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COMMITTEE REPORT

March 23, 2017

**H. 3968**

Introduced by Reps. Sandifer and Forrester

S. Printed 3/23/17--H.

Read the first time March 13, 2017.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3968) to amend Section 40‑1‑140, Code of Laws of South Carolina, 1976, relating to effects of prior criminal convictions on persons seeking authorization to practice, pursue, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 40‑1‑140, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EFFECTS OF PRIOR CRIMINAL CONVICTIONS ON PERSONS SEEKING AUTHORIZATION TO PRACTICE, PURSUE, OR ENGAGE IN REGULATED PROFESSIONS OR OCCUPATIONS, SO AS TO DELETE PROVISIONS PROHIBITING DENIALS OF SUCH AUTHORIZATIONS SOLELY FOR CERTAIN PRIOR CRIMINAL CONVICTIONS, TO ALLOW THE DENIAL OF AN AUTHORIZATION TO PRACTICE WHICH WOULD POSE CERTAIN THREATS TO THE PUBLIC, TO REQUIRE CERTAIN MINIMUM CRIMINAL RECORD BACKGROUND CHECKS OF PERSONS SEEKING AUTHORIZATION TO PRACTICE, TO PROVIDE SUCH REQUIREMENTS ARE INTENDED TO OPERATE IN THE ABSENCE OF SUCH REQUIREMENTS BUT DO NOT LIMIT OR OTHERWISE RESTRICT THE ABILITY OF BOARDS, COMMISSIONS, AND PANELS FROM IMPOSING MORE RESTRICTIVE AND ADDITIONAL REQUIREMENTS, AND TO SPECIFY THE BOARDS, COMMISSIONS, AND PANELS TO WHICH THESE BACKGROUND CHECK REQUIREMENTS APPLY; TO AMEND SECTION 40‑1‑110, RELATING TO SPECIFIC GROUNDS FOR DISCIPLINARY ACTION AGAINST PERSONS AUTHORIZED TO PRACTICE, PURSUE, OR ENGAGE IN REGULATED PROFESSIONS AND AUTHORIZATIONS, SO AS TO INCLUDE CERTAIN PRIOR CRIMINAL CONVICTIONS OR PLEAS TO CRIMINAL CONDUCT; AND TO PROVIDE THAT THE PROVISIONS OF THIS ACT TAKE EFFECT TWO YEARS AFTER APPROVAL BY THE GOVERNOR.

Whereas, the South Carolina General Assembly finds that among the most fundamental, vital obligations of the State is to protect the public from health and safety threats; and

Whereas, the South Carolina General Assembly finds recent atrocities committed against the public by a professional licensed by this State demand increased vigilance to ensure that this State only authorizes persons worthy of public trust to engage in professions and occupations, and that the lack of a mandatory background screening process of all such persons must be corrected; and

Whereas, the South Carolina General Assembly finds that while the State’s principal regulator of professions and occupations, the Department of Labor, Licensing and Regulation, has broad authority to revoke professional and occupational authorization, it lacks similar latitude to deny initial authorization, and this disparity must be corrected to ensure the department can deny the authorization to engage in a profession or occupation for any reason that it can revoke such authorization. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 40‑1‑140 of the 1976 Code is amended to read:

“Section 40‑1‑140. (A)(1) ~~A person may not be refused an authorization to practice, pursue, or engage in a regulated profession or occupation solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the authorization to practice is sought. However,~~ A board may refuse an authorization to practice if, based upon all information available, including the applicant’s record of prior convictions, it finds:

(a) that the applicant is unfit or unsuited to engage in the profession or occupation; or

(b) granting an authorization to practice would pose a threat to public health, safety, or welfare.

(2)(a) A board may find that an applicant is unfit or unsuited to engage in the profession or occupation, or that granting an authorization to practice would pose a threat to public health, safety, or welfare, if the board finds that the applicant:

(i) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act or omitted a material fact in obtaining licensure under this article;

(ii) has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled;

(iii) has intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article;

(iv) has intentionally used a fraudulent statement in a document connected with the practice of the individual’s profession or occupation;

(v) has obtained fees or assisted in obtaining fees under fraudulent circumstances;

(vi) has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

(vii) lacks the professional or ethical competence to practice the profession or occupation;

(viii) has been convicted of or has pled guilty to or nolo contendere to a felony or a crime involving drugs or moral turpitude;

(ix) uses alcohol or drugs to such a degree as to render him unfit to practice his profession or occupation;

(x) has been convicted or has pled guilty or nolo contendere to a crime that directly relates to the duties and responsibilities of the licensed occupation; or

(xi) has been convicted of a sex crime against a child.

(b) The factors set forth in this item are not exhaustive and a board may rely upon other relevant factors in the discretion of the board to reach a finding that the applicant is unfit or unsuited to engage in the profession or occupation, or that granting an authorization to practice would pose a threat to public health, safety, or welfare

(B) In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for licensure, the board, commission, or panel shall require initial applicants to submit to a state background check and a national criminal record background check. These are minimum requirements intended to operate in the absence of any such requirements, but may not be construed to limit or otherwise restrict more stringent requirements or additional requirements in a particular practice act or the ability of a board, commission, or panel to impose such more stringent or additional requirements that would supplant the requirements of this subsection. Costs of conducting criminal record background checks must be borne by the applicant. The board, commission, or panel shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as necessary to support the administrative action.

(C) This section is applicable to the following boards, commissions and panels:

(1) Board of Chiropractic Examiners

(2) Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists and Psycho‑Educational Specialists

(3) Board of Dentistry

(4) Board of Medical Examiners

(5) Board of Nursing

(6) Building Codes Council

(7) Long Term Health Care Administrators Board

(8) Massage/Bodywork Therapy Panel

(9) Board of Occupational Therapy

(10) Board of Examiners in Optometry

(11) Board of Pharmacy

(12) Board of Physical Therapy

(13) Board of Podiatry Examiners

(14) Board of Examiners in Psychology

(15) Real Estate Commission

(16) Board of Social Work Examiners

(17) Board of Examiners in Speech‑Language Pathology and Audiology.”

SECTION 2. Section 40‑1‑110 of the 1976 Code is amended to read:

“Section 40‑1‑110. (A) In addition to other grounds contained in this article and the respective board’s chapter~~:~~,

~~(1)~~ a board may cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who:

(~~a~~1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act or omitted a material fact in obtaining licensure under this article;

(~~b~~2) has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined;

(~~c~~3) has intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article;

(~~d~~4) has intentionally used a fraudulent statement in a document connected with the practice of the individual’s profession or occupation;

(~~e~~5) has obtained fees or assisted in obtaining fees under fraudulent circumstances;

(~~f~~6) has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

(~~g~~7) lacks the professional or ethical competence to practice the profession or occupation;

(~~h~~8) has been convicted of or has pled guilty to or nolo contendere to a felony or a crime involving drugs or moral turpitude;

(~~i~~9) has practiced the profession or occupation while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him unfit to practice his profession or occupation;

(~~j~~10) has sustained a physical or mental disability which renders further practice dangerous to the public;

(~~k~~11) violates a provision of this article or of a regulation promulgated under this article;

(~~l~~12) violates the code of professional ethics adopted by the applicable licensing board for the regulated profession or occupation or adopted by the department with the advice of the advisory panel for the professions and occupations it directly regulates~~.~~;

(13) has been convicted or has pled guilty or nolo contendere to a crime that directly relates to the duties and responsibilities of the licensed occupation; or

(14) has been convicted of a sex crime against a child.

(B) Each incident is considered a separate violation.”

SECTION 3. This act takes effect two years after approval by the Governor.

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