



HOUSE BILL 770: Freedom to Work/OLB Reform.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2019-2020 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	June 18, 2019
Introduced by:	Reps. Stevens, Bell, Jones, Zachary	Prepared by:	Jeremy Ray* Staff Attorney
Analysis of:	PCS to Third Edition H770-CSBH-22		

OVERVIEW: *The PCS to House Bill 770 does the following:*

- *Requires administrative agencies, governmental officials, and courts in civil proceedings to consider a certificate of relief favorably.*
- *Defines a "State agency licensing board."*
- *Clarifies standards for a licensing board's use of an applicant's criminal history in making determinations.*
- *Requires recognition by licensing boards of certain apprenticeship and training experiences.*

CURRENT LAW:

Article 6 of Chapter 15A of the General Statutes governs Certificates of Relief. An individual may petition a court for a Certificate of Relief to relieve some of the collateral consequences associated with criminal convictions that could impede their reintegration into society. A petitioner may obtain a certificate of relief if he or she has three or fewer prior Class H or I felony convictions, as well as any prior misdemeanor convictions. If the felony convictions occurred during the same session of court, the convictions count as a single conviction. Unlike an expunction order, which is confidential, the issuance, modification, and revocation of a certificate of relief is a public record.

Chapter 93B governs occupational licensing boards. G.S. 93B-1 defines occupational licensing boards as "any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses." State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses are not occupational licensing boards.

BILL ANALYSIS:

Section 1 requires an administrative agency, governmental official, or civil court to consider a Certificate of Relief favorably in determining whether a conviction should result in a disqualification.

Section 2 defines a "State agency licensing board" as any State agency, staffed by full time State employees, which as part of their regular functions issue licenses, and provides a nonexclusive list of State agency licensing boards which qualify under the definition.

Section 3 requires no later than October 31 of each year, each occupational licensing board and state agency licensing board to file with the Secretary of State, Attorney General, and the Joint Legislative

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Oversight Committee, an annual report with the number of applicants, and of that number, licenses granted; and, the number of applicants with a conviction record, and of that number, licenses granted, licenses denied for any reason, and licenses denied because of a conviction.

Section 4 provides the following:

- Prevents an occupational licensing board from automatically denying licensure because of an applicant's criminal history unless a federal law governing a particular occupation requires the denial.
- Requires an occupational licensing board to find by clear and convincing evidence that the applicant's criminal history is directly-related to the duties and responsibilities for the licensed occupation, or is for a crime that is violent or sexual in nature. The board is required to use the clear and convincing standard of proof to determine whether an applicant with a directly-related criminal conviction or a conviction for a crime that is violent or sexual in nature will be denied a license.
- Requires an occupational licensing board to consider the following additional factors favorably:
 - Completion or participation in rehabilitative drug or alcohol treatment.
 - A Certificate of Relief granted pursuant to G.S. 15A-173.2.
- Requires a board to make written findings specifying the factors deemed relevant to deny an applicant a license.
- Requires a board to disclose in an application whether the board requires applicants to consent to a criminal background check, factors considered when making a determination of licensure, and any appeals process if the board denies an applicant licensure.
- Requires criminal history records (copies) to be provided to an applicant if the board requires an applicant to submit a criminal history record, and requires a board to notify the applicant in writing of any specific issues to afford the applicant an opportunity to provide additional documentation. If there is an issue related to a criminal conviction, an applicant would be allowed 30 days to respond.
- Requires a board following a hearing denying an applicant licensure, to issue a written order referencing the criminal conviction(s) considered as part or all of any basis for the denial, and an explanation of the board's rationale for the denial. The board must also provide reference for an appeal process and cannot prevent an applicant from reapplying for a period exceeding two years.
- Allows individuals with a criminal history to petition an occupational licensing board for a determination as to whether or not the individual's criminal history will disqualify the person from obtaining a license. This petition may be filed at any time including before an individual starts or completes any mandatory education or training requirements. The board must notify the individual of their determination within 45 days and the board may charge a fee of not more than \$25.00 for each petition. If the person's petition is denied the board must notify the person in writing of the determination and certain other rights and information related to the determination.

Section 5 requires occupational licensing boards to recognize certain apprenticeships and training and to grant a license to applicants who complete apprenticeships and pass an examination if one is deemed to be necessary by the licensing authority. This section does not apply to occupational licensing boards governing professions that require a college or advanced degree.

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EFFECTIVE DATE: This act becomes effective October 1, 2019, and applies to Certificates of Relief granted or applications for licensure submitted on or after that date.

**Tawanda Foster, Staff Attorney with the Legislative Analysis Division, substantially contributed to this summary.*