2024 South Dakota Legislature

Senate Bill 57

Introduced by: The Chair of the Committee on Commerce and Energy at the request of the Department of Labor and Regulation

An Act to create uniform procedures for consideration of criminal histories and convictions in professional or occupational licensure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-1C-1 be AMENDED:

36-1C-1. Terms used in this chapter mean:

(1) "Administrator," the executive director, executive secretary, or other person designated as being responsible for a professional or occupational licensing's board, commission, or agency operation;

(2) "Adverse action," a decision by an administrator or agency to deny, condition, discipline, fine, limit, suspend, revoke, refuse to renew, or otherwise withhold a license;

(3) "Agency," a professional or occupational licensing board, commission, or agency set forth in title 36;

(4) "Conviction," a plea of guilty, a verdict of guilty by a jury, a finding of guilty, or a plea of nolo contendere or a similar plea which is accepted by a court;

(5) "Criminal history," any criminal conviction, sentence, or judgment against a licensee or applicant;

~~(3)~~(6) "Complaint," an allegation of a violation of the laws or rules of a professional or occupational licensing board, commission, or agency set forth in title 36;

~~(4)~~(7) "Investigative committee," one or more persons employed or contracted by a professional or occupational licensing board, commission, or agency set forth in title 36 to review and investigate complaints; and

~~(5)~~(8) "License," any certification, license, permit, or other authorization related to the practice of any profession or occupation regulated under title 36.

Section 2. That chapter 36-1C be amended with a NEW SECTION:

An agency or administrator may not take adverse action against an applicant or licensee based on the individual's criminal history, arrest records, criminal court records, or juvenile court records, except as provided in this chapter. Except as provided in section 7 of this Act, this Act supersedes any conflicting provisions for the affected profession and occupation unless otherwise stated.

An agency or administrator may take adverse action against an applicant or licensee upon proof that the applicant or licensee has been convicted of a crime for which the conviction directly relates, in the discretion of the agency or administrator, to the profession or occupation for which the license is sought or held.

To determine whether a conviction directly relates to the profession or occupation, the agency or administrator must consider:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purposes of regulating the profession or occupation for which the license is sought or held;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any personal statement of an applicant or licensee regarding whether each crime directly relates to the profession or occupation for which the license is sought or held.

If the agency or administrator determines that the crime directly relates to the profession or occupation being licensed, the agency or administrator must also consider whether an applicant or licensee has been rehabilitated to the extent that the person no longer poses the kind of risk to the profession or occupation associated with that type of conviction.

Section 3. That chapter 36-1C be amended with a NEW SECTION:

An agency or administrator may not take adverse action against an applicant or licensee based on arrest or court records for which no conviction was entered or arrest or court records which have been sealed, dismissed, expunged, or pardoned. An agency or administrator may not require an applicant or licensee to disclose, pursuant to section 4 of this Act, an arrest or court records for which no conviction was entered or arrest or court records which have been sealed, dismissed, expunged, or pardoned.

Section 4. That chapter 36-1C be amended with a NEW SECTION:

An agency or administrator may require an applicant to disclose on an application for licensure whether the applicant has been convicted of certain types of crimes which directly relate to the profession or occupation. An agency or administrator may require a licensee to disclose on any renewal application for licensure whether the licensee has been convicted of certain types of crimes which directly relate to the profession or occupation since the last renewal cycle. An agency or administrator may require the applicant or licensee to provide additional documentation of any conviction disclosed by the applicant or licensee. An agency or administrator may take adverse action against an applicant or licensee based on a failure to disclose a conviction as required by this section or to provide requested documentation of any conviction disclosed by the applicant or licensee.

Section 5. That chapter 36-1C be amended with a NEW SECTION:

If an agency or administrator intends to take an adverse action against an applicant based on an applicant's criminal history, as provided in this chapter, the agency or administrator must provide written notice to the applicant of the agency's or administrator's intent to take adverse action and that, unless the applicant requests a hearing in writing within twenty calendar days, the administrator may take the adverse action without a hearing. If the applicant requests a hearing, notice and a contested case hearing under § 1-26-27 are required.

If an agency or administrator intends to take an adverse action against a licensee based on the licensee's criminal history, as provided in section 2 of this Act, the administrator must comply with the complaint procedure outlined in this chapter.

During any requested hearing, the applicant or licensee shall have the right to present evidence demonstrating that the crime or crimes at issue does not directly relate to the relevant profession or occupation and any evidence of the individual's rehabilitation from the crime or crimes at issue such that the individual no longer poses the kind of risk to the profession or occupation normally associated with the type of conviction. The agency shall consider this evidence in making its determination.

The applicant or licensee shall have a right to a judicial review of the final decision pursuant to § 1-26-30.2. An applicant or licensee may waive the right to a contested case hearing as part of any final resolution of the licensure matter.

Section 6. That chapter 36-1C be amended with a NEW SECTION:

Any prospective applicant for a license may petition an agency for a declaratory ruling, as provided in §§ 36-1C-14 to 36-1C-16, inclusive, seeking a ruling on whether the

applicant's criminal history would result in an adverse action against a prospective license application by the agency. In any adverse declaratory ruling, the agency may specify the length of time for which the agency considers the decision binding, if any. Any ruling issued under this section is not required to be filed with the director of the Legislative Research Council for publication in the Administrative Rules of South Dakota. The agency must retain a copy of the ruling for the length of time for which the agency considers the decision binding, if any, and the ruling must be available for inspection by the public upon request.

Section 7. That chapter 36-1C be amended with a NEW SECTION:

Nothing in this chapter may be construed to override, supersede, or invalidate any compact or agreement already in place with regard to the regulation of any profession or occupation. Nothing in this chapter may be construed to limit or change any basis for an agency or administrator, in statute or administrative rule, to take adverse action against an applicant or licensee not based on the criminal history of an applicant or licensee as provide in this chapter.