

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 709

Introduced by McCollister, 20.

Read first time January 05, 2022

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to the Occupational Board Reform Act; to amend
- 2 section 84-947, Revised Statutes Cumulative Supplement, 2020; to
- 3 change provisions relating to preliminary applications by
- 4 individuals with a criminal conviction; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-947, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 84-947 (1) The fundamental right of an individual to pursue an
4 occupation includes the right of an individual with a criminal history to
5 obtain an occupational license, government certification, or state
6 recognition of the individual's personal qualifications.

7 (2)(a) An individual who has a criminal conviction may submit to the
8 appropriate occupational board a preliminary application for an
9 occupational license, government certification, or state recognition of
10 the individual's personal qualifications for a determination as to
11 whether the individual's criminal conviction would disqualify the
12 individual from obtaining the occupational license, government
13 certification, or state recognition of the individual's personal
14 qualifications from that occupational board. The preliminary application
15 may be submitted at any time, including prior to obtaining required
16 education or paying any fee, other than the fee for the preliminary
17 application if required under subsection (9) (7) of this section.

18 (b) The individual may include with the preliminary application
19 additional information about the individual's current circumstances,
20 mitigating factors, and other evidence of rehabilitation, including:
21 ~~including the time since the offense, completion of the criminal~~
22 ~~sentence, other evidence of rehabilitation, testimonials, employment~~
23 ~~history, and employment aspirations.~~

24 (i) The age of the individual when the individual committed the
25 offense;

26 (ii) The time elapsed since the offense;

27 (iii) The circumstances and nature of the offense;

28 (iv) The completion of the criminal sentence;

29 (v) The completion of, or active participation in, rehabilitative
30 drug or alcohol treatment;

31 (vi) Testimonials and recommendations, which may include a progress

- 1 report from the individual's probation or parole officer;
2 (vii) Other evidence of rehabilitation;
3 (viii) Education and training;
4 (ix) Employment history;
5 (x) Employment aspirations;
6 (xi) The individual's current family responsibilities;
7 (xii) Whether the individual is required to be bonded in the
8 occupation; and
9 (xiii) Other information the individual submits to the board.

10 (3) Upon receipt of a preliminary application under subsection (2)
11 of this section and a fee if required under subsection (9) ~~(7)~~ of this
12 section, the appropriate occupational board shall make a determination of
13 whether the individual's criminal conviction would disqualify the
14 individual from obtaining an occupational license, government
15 certification, or state recognition of the individual's personal
16 qualifications from that occupational board in accordance with subsection
17 (4) of this section. In making such determination, an individual's
18 criminal history shall disqualify the individual from obtaining an
19 occupational license, government certification, or state recognition of
20 the individual's personal qualifications only if: -

21 (a) Beginning January 1, 2024, the individual has a felony
22 conviction expressly listed as a disqualifying offense in the statutes
23 governing the occupation;

24 (b) The individual's conviction directly and specifically relates to
25 the duties and responsibilities of the occupation; and

26 (c) The individual obtaining such license, certification, or state
27 recognition would pose a direct and substantial risk to public safety
28 because the individual has not been rehabilitated, as evidenced by
29 information described in subdivision (2)(b) of this section, to safely
30 perform the duties and responsibilities of the occupation.

31 (4) In determining whether an individual's criminal history is

1 disqualifying under subsection (3) of this section, the occupational
2 board shall only make an adverse determination after:

3 (a) The executive director or employee designee of the occupational
4 board issues a preliminary adverse determination after completing the
5 following actions:

6 (i) Providing an opportunity for an informal meeting with the
7 individual, which shall be held in-person, by remote video, or by
8 teleconference within sixty days after receiving an application for
9 consideration. The individual shall be allowed to include character
10 witnesses at such informal meeting. The executive director shall not make
11 an adverse determination based on an individual's decision not to attend
12 an informal meeting or not to include character witnesses; and

13 (ii) Issuing and submitting a written preliminary determination to
14 the appropriate occupational board for consideration and ratification
15 within sixty days of receiving preliminary application for consideration
16 or of the informal meeting, whichever is later. A preliminary adverse
17 decision shall not become final without consideration and ratification by
18 the appropriate occupational board; and

19 (b) The occupational board ratifies the preliminary adverse
20 determination and issues a final adverse determination in writing within
21 sixty days after the issuance of the preliminary adverse determination.

22 ~~(5) (4) The determination of the occupational board shall issue its~~
23 ~~determination in writing within ninety days after receiving a preliminary~~
24 ~~application under subsection (2) of this section. The determination shall~~
25 include findings of fact and conclusions of law including clear and
26 convincing evidence for any adverse determination made by the
27 occupational board. If the occupational board determines that the
28 individual's criminal conviction would disqualify the individual, the
29 occupational board may advise the individual of any action the individual
30 may take to remedy the disqualification. If the occupational board finds
31 that the individual has been convicted of a subsequent criminal

1 conviction, the occupational board may rescind a determination upon
2 finding that the subsequent criminal conviction would be disqualifying
3 under subsection (3) of this section.

4 (6) An individual shall not be required to disclose nor shall
5 consideration be given in a determination under this section to the
6 following:

7 (a) A deferred adjudication, participation in a diversion program,
8 or an arrest not followed by a conviction;

9 (b) A conviction of an offence for which no sentence of
10 incarceration is statutorily authorized;

11 (c) A conviction that has been sealed, annulled, dismissed,
12 expunged, or pardoned;

13 (d) A juvenile adjudication;

14 (e) A nonviolent misdemeanor;

15 (f) A conviction older than three years for which the individual was
16 not incarcerated; or

17 (g) A conviction for which the individual's incarceration ended more
18 than three years before the date of the application except for a
19 conviction of a felony related to:

20 (i) A criminal sexual act as provided in sections 28-317 to
21 28-322.05;

22 (ii) Criminal fraud as provided in sections 28-505, 28-631, 28-638,
23 28-639, 28-640, and 28-935;

24 (iii) Assault in the first or second degree as provided in sections
25 28-308 and 28-309;

26 (iv) Robbery as provided in section 28-324;

27 (v) Child abuse as provided in section 28-707;

28 (vi) Arson as provided in sections 28-502, 28-503, and 28-504;

29 (vii) Theft as provided in section 28-511;

30 (viii) Kidnapping as provided in section 28-313;

31 (ix) Manslaughter as provided in section 28-305; or

1 (x) Murder as provided in sections 28-303, 28-304, and 28-306.

2 (7) (5) The individual may appeal the determination of the
3 occupational board. The appeal shall be in accordance with the
4 Administrative Procedure Act.

5 (8) (6) An individual shall not file another preliminary application
6 under this section with the same occupational board within two years
7 after the final decision on the previous preliminary application, except
8 that if the individual has taken action to remedy the disqualification as
9 advised by the occupational board, the individual may file another
10 preliminary application under this section with the same occupational
11 board six months after the final decision on the previous preliminary
12 application.

13 (9) (7) An occupational board may charge a fee not to exceed one
14 hundred dollars for each preliminary application filed pursuant to this
15 section. The fee is intended to offset the administrative costs incurred
16 under this section. An occupational board shall waive such fee if the
17 individual's income at the time of the application is at or below three
18 hundred percent of the federal poverty level as determined by the
19 occupational board.

20 Sec. 2. Original section 84-947, Revised Statutes Cumulative
21 Supplement, 2020, is repealed.