

North Carolina Freedom to Work Act & Professional Licensure

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February 2024

In 2019, the North Carolina General Assembly enacted [Session Law 2019-91](#) (House Bill 770), effective for occupational licensure applications submitted or Certificates of Relief granted on or after October 1, 2019. The law reformed North Carolina's occupational licensing laws by narrowing the authority of occupational and state agency licensing boards¹ to deny a licensing application because of an applicant's criminal history, establishing a process for individuals to petition a licensing board for a predetermination of whether a criminal conviction will likely disqualify them from licensure, and creating requirements for licensing boards to publicly disclose and report on their use of criminal histories in licensing determinations. The law also requires licensing boards to favorably consider a Certificate of Relief when determining whether a conviction should result in disqualification. More information about these changes is provided below.²

Use of Criminal History by Licensing Boards

The law made several changes to section 93B-8.1 of the North Carolina General Statutes (hereinafter G.S.),³ reforming how licensing boards can use criminal histories in licensing determinations.⁴ While licensing boards are governed by laws and administrative rules specific to each board, several sections of G.S. Chapter 93B include requirements that apply to all occupational and state agency licensing boards.⁵ Before these changes, occupational licensing boards could (1) automatically deny an application because of the applicant's criminal history, if automatic denial was required by the law governing the specific licensing board; and (2) exercise discretion to deny an application because of a

¹ Defined in North Carolina General Statutes (hereinafter G.S.) 93B-1(2)-(3). This paper uses "licensing boards" when referring to these collectively.

² The law also enacted G.S. 93B-8.6, recognizing apprenticeships and training as qualifications for certain types of occupational licenses; these changes are beyond the scope of this paper.

³ Since the enactment of S.L. 2019-91, further technical and conforming changes to G.S. 93B-8.1 were enacted. See [S.L. 2023-46](#), § 11, effective June 16, 2023.

⁴ "Criminal history" is defined in G.S. 93B-8.1(a)(4) as "[a] State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or a licensee's fitness to be licensed or disciplined."

⁵ Prior to this law, state agency licensing boards were not subject to regulation under G.S. Chapter 93B. The law brought state agency licensing boards within the scope of two statutes in G.S. Chapter 93B: (1) G.S. 93B-8.1, relating to the use of criminal history records, and (2) G.S. 93B-2, requiring annual reporting of the boards' licensing activity and use of criminal histories. "State agency licensing board" is defined in G.S. 93B-1(3) as "[a]ny State agency staffed by full-time State employees, which as part of their regular functions issue licenses." The definition includes a non-exhaustive list of state agency licensing boards, which has been amended twice since its enactment. See [S.L. 2021-138](#), § 17; and [S.L. 2021-180](#), § 9G.7.(c). Specifically excluded from the definition are the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Sheriffs' Education and Training Standards Commission, and the Department of Revenue.

conviction for a crime listed in the specific licensing board’s governing statute, after consideration of certain factors.⁶ The law amended G.S. 93B-8.1(b) to prohibit automatic denials by licensing boards, and added a provision preventing licensing boards from denying licenses based on convictions for crimes of moral turpitude.

The law further limited the use of criminal histories by licensing boards. It provides that a licensing board can deny a license because of a criminal conviction only if the board finds that the criminal history “is directly related to the duties and responsibilities for the licensed occupation” or the conviction is “for a crime that is violent or sexual in nature.”⁷ Furthermore, licensing boards can deny an application only after analyzing a specific set of factors in G.S. 93B-8.1(b1). These factors include, for example, the level and seriousness of the crime and the nexus between the criminal conduct and the applicant’s would-be duties as a licensee.⁸ The law also requires a licensing board to provide written findings specifying which factors it considered when denying an application, and to provide these findings to the applicant.⁹

With one exception, the requirements of G.S. 93B-8.1(b) apply “[n]otwithstanding any other provision of law.”¹⁰ However, many statutes and administrative rules that govern licensing boards are scattered throughout the G.S., and conforming changes were not made to these provisions.¹¹

⁶ Before the changes, G.S. 93B-8.1(b) also authorized denial based on the applicant’s “commission of a crime involving fraud or moral turpitude,” if allowed by the licensing board’s enabling statute and after consideration of the same factors. As amended, this section now prohibits denial on the basis of a crime of moral turpitude, and the reference to a crime involving fraud was removed.

⁷ G.S. 93B-8.1(b).

⁸ The full list of factors in G.S. 93B-8.1(b1) are: (1) the level and seriousness of the crime; (2) the date of the crime; (3) the age of the person at the time of the offense; (4) the circumstances surrounding the commission of the crime, if known; (5) the nexus between the criminal conduct and the prospective duties of the applicant as a licensee; (6) the prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the commission of the crime; (6a) the completion of, or active participation in, rehabilitative drug or alcohol treatment; (6b) a Certificate of Relief granted; (7) the subsequent commission of a crime; and (8) any affidavits or other written documents, including character references. These are the same factors licensing boards were required to consider under former G.S. 93B-8.1(b) when exercising discretion to deny an application, except for the addition of (6a) and (6b).

⁹ G.S. 93B-8.1(b2).

¹⁰ The one exception is when federal law governs the licensing board.

¹¹ For example, G.S. 90-14(c) provides that “a felony conviction shall result in the automatic revocation of a license issued by the [North Carolina Medical Board], unless the Board orders otherwise or receives a request for a hearing from the person within 60 days.” And, G.S. 90-30(a) provides that the North Carolina State Board of Dental Examiners may “refuse to grant a license to any person guilty of a crime involving moral turpitude.”

Providing Access to Criminal History

Under the law, if a licensing board requires a criminal history check, it must provide the applicant access to their criminal history.¹² If that history contains “matters that will or may prevent the board from issuing a license,” the licensing board must notify the applicant in writing and give them at least thirty days to provide additional information to be considered by the licensing board before a final denial decision is made.¹³

Basis for Denial and Limitation on Reapplication Restrictions

The law adds a new requirement that licensing boards must include information about appeal rights and the reapplication process, along with “specific reference to any criminal conviction(s) considered as part or all of any basis for the denial and the rationale for the denial” when denying an application.¹⁴ This provision also prevents a licensing board from barring a reapplication for more than two years.

Public Notice of Criminal Record Check

The law requires licensing boards to provide the following new information on their license applications and public websites:

- (1) whether the board requires applicants to consent to a criminal history record check;
- (2) the factors under G.S. 93B-8.1(b1) that the licensing board must consider when making a licensing determination; and
- (3) the appeals process under the North Carolina Administrative Procedure Act if a denial is made in whole or in part because of a criminal conviction.¹⁵

Petition for Predetermination

The law created a new procedure in G.S. 93B-8.1(b6) allowing a potential applicant with criminal history to petition a licensing board for a predetermination of whether their criminal history will likely disqualify them from obtaining a license. The licensing board may charge a fee of up to \$45 for the predetermination, and the petitioner also must pay the costs of obtaining the criminal history report from the designated reporting service. The licensing board’s predetermination is not a final agency decision and cannot be appealed, but a predetermination of eligibility is binding on the licensing board if the person subsequently applies and fulfills all requirements, provided their criminal history was correct and has not changed.¹⁶ Criminal history records relating to predetermination petitions are not public records.¹⁷

¹² Access must be provided by “the provider of the criminal history record,” or the board must “otherwise deliver a copy of the criminal history record to the applicant.” G.S. 93B-8.1(b4).

¹³ This includes “correcting any inaccuracy in the criminal history” or “submitting evidence of mitigation or rehabilitation.” G.S. 93B-8.1(b4).

¹⁴ G.S. 93B-8.1(b5).

¹⁵ G.S. 93B-8.1(b3).

¹⁶ G.S. 93B-8.1(b7)-(b8).

¹⁷ G.S. 93B-8.1(b6).

Consideration of a Certificate of Relief

The law amended G.S. 15A-173.2(d) to require that licensing boards favorably consider a Certificate of Relief when determining whether an applicant is disqualified due to criminal convictions. Certain individuals with felony and/or misdemeanor convictions¹⁸ can petition a court for a Certificate of Relief. If the court finds that the petitioner has satisfied the statutory requirements,¹⁹ it may issue a Certificate of Relief. That certificate relieves the petitioner from certain collateral consequences of a conviction.²⁰ In addition to the change noted above, the law also added a Certificate of Relief to the list of factors in G.S. 93B-8.1(b1) that a licensing board must consider before denying an application based on a criminal conviction.

Licensing Board Reporting Requirements

Finally, occupational and state agency licensing boards now must include in their annual reports to the Secretary of State, the Attorney General, and the General Assembly: (1) the number of applicants for and the number of people granted a license, and (2) the number of applicants with a criminal record, and of those, the number granted a license, denied a license for any reason, and denied a license because of a conviction.²¹

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¹⁸ The petitioner for a Certificate of Relief must have been convicted of “no more than...three Class H or I felonies,” but the statute does not place a limit on the number of misdemeanors. G.S. 15A-173.2(a).

¹⁹ The requirements are listed in G.S. 15A-173.2(b)(1)-(6), and are generally focused on the petitioner’s conduct after completing their criminal sentence.

²⁰ The statute refers to “collateral sanctions” and “disqualifications” as collateral consequences. G.S. 15A-173.1(1)-(3). There are a wide range of collateral consequences from a criminal conviction. The UNC School of Government has created the Collateral Consequences Assessment Tool to assist searching for these consequences: <https://ccat.sog.unc.edu>.

²¹ G.S. 93B-2(a)(9a)-(9b); (e). These reports are available on the General Assembly’s website for the Joint Legislative Administrative Procedure Oversight Committee. Annual reports for occupational licensing boards can be found [here](#); annual reports for state agency licensing boards can be found [here](#).