

By: Representatives Baker, Sykes, Mickens,
Faulkner, Gibbs (36th), Paden

To: Judiciary A

HOUSE BILL NO. 1284
(As Passed the House)

1 AN ACT TO CREATE THE "FRESH START ACT OF 2019"; TO PROVIDE
2 THAT NO PERSON SHALL BE DISQUALIFIED FROM PURSUING, PRACTICING OR
3 ENGAGING IN ANY OCCUPATION FOR WHICH A LICENSE IS REQUIRED SOLELY
4 OR IN PART BECAUSE OF A PRIOR CONVICTION OF A CRIME, UNLESS THE
5 CRIME FOR WHICH THE PERSON WAS CONVICTED DIRECTLY RELATES TO THE
6 DUTIES AND RESPONSIBILITIES OF THE LICENSED OCCUPATION; TO
7 PROHIBIT THE USE OF VAGUE TERMS SUCH AS "MORAL TURPITUDE," "GOOD
8 CHARACTER" AND "ANY FELONY"; TO PROVIDE THAT WHEN PROMULGATING
9 RULES AND REGULATIONS RELATED TO THE QUALIFICATIONS FOR LICENSURE,
10 LICENSING AUTHORITIES SHALL ONLY CONSIDER CRIMINAL RECORDS THAT
11 ARE SPECIFIC AND DIRECTLY RELATED TO THE DUTIES AND
12 RESPONSIBILITIES OF THE LICENSED OCCUPATION; TO ESTABLISH A CLEAR
13 AND CONVINCING STANDARD OF PROOF WHEN DETERMINING WHETHER A PERSON
14 WILL BE DENIED A LICENSE; TO AUTHORIZE A PERSON WITH A CRIMINAL
15 RECORD TO PETITION A LICENSING AUTHORITY AT ANY TIME FOR A
16 DETERMINATION OF WHETHER THE PERSON'S CRIMINAL RECORD WILL
17 DISQUALIFY THAT PERSON FROM OBTAINING A LICENSE; TO REQUIRE EACH
18 LICENSING AUTHORITY WITH ESTABLISHED STATUTORY AUTHORITY OR
19 ADOPTED RULES THAT ALLOW THAT LICENSING AUTHORITY TO DISQUALIFY A
20 PERSON FROM PURSUING OR PRACTICING AN OCCUPATION FOR WHICH A
21 LICENSE IS REQUIRED SOLELY OR IN PART BECAUSE OF A PRIOR
22 CONVICTION OF CRIME SHALL BEGIN TO REVIEW ITS STATUTORY AUTHORITY
23 AND RULES IN ORDER TO PROPOSE STATUTORY CHANGES CONSISTENT WITH
24 THE CERTAIN GUIDELINES AND FOR RELATED PURPOSES.

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

26 **SECTION 1.** (1) This act shall be known and may be cited as
27 the "Fresh Start Act of 2019."



28 **SECTION 2.** The following words and phrases shall have the
29 meanings as defined in this section unless the context clearly
30 indicates otherwise:

31 (a) "Criminal record" shall mean any type of felony or
32 misdemeanor conviction.

33 (b) "Licensing" shall mean any required training,
34 education, or fee to work in a specific profession.

35 (c) "Licensing authority" shall mean an agency,
36 examining board, credentialing board, or other office with the
37 authority to impose occupational fees or licensing requirements on
38 any profession.

39 **SECTION 3.** Absent applicable state law, no person shall be
40 disqualified from pursuing, practicing, or engaging in any
41 occupation for which a license is required solely or in part
42 because of a prior conviction of a crime, unless the crime for
43 which an applicant was convicted directly relates to the duties
44 and responsibilities for the licensed occupation.

45 **SECTION 4.** (1) Absent applicable state law, licensing
46 authorities shall not have in any rulemaking for their
47 qualifications for licensure vague or generic terms including, but
48 not limited to, "moral turpitude," "any felony," and "good
49 character." Absent applicable state law, licensing authorities
50 may only consider criminal records that are specific and directly
51 related to the duties and responsibilities for the licensed
52 occupation when evaluating applicants.



53 (2) The licensing authority shall use the clear and
54 convincing standard of proof in examining the factors to determine
55 whether an applicant with a disqualifying criminal conviction will
56 be denied a license. Absent applicable state law, the licensing
57 authority shall make their determination based on the following
58 factors:

59 (a) The nature and seriousness of the crime for which
60 the individual was convicted;

61 (b) The passage of time since the commission of the
62 crime;

63 (c) The relationship of the crime to the ability,
64 capacity, and fitness required to perform the duties and discharge
65 the responsibilities of the occupation; and

66 (d) Any evidence of rehabilitation or treatment
67 undertaken by the individual that might mitigate against a direct
68 relation.

69 (3) All licensing authorities shall meet the requirements
70 listed in subsection (1) by one hundred twenty (120) days after
71 the enactment of this act.

72 (4) For licensing authorities, the requirements listed in
73 subsections (1) and (2) also apply to any new occupational
74 licenses created after July 1, 2019.

75 (5) The licensing authority shall adopt necessary rules for
76 the implementation of this section.



77 **SECTION 5.** (1) An individual with a criminal record may
78 petition a licensing authority at any time for a determination of
79 whether the individual's criminal record will disqualify the
80 individual from obtaining a license. This petition shall include
81 details on the individual's criminal record. The licensing
82 authority shall inform the individual of his standing within
83 thirty (30) days of receiving the petition from the applicant.
84 The board may charge a fee to recoup its costs not to exceed
85 Twenty-five Dollars (\$25.00) for each petition.

86 (2) If a licensing authority denies an individual a license
87 solely or in part because of the individual's prior conviction of
88 a crime, the licensing authority shall notify the individual in
89 writing of the following:

90 (a) The grounds and reasons for the denial or
91 disqualification;

92 (b) That the individual has the right to a hearing to
93 challenge the licensing authority's decision;

94 (c) The earliest date the person may reapply for a
95 license; and

96 (d) That evidence of rehabilitation may be considered
97 upon reapplication.

98 (3) If an applicant's criminal history does not require a
99 denial of a license under applicable state law, any written
100 determination by the licensing authority that an applicant's
101 criminal conviction is directly related to the duties and



102 responsibilities for the licensed occupation must be documented in
103 written findings for each of the preceding factors under
104 subsection (2) by clear and convincing evidence sufficient for a
105 reviewing court.

106 (4) In any administrative hearing or civil litigation
107 authorized under this section, the licensing authority shall carry
108 the burden of proof on the question of whether the applicant's
109 criminal conviction directly relates to the occupation for which
110 the license is sought.

111 (5) The licensing authority shall adopt necessary rules for
112 the implementation of this section.

113 **SECTION 6.** (1) On or before July 1, 2019, each licensing
114 authority with established statutory authority or adopted rules
115 that allow that licensing authority to disqualify a person from
116 pursuing or practicing an occupation for which a license is
117 required solely or in part because of a prior conviction of crime
118 shall begin to review its statutory authority and rules in order
119 to propose statutory changes consistent with the following
120 guidelines:

121 (a) Specifically identify those criminal convictions
122 that in the opinion of the licensing authority should reasonably
123 disqualify a person from receiving a license because the
124 conviction directly relates to the duties and responsibilities of
125 the licensed occupation;



126 (b) Identify instances of background history which
127 would be considered as involving or pertaining to, "moral
128 turpitude" and "good character," which in the opinion of the
129 licensing authority would be a disqualifying crime or instance.

130 (2) In considering these recommendations, the licensing
131 authority should:

132 (a) Use a clear and convincing standard of proof in
133 examining the factors to determine whether an applicant with a
134 disqualifying criminal conviction should be denied a license;

135 (b) Consider licensing disqualification decisions based
136 on the following factors:

137 (i) The nature and seriousness of the crime for
138 which the individual was convicted;

139 (ii) The passage of time since the commission of
140 the crime;

141 (iii) The relationship of the crime to the
142 ability, capacity and fitness required to perform the duties and
143 discharge the responsibilities of the occupation;

144 (iv) Any evidence of rehabilitation or treatment
145 undertaken by an individual that might mitigate against pursuing,
146 practicing or engaging in the occupation; and

147 (v) Regarding felony convictions of a violent or
148 sexual nature, the health and safety of clients and customers
149 served by the occupation;



150 (c) Identify those instances where a disqualifying
151 criminal conviction results in a licensing disqualification but
152 that disqualification in the opinion of the licensing authority
153 should be limited to a specific time duration except for crimes of
154 a violent or sexual nature, of no more than five (5) years from
155 the date the individual is released from incarceration.

156 (3) On or before November 1, 2020, those licensing
157 authorities shall submit the information in subsection (1) to the
158 Mississippi Joint Committee on Performance Evaluation and
159 Expenditure Review (PEER). PEER shall review the submitted
160 information and prepare a report to be submitted to the
161 Legislature no later than December 31, 2020.

162 (4) Notwithstanding any provisions of the laws of the State
163 of Mississippi to the contrary, each licensing authority in the
164 state shall be required to provide the information required in
165 subsection (1) of this section and cooperate with PEER when PEER
166 is making the report to the Legislature.

167 **SECTION 7.** This act shall take effect and be in force from
168 and after July 1, 2019.

