcotic drugs.
4 54. Robbery.
5 55. Aggravated assault.
6 56. Felony offenses involving contributing to the delinquency of a
7 minor.
8 57. Negligent homicide.
9 58. Criminal damage.
10 59. Misappropriation of charter school monies as prescribed in
11 section 13-1818.
12 60. Taking identity of another person or entity.
13 61. Aggravated taking identity of another person or entity.
14 62. Trafficking in the identity of another person or entity.
15 63. Cruelty to animals.
16 64. Prostitution.
17 65. Sale or distribution of material harmful to minors through
18 vending machines as prescribed in section 13-3513.
19 66. Welfare fraud.
20 D. A person who is awaiting trial on or who has been convicted of
21 committing or attempting to commit a misdemeanor or felony violation of
22 section 28-1381, 28-1382 or 28-1383 in this state or the same or similar
23 offense in another state or jurisdiction within five years from the date
24 of applying for a fingerprint clearance card is precluded from driving any
25 vehicle to transport employees or clients of the employing agency as part
26 of the person's employment. The division shall place a notation on the
27 fingerprint clearance card that indicates this driving restriction. This
28 subsection does not preclude a person from driving a vehicle alone as part
29 of the person's employment. This subsection does not apply to a person
30 who is licensed pursuant to title 32, chapter 20, except if the person is
31 employed by an agency as defined in section 41-1758.
32 E. Notwithstanding subsection C of this section, on receiving
33 written notice from the board of fingerprinting that a good cause
34 exception was granted pursuant to section 41-619.55, the division shall
35 issue a fingerprint clearance card to the person.
36 F. If the division denies a person's application for a fingerprint
37 clearance card pursuant to subsection C of this section and a good cause
38 exception is requested pursuant to section 41-619.55, the division shall
39 release, on request by the board of fingerprinting, the person's criminal
40 history record to the board of fingerprinting.
41 G. A person shall be granted a fingerprint clearance card if either
42 of the following applies:
43 1. An agency granted a good cause exception before August 16, 1999
44 and no new precluding offense is identified. The fingerprint clearance
45 card shall specify only the program that granted the good cause exception.

1 On the request of the applicant, the agency that granted the prior good
2 cause exception shall notify the division in writing of the date on which
3 the prior good cause exception was granted and the date of the conviction
4 and the name of the offense for which the good cause exception was
5 granted.

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

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

11 I. A person who is under eighteen years of age or who is at least
12 ninety-nine years of age is exempt from the fingerprint clearance card
13 requirements of this section. At all times the person shall be under the
14 direct visual supervision of personnel who have valid fingerprint
15 clearance cards.

16 J. The division shall conduct periodic state criminal history
17 records checks and may conduct federal criminal history records checks
18 when authorized pursuant to federal law for the purpose of updating the
19 clearance status of current fingerprint clearance card holders and may
20 notify the board of fingerprinting and the agency employing the person of
21 the results of the records check.

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

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

39 M. Except as provided in subsection N of this section, if after
40 conducting a state and federal criminal history records check the division
41 determines that it is not authorized to issue a fingerprint clearance card
42 to a person, the division shall notify the agency that licenses or employs
43 the person that the division is not authorized to issue a fingerprint
44 clearance card. This notice shall include the criminal history
45 information on which the denial was based. This criminal history

1 information is subject to dissemination restrictions pursuant to section
2 41-1750 and Public Law 92-544.

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

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

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

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

20 P. The issuance of a fingerprint clearance card does not entitle a
21 person to employment.

22 Q. Notwithstanding any law to the contrary, a person may apply for
23 and receive a level I fingerprint clearance card pursuant to section
24 41-1758.07 to satisfy a requirement that the person have a valid
25 fingerprint clearance card issued pursuant to this section.

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

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

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

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