

# HOUSE . . . . . No. 4602

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, May 6, 2024.

The committee on Consumer Protection and Professional Licensure, to whom were referred the petition (accompanied by bill, Senate, No. 2451) of Cynthia Stone Creem, Liz Miranda and Estela A. Reyes for legislation to further regulate professional and occupational licensing and the petition (accompanied by bill, House, No. 348) of David Henry Argosky LeBoeuf, Steven Ultrino and others for legislation to further regulate professional and occupational licensing, reports recommending that the accompanying bill (House, No. 4602) ought to pass.

For the committee,

TACKEY CHAN.

**HOUSE . . . . . No. 4602**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
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An Act relative to increasing professional licensure opportunities.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 6 of the General Laws, as appearing in the 2022 Official Edition, is  
2 hereby amended by striking out section 172N, and inserting in place thereof the following 2  
3 sections:-

4           Section 172N. (a) For the purposes of this section and section 172N 1/2, “licensing  
5 authority” shall include any agency, examining board, credentialing board or other office or  
6 commission, including boards supervised by the commissioner of occupational licensure, with  
7 the authority to impose occupational fees or licensing requirements on a profession.

8           (b) A licensing authority shall provide individualized consideration of an applicant’s  
9 circumstances as described in subsections (d) and (e) to deny, diminish, suspend, revoke,  
10 withhold or otherwise limit a professional or occupational license.

11           (c) Notwithstanding any general or special law to the contrary, a licensing authority shall  
12 not consider, nor require an applicant to disclose:

13 (1) a deferred adjudication, including but not limited to a continuance without a finding,  
14 participation in a diversion program or an arrest not followed by a conviction;

15 (2) a conviction for which no sentence of incarceration may be imposed;

16 (3) a conviction that has been sealed, annulled, dismissed, vacated, set aside, expunged or  
17 pardoned;

18 (4) a juvenile adjudication;

19 (5) a non-violent misdemeanor;

20 (6) a conviction that occurred more than 3 years prior to the date of the licensing  
21 authority's consideration or where the applicant's incarceration ended more than 3 years before  
22 the date of the licensing authority's consideration, except for a conviction of:

23 (i) a crime punishable by imprisonment for a term exceeding 2 and a half years, or any  
24 act of juvenile delinquency involving the use or possession of a deadly weapon that would be  
25 punishable by imprisonment for such term if committed by an adult, that (A) has as an element  
26 involving the use, attempted use or threatened use of physical force or a deadly weapon against  
27 the person of another; (B) is burglary, extortion, arson or kidnapping; (C) involves the use of  
28 explosives; or (D) resulted in death, bodily injury, or serious bodily injury with malice  
29 aforethought;

30 (ii) a felony related to a sex offense, a sex offense involving a child or a sexually violent  
31 offense as defined in section 178C; or

32 (iii) a felony related to criminal fraud pursuant to section 1 of chapter 267 or  
33 embezzlement pursuant to chapter 266.

34 (d) A licensing authority may deny, diminish, suspend, revoke, withhold or otherwise  
35 limit a professional or occupational license only if the licensing authority determines, by clear  
36 and convincing evidence, that:

37 (1) First, an applicant's non-excluded criminal record directly relates to the duties and  
38 responsibilities of the profession or occupation.

39 (2) Second, if an applicant's non-excluded criminal record is directly related to the duties  
40 and responsibilities of the profession or occupation, the licensing authority must then determine  
41 if the interest of the licensing authority in protecting the public, an individual or property from  
42 harm outweighs the applicant's right to hold the professional or occupational license.

43 (3) Third, if the licensing authority determines that the interest in protecting the public, an  
44 individual or property from harm outweighs the applicant's right to hold the professional or  
45 occupational license, then the licensing authority shall determine if the applicant has failed to be  
46 rehabilitated.

47 (e) If the applicant's criminal record is directly related to the performance, duties,  
48 responsibilities, practices or functions of the profession, the licensing authority shall consider the  
49 following factors, in a light most favorable to the applicant, to demonstrate evidence of  
50 rehabilitation:

51 (1) the age of the applicant at the time of the offense;

52 (2) the length of time since the offense;

53 (3) the completion of a criminal sentence, not including financial obligations;

54 (4) a certificate of rehabilitation, restoration of rights or good conduct;

55 (5) completion of, or active participation in, rehabilitative drug or alcohol treatment or  
56 similar programs;

57 (6) testimonials and recommendations, including, but not limited to, progress reports  
58 from the applicant's probation or parole officer;

59 (7) education and training;

60 (8) employment history;

61 (9) the applicant's responsibilities, including civic and community engagement or family  
62 contributions;

63 (10) whether the applicant will be bonded in the occupation; and

64 (11) other evidence of rehabilitation or information that the applicant submitted to the  
65 licensing authority, including mitigating circumstances.

66 (f)(1) The licensing authority shall issue and send a decision to the applicant on the  
67 petition not later than 60 days after the licensing authority receives the petition or, if a hearing is  
68 held, not later than 90 days after the licensing authority receives the petition. The decision shall  
69 be made in writing and include a copy of any criminal record report that the licensing authority  
70 reviewed. If the licensing authority determines that an occupational or professional license  
71 should not be granted because of the criminal conviction of an applicant, the decision shall set  
72 forth the reasons for the determination which shall address each of the factors in subsection (e)  
73 that the licensing authority deemed relevant to the determination.

74 (2) If the licensing authority decides that the professional or occupational license should  
75 not be granted, the licensing authority may provide an alternative advisory opinion, in which the

76 licensing authority may advise the applicant of actions the applicant may take to remedy the  
77 disqualification.

78 (3) If advised by the licensing authority of remedial actions, the applicant may submit a  
79 revised petition reflecting completion of the remedial actions before a deadline set by the  
80 licensing authority in the alternative advisory decision.

81 (g) The applicant may appeal the licensing authority's decision as provided in section  
82 176.

83 (h) An ambiguity in a professional or occupational regulation relating to a licensing  
84 authority's use of an applicant's criminal record shall be resolved in the favor of the applicant.

85 (i) Nothing in this section shall be construed to change a licensing authority's ability to  
86 enforce other conditions of professional and occupational licenses, including the personal  
87 qualifications required to obtain recognition or compliance with other regulations.

88 Section 172N ½. (a) At least once every three years, a licensing authority shall review  
89 and issue a report on their license application review and approval processes to ensure that those  
90 decisions promote economic opportunities while fostering public safety in a manner consistent  
91 with the stated objectives of applicable statutes.

92 In so reviewing, each licensing authority shall report to the division of occupational  
93 licensure, or the department under which the licensing authority sits:

94 (1) the number of times that each licensing authority acted to deny, diminish, suspend,  
95 revoke, withhold or otherwise limit state recognition for a license because of an individual's  
96 criminal record;

- 97 (2) the criminal convictions that were the subject of each licensing authority action;
- 98 (3) the number of applicants petitioning each licensing authority;
- 99 (4) the criminal convictions that were the subject of each approval or denial of a petition;

100 and

101 (5) other relevant data as determined by the division of occupational licensure or the  
102 department under which the licensing authority sits.

103 (b) The division of occupational licensure or department governing the licensing  
104 authority shall compile and publish a report on a searchable public website summarizing data  
105 reported.

106 SECTION 2. There shall be a special commission on background record requirements  
107 and good moral character for occupational licensure consisting of 11 members: the commissioner  
108 of occupational licensure or a designee, who shall serve as chair; the commissioner of public  
109 health, or a designee; the executive director of the Massachusetts office of victim assistance, or a  
110 designee; and 8 members to be appointed by the governor, 1 of whom shall be a representative of  
111 the Massachusetts AFL-CIO Council, Inc., 1 of whom shall be a representative of the  
112 Massachusetts Building Trades Council, 1 of whom shall be a representative of a local chamber  
113 of commerce, 1 of whom shall be a representative of the NAACP New England Area  
114 Conference, 1 of whom shall be a representative of a registered Massachusetts affiliate of the  
115 National Urban League, Inc., 1 of whom shall be a representative of the YWCA's of  
116 Massachusetts, Inc., and 1 of whom shall be a representative of the Greater Boston Legal  
117 Services, Inc..

118           The commission shall: (a) advise the division of occupational licensure and licensing  
119 authorities, as defined in section 172N of chapter 6 of the General Laws, to provide  
120 recommendations for background record requirements for each professional and occupational  
121 license granted within the commonwealth; and (b) report on the use and any necessity of, or the  
122 elimination or modification of vague terms contained in the General Laws, including but not  
123 limited to chapters 112 and 151B, relative to licensing or employment decision making,  
124 including: (i) “good moral character”; (ii) “moral turpitude”; or (iii) “character and fitness”.

125           Background record requirements developed by the commission shall not be designed to  
126 eliminate certain licenses, nor to develop or recommend that the division of occupational  
127 licensure or other licensing authority create new licenses or additional professional requirements  
128 for licensure. The commission shall report its findings, including any recommended further  
129 legislative action, to the offices of the House and Senate Clerks and to the Joint Committee on  
130 Consumer Protection and Professional Licensure not later than 6 months.