

Senate Engrossed

occupational license; criminal record

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SENATE BILL 1367

AN ACT

AMENDING SECTION 41-1093.04, ARIZONA REVISED STATUTES; RELATING TO
OCCUPATIONAL LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1093.04, Arizona Revised Statutes, is amended
3 to read:

4 41-1093.04. Occupational license, permit or certificate or
5 other state recognition rights; petition for
6 review of criminal record; annual report

7 A. A person with a criminal record may petition an agency, at any
8 time, including before obtaining any required education or experience,
9 taking any examination or paying any fee, for a determination of whether
10 the person's criminal record disqualifies the person from obtaining a
11 license, permit, certificate or other state recognition.

12 B. In the petition, the person shall include:

13 1. The person's complete criminal history record or authorization
14 for the agency to obtain the person's criminal history record.

15 2. Any additional information about the person's current
16 circumstances, including the time since the offense was committed and the
17 sentence was completed, the payment of any court-ordered restitution,
18 evidence of rehabilitation, testimonials, employment history and
19 employment aspirations.

20 C. The agency shall determine whether the person's criminal record
21 disqualifies the person from obtaining a license, permit, certificate or
22 other state recognition.

23 D. Notwithstanding any other law or rule, **WHEN MAKING A**
24 **DETERMINATION REGARDING THE PERSON'S PETITION**, the agency may determine
25 that the person's criminal record disqualifies the person from obtaining a
26 license, permit, certificate or other state recognition only if the agency
27 concludes that ~~the~~ **THIS** state has an important interest in protecting
28 public safety that is superior to the person's right and either of the
29 following applies:

30 1. The person was convicted of any of the following, the conviction
31 occurred within ~~seven~~ **THREE** years before the date of the petition,
32 excluding any period of time that the person was imprisoned in the custody
33 of the state department of corrections, and the conviction has not been
34 set aside **OR SEALED**:

35 (a) A felony offense.

36 (b) A violent crime as defined in section 13-901.03.

37 (c) An offense included in title 13, chapter 20, 21 or 22 or
38 section 13-2310 or 13-2311 if the license, permit, certificate or other
39 state recognition is for an occupation in which the applicant would owe a
40 fiduciary duty to a client.

41 2. The person was, at any time, convicted of either of the
42 following:

43 (a) An offense that a law specifically requires the agency to
44 consider when issuing a license, permit, certificate or other state
45 recognition and the conviction has not been set aside **OR SEALED**.

1 (b) A dangerous offense as defined in section 13-105, a serious
2 offense as defined in section 13-706, a dangerous crime against children
3 as defined in section 13-705 or an offense included in title 13, chapter
4 14 or 35.1, and the conviction has not been set aside OR SEALED.

5 E. To conclude that the state has an important interest in
6 protecting public safety that is superior to the person's right, as
7 required by subsection D of this section, the agency must determine by
8 clear and convincing evidence at the time of the petition that both of the
9 following apply:

10 1. The specific offense that the person was convicted of
11 substantially relates to ~~the~~ THIS state's interest and specifically and
12 directly relates to the duties and responsibilities of the occupation,
13 except offenses involving moral turpitude.

14 2. The person, based on the nature of the specific offense that the
15 person was convicted of and the person's current circumstances, including
16 the passage of time since the person committed the ~~crime~~ OFFENSE and any
17 evidence of rehabilitation or treatment, is more likely to reoffend by
18 virtue of having the license, permit, certificate or other state
19 recognition than if the person did not have the license, permit,
20 certificate or other state recognition.

21 F. In determining if a person's criminal record disqualifies the
22 person from obtaining a license, permit, certificate or other state
23 recognition PURSUANT TO SUBSECTION D OF THIS SECTION, the agency may not
24 consider negatively any of the following:

25 1. Nonconviction information, including information related to a
26 deferred adjudication, participation in a diversion program or an arrest
27 that was not followed by a conviction.

28 2. A conviction that has been sealed, dismissed, expunged or
29 pardoned.

30 3. A juvenile adjudication.

31 4. A nonviolent misdemeanor.

32 5. WHETHER THE PERSON WOULD QUALIFY FOR A FINGERPRINT CLEARANCE
33 CARD ISSUED PURSUANT TO CHAPTER 12, ARTICLE 3.1 OF THIS TITLE WITHOUT A
34 GOOD CAUSE EXCEPTION.

35 G. The agency shall issue a determination on the petition within
36 ninety days after the agency receives the petition. The determination on
37 the petition must be in writing and include all of the following:

38 1. Findings of fact and conclusions of law.

39 2. The grounds and reasons for the determination if the person's
40 criminal history disqualifies the person.

41 H. If the agency determines that the state's interest to protect
42 public safety is superior to the person's right, the agency ~~may~~ SHALL
43 advise the person of the actions that the person may take to remedy the
44 disqualification, including:

- 1 1. An appeal of the determination as provided in title 12, chapter
2 7, article 6.
- 3 2. The earliest date the person may submit a new petition to the
4 agency, which must be not later than two years after the final
5 determination of the initial petition.
- 6 I. The agency shall rescind the determination any time after the
7 determination is made but before issuing a license, permit, certificate or
8 other state recognition if the person is convicted of an additional
9 offense that is included in subsection D of this section.
- 10 J. Subsection D and subsection F, paragraphs 1, 2 and 4 of this
11 section do not apply to any of the following:
- 12 1. Any law enforcement agency or the Arizona peace officer
13 standards and training board.
- 14 2. Any license or registration certificate that is issued pursuant
15 to title 32, chapter 24 or 26.
- 16 3. Any certification, license or permit that is issued pursuant to
17 title 15.
- 18 4. Statutory requirements for a fingerprint clearance card issued
19 pursuant to chapter 12, article 3.1 of this title.
- 20 5. Any criteria for license, permit or certificate eligibility that
21 is established by an interstate compact.
- 22 K. Each agency shall submit a report on or before July 1 of each
23 year to the governor and the legislature, ~~and~~ provide a copy of this
24 report to the secretary of state **AND POST THE REPORT ON THE AGENCY'S**
25 **WEBSITE**. The report shall include the following information for the
26 previous calendar year:
- 27 1. The number of applicants who petitioned the agency for a
28 determination.
- 29 2. The number of petitions that were granted and the types of
30 offenses at issue.
- 31 3. The number of petitions that were denied and the types of
32 offenses at issue.
- 33 4. The number of determinations that were rescinded.
- 34 L. An agency shall adopt forms for petitions as prescribed in
35 subsections A and B of this section.