

HOUSE BILL NO. 838

INTRODUCED BY J. CARLSON, G. FRAZER, R. MARSHALL, E. BUTTREY, S. HOWELL, M. CAFERRO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING OCCUPATIONAL LICENSING LAWS; REVISING THE STANDARDS FOR DENIAL FOR LICENSING APPLICANTS WITH CRIMINAL CONVICTIONS; REQUIRING A REPORT FROM THE DEPARTMENT OF LABOR AND INDUSTRY REGARDING LICENSE DENIAL DUE TO CRIMINAL CONVICTIONS; PROVIDING FOR A FEE PAYABLE TO THE LICENSING AUTHORITY FOR CERTAIN COSTS; AMENDING SECTIONS 37-1-203, 37-1-204, AND 37-1-205, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Reporting.** (1) The department shall establish an annual reporting requirement of the following:

(a) the number of applicants for each license with a criminal conviction, and of that number, the number of times that each licensing authority acted to grant the application or to deny, diminish, suspend, revoke, withhold, refuse to renew, or otherwise limit the license or renewal because of a person's criminal conviction;

(b) the offenses for which each licensing authority acted on in subsection (1)(a);

(c) the number of applicants petitioning each licensing authority under 37-1-204;

(d) the numbers of each licensing authority's approvals and denials of licenses under 37-1-204;

(e) the offenses for which each licensing authority approved or denied petitions under 37-1-204;

and

(f) other data the department determines relevant.

(2) The department shall compile and publish the report annually on a searchable public website.

**Section 2.** Section 37-1-203, MCA, is amended to read:

**"37-1-203. Conviction not a sole basis for denial -- standards for denial.** (1) Criminal convictions

1 ~~shall~~may not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. ~~Ne~~  
2 Notwithstanding any other provision of Title 37, a licensing authority shall~~may not~~ refuse to license a person  
3 solely on the basis of a previous criminal conviction; ~~provided, however, where a license applicant has been~~  
4 ~~convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it~~  
5 ~~applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that~~  
6 ~~the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the~~  
7 ~~issuance of a license. but~~ will provide individualized consideration of the person's criminal conviction and  
8 current and mitigating circumstances, including:

9 (a) the person's age when the person committed the offense and the time elapsed since the  
10 offense;

11 (b) the circumstances and nature of the offense;

12 (c) the completion of probation, parole supervision, or a criminal sentence without any subsequent  
13 criminal conviction;

14 (d) a certificate of rehabilitation or good conduct;

15 (e) the completion of or active participation in rehabilitative drug or alcohol treatment;

16 (f) testimonials and recommendations, which may include a progress report from the person's  
17 probation or parole officer;

18 (g) other evidence of rehabilitation;

19 (h) education and training;

20 (i) employment history and aspirations;

21 (j) the person's current family responsibilities;

22 (k) whether the person will be bonded in the occupation; and

23 (l) other information the person submits to the licensing authority.

24 (2) Notwithstanding any other provision of Title 37, the licensing authority shall deny, diminish,  
25 suspend, revoke, withhold, refuse to renew, or otherwise limit a license only if the following conditions are met:

26 (a) The person's criminal conviction considered under subsection (2)(b) directly and specifically  
27 relates to the duties and responsibilities of the occupation, and granting the person a license would pose a  
28 direct and substantial risk to public safety because the person has not been rehabilitated, in accordance with

1 the criteria in subsection (1), to safely perform the duties and responsibilities of the occupation.

2 (b) The licensing authority shall consider a felony or violent misdemeanor only and may not  
3 consider or require a person to disclose:

4 (i) a deferred adjudication, participation in a diversion program, or an arrest not followed by a  
5 conviction;

6 (ii) a conviction for which no sentence of incarceration can be imposed;

7 (iii) a conviction that has been sealed, annulled, dismissed, expunged, or pardoned;

8 (iv) a juvenile adjudication;

9 (v) a nonviolent misdemeanor; or

10 (vi) a conviction older than 3 years for which the person was not incarcerated or a conviction for  
11 which the person's incarceration ended more than 3 years before the date of the licensing authority's  
12 consideration, except for a conviction of a felony related to a criminal sexual act, criminal fraud or  
13 embezzlement, aggravated assault, aggravated robbery, aggravated abuse, neglect, or endangerment of a  
14 child, arson, carjacking, kidnapping, or manslaughter, homicide, or murder.

15 (c) The licensing authority has the burden of making an adverse decision with clear and  
16 convincing evidence.

17 (d) The licensing authority may not use a vague term in its consideration and decision, including  
18 "good moral character", "moral turpitude", or "character and fitness".

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20 **Section 3.** Section 37-1-204, MCA, is amended to read:

21 **"37-1-204. Statement of reasons Process for denial.** (1) Notwithstanding any other provision of  
22 Title 37, a person with a criminal record may petition a licensing authority for a decision at any point, including  
23 before investing in training and applying for a license, for a decision regarding whether a criminal conviction will  
24 disqualify the person from obtaining the license. When a licensing agency authority prohibits an applicant from  
25 being licensed wholly or partially on the basis of a criminal conviction, the agency-licensing authority shall state  
26 explicitly in writing the reasons for the decision and use the process in this section.

27 (2) The person shall include in the petition the person's criminal record or authorize the licensing  
28 authority to obtain the person's criminal record. The licensing authority shall make its decision using the

1 standards in 37-1-203.

2 (3) The licensing authority may issue an adverse decision regarding a person's criminal record  
3 using the following process only:

4 (a) The licensing authority shall designate the executive director of the board or other department  
5 staff to consider applications pursuant to this chapter. Without further review from the licensing authority, the  
6 executive director or designated staff has the authority not to deny, diminish, limit, suspend, revoke, refuse to  
7 renew or otherwise withhold a license because of a criminal conviction or question of character using the  
8 standards in 37-1-203.

9 (b) Before issuing an adverse decision regarding a person's criminal conviction, the executive  
10 director of the board or other designated department staff shall request an informal meeting. The informal  
11 meeting may be held in person, by teleconference, or by video conference. In circumstances of a person  
12 applying for a license, the informal meeting must be held within 60 days after receiving a person's application  
13 for the license. The person may bring character witnesses to offer their verbal or written support. The executive  
14 director or other designated staff may not make an adverse inference from a person's decision not to attend an  
15 informal meeting or to not include witnesses at the meeting. Following an informal meeting, the executive  
16 director or other designated staff shall promptly issue a written decision as to whether to approve a license or  
17 decline to take adverse action against the person's license, or to issue a preliminary adverse decision. The  
18 executive director or other designated staff shall issue the decision within 60 days after the complete  
19 submission of the issue for consideration or the informal meeting, whichever is later, and submit any preliminary  
20 adverse decision to the licensing authority for its consideration.

21 (c) A preliminary adverse decision may not become final without consideration and ratification by  
22 the licensing authority in writing. A person may request that the licensing authority overturn a preliminary  
23 adverse decision. The request may include additional or revised information. The licensing authority shall issue  
24 a final written decision.

25 (d) A person may appeal the licensing authority's decision in accordance with Title 2, chapter 4.  
26 The licensing authority shall inform the person of the right to appeal the decision.

27 (e) A decision concluding that a license must be granted or granted under certain conditions or  
28 that a criminal conviction is not disqualifying is binding on the licensing authority in any later ruling on the

1 license unless there is a material and adverse change that directly and specifically relates to the person's  
2 criminal record. If the licensing authority decides that a license may not be granted, the licensing authority shall  
3 advise the person of any actions the person may take to remedy the disqualification. The person may submit a  
4 revised petition reflecting completion of the remedial actions before a deadline the licensing authority sets in its  
5 alternative advisory decision.

6 (f) The person may submit a new petition for consideration of a criminal conviction to the licensing  
7 authority not before 1 year following a final judgment on the initial petition or on obtaining the required personal  
8 qualifications, whichever is earlier.

9 (g) The licensing authority may charge a fee to the person to recoup the licensing authority's costs  
10 not to exceed \$100 for each petition. If the person's income at the time of application is at or below 300% of the  
11 federal poverty level used to determine indigency by the district court of the state, the fee must be waived."

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13 **Section 4.** Section 37-1-205, MCA, is amended to read:

14 **"37-1-205. Licensure on completion of supervision.** ~~Completion of probation or parole supervision~~  
15 ~~without any subsequent criminal conviction is evidence of rehabilitation. However, the facts surrounding the~~  
16 ~~situation that led to the probation or parole supervision may be considered as they relate to the occupation for~~  
17 ~~which a license is sought, and this~~This chapter may not be construed to prohibit licensure of a person while the  
18 person is under state supervision if the licensing ~~agency~~authority finds insufficient evidence to preclude  
19 licensure."

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21 NEW SECTION. Section 5. Transition. A licensing authority subject to the provisions of [this act]  
22 shall update all regulations and forms and all other public-facing documents, provide an explanation on the  
23 licensing authority's website regarding the availability of the predetermination process in Title 37, chapter 1, part  
24 2, and eliminate language that conflicts with or contradicts Title 37, chapter 1, part 2, by October 1, 2024.

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26 NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an  
27 integral part of Title 37, chapter 1, part 2, and the provisions of Title 37, chapter 1, part 2, apply to [section 1].

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