

SENATE BILL NO. 347

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING OCCUPATIONAL AND PROFESSIONAL LICENSING PROCEDURES FOR PERSONS WITH CRIMINAL CONVICTIONS; ALLOWING A PRELIMINARY DETERMINATION OF QUALIFICATIONS FOR A FEE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-203 AND 37-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

"37-1-203. Conviction not a sole basis for denial. Criminal convictions ~~shall~~ may not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. ~~No licensing authority shall A board or the department on behalf of a program may not~~ refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where if a license applicant has been convicted of a criminal offense and such criminal offense that directly relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency board or the department on behalf of a program may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and may deny the issuance of a license."

Section 2. Section 37-1-204, MCA, is amended to read:

"37-1-204. Statement of reasons for denial -- opportunity for review and hearing. (1) When a licensing agency board or the department on behalf of a program prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency board or the department on behalf of a program shall state explicitly in writing the reasons for the decision provide written notice and an opportunity for hearing pursuant to 37-1-309 or 37-1-403.

(2) A final order issued under subsection (1) must provide notice to the applicant of the earliest date on which the applicant may reapply for a license."

1 **NEW SECTION. Section 3. Review for criminal convictions.** (1) In reviewing an application for which
2 the applicant has acknowledged a criminal conviction, a board or the department on behalf of a program shall
3 consider whether a conviction is directly related to an occupation based on:

- 4 (a) the public policy of the state as expressed in 37-1-201 and 37-1-202;
5 (b) whether the elements of the offense are directly related to the specific duties and responsibilities of
6 the license regulated by the board or program; and
7 (c) whether the performance of the occupation offers the opportunity for the same or a similar offense
8 to occur.

9 (2) In determining whether to issue or deny a license to a person with a directly related conviction, a
10 board or the department on behalf of a program may not consider:

- 11 (a) an arrest that did not result in a subsequent conviction;
12 (b) a deferred prosecution;
13 (c) a conviction that has been dismissed, expunged, or pardoned;
14 (d) a juvenile adjudication;
15 (e) a nonviolent or nonsexual misdemeanor conviction for which the applicant completed all terms of
16 sentencing more than 2 years before applying for a license; or
17 (f) a nonviolent or nonsexual felony conviction for which the applicant completed all terms of sentencing
18 more than 5 years before applying for a license.

19 (3) An applicant who has been convicted of a crime directly related to the occupation may not be denied
20 licensure unless the board or the department on behalf of a program finds the applicant is insufficiently
21 rehabilitated, based on evidence that may include:

- 22 (a) a subsequent criminal charge or conviction that is directly related to the occupation;
23 (b) revocation of probation, parole, or conditional discharge;
24 (c) an insufficient amount of time having passed since the conviction as compared to the nature and
25 severity of the offense;
26 (d) the facts and circumstances surrounding the conviction;
27 (e) discharge of a sentence without completion of court-ordered programming or treatment;
28 (f) misrepresentation or omission in disclosing the offense or circumstance of the offense; or
29 (g) other credible factors that demonstrate insufficient rehabilitation.

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