

House Amendments to Senate Bill No. 2781

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

26 **SECTION 1.** Sections 1 through 6 of this act shall be known
27 and may be cited as 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.** With the exception of admission or reinstatement
40 to The Mississippi Bar as an attorney in good standing authorized
41 to practice law, absent applicable state law, no person shall be

42 disqualified from pursuing, practicing, or engaging in any
43 occupation for which a license is required solely or in part
44 because of a prior conviction of a crime, unless the crime for
45 which an applicant was convicted directly relates to the duties
46 and responsibilities for the licensed occupation.

47 **SECTION 4.** (1) With the exception of admission or
48 reinstatement to The Mississippi Bar as an attorney in good
49 standing authorized to practice law, absent applicable state law,
50 licensing authorities shall not have in any rulemaking for their
51 qualifications for licensure vague or generic terms including, but
52 not limited to, "moral turpitude," "any felony," and "good
53 character." Absent applicable state law, licensing authorities
54 may only consider criminal records that are specific and directly
55 related to the duties and responsibilities for the licensed
56 occupation when evaluating applicants.

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

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

65 (b) The passage of time since the commission of the
66 crime;

67 (c) The relationship of the crime to the ability,
68 capacity, and fitness required to perform the duties and discharge
69 the responsibilities of the occupation; and

70 (d) Any evidence of rehabilitation or treatment
71 undertaken by the individual that might mitigate against a direct
72 relation.

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

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

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

81 **SECTION 5.** (1) With the exception of admission or
82 reinstatement to The Mississippi Bar as an attorney in good
83 standing authorized to practice law, absent applicable state law,
84 an individual with a criminal record may petition a licensing
85 authority at any time for a determination of whether the
86 individual's criminal record will disqualify the individual from
87 obtaining a license. This petition shall include details on the
88 individual's criminal record. The licensing authority shall
89 inform the individual of his standing within thirty (30) days of
90 receiving the petition from the applicant. The board may charge a
91 fee to recoup its costs not to exceed Twenty-five Dollars (\$25.00)
92 for each petition.

93 (2) If a licensing authority denies an individual a license
94 solely or in part because of the individual's prior conviction of
95 a crime, the licensing authority shall notify the individual in
96 writing of the following:

97 (a) The grounds and reasons for the denial or
98 disqualification;

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

101 (c) The earliest date the person may reapply for a
102 license; and

103 (d) That evidence of rehabilitation may be considered
104 upon reapplication.

105 (3) If an applicant's criminal history does not require a
106 denial of a license under applicable state law, any written
107 determination by the licensing authority that an applicant's
108 criminal conviction is directly related to the duties and
109 responsibilities for the licensed occupation must be documented in
110 written findings for each of the preceding factors under
111 subsection (2) by clear and convincing evidence sufficient for a
112 reviewing court.

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

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

120 **SECTION 6.** (1) Except for the Mississippi Board of Bar
121 Admissions, which shall be exempt from the following, on or before
122 July 1, 2019, each licensing authority with established statutory
123 authority or adopted rules that allow that licensing authority to
124 disqualify a person from pursuing or practicing an occupation for
125 which a license is required solely or in part because of a prior
126 conviction of crime shall begin to review its statutory authority
127 and rules in order to propose statutory changes consistent with
128 the following guidelines:

129 (a) Specifically identify those criminal convictions
130 that in the opinion of the licensing authority should reasonably
131 disqualify a person from receiving a license because the
132 conviction directly relates to the duties and responsibilities of
133 the licensed occupation;

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

138 (2) In considering these recommendations, the licensing
139 authority should:

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

143 (b) Consider licensing disqualification decisions based
144 on the following factors:

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

147 (ii) The passage of time since the commission of
148 the crime;

149 (iii) The relationship of the crime to the
150 ability, capacity and fitness required to perform the duties and
151 discharge the responsibilities of the occupation;

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

155 (v) Regarding felony convictions of a violent or
156 sexual nature, the health and safety of clients and customers
157 served by the occupation;

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

164 (3) On or before November 1, 2020, those licensing
165 authorities shall submit the information in subsection (1) to the
166 Mississippi Joint Committee on Performance Evaluation and
167 Expenditure Review (PEER). PEER shall review the submitted

168 information and prepare a report to be submitted to the
169 Legislature no later than December 31, 2020.

170 (4) Notwithstanding any provisions of the laws of the State
171 of Mississippi to the contrary, each licensing authority in the
172 state shall be required to provide the information required in
173 subsection (1) of this section and cooperate with PEER when PEER
174 is making the report to the Legislature.

175 **SECTION 7.** Notwithstanding any provision of law to the
176 contrary, no licensing authority shall suspend or revoke the
177 license it has issued to any person who is:

178 (a) In default or delinquent in the payment of their
179 student loans solely on the basis of such default or delinquency;
180 or

181 (b) In default or delinquent in the satisfaction of the
182 requirements of their work - conditional scholarship solely on the
183 basis of such default or delinquency.

184 **SECTION 8.** The medical director of a licensed hospice, in
185 his discretion, may prescribe controlled substances for a patient
186 of the hospice for terminal disease pain without having a
187 face-to-face visit with the patient before issuing the
188 prescription. This section supersedes the provisions of any rule
189 or regulation of a licensing agency to the contrary.

190 **SECTION 9.** This act shall take effect and be in force from
191 and after July 1, 2019.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

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Andrew Ketchings
Clerk of the House of Representatives