AS PASSED BY THE SENATE

March 31, 2022

**S. 295**

Introduced by Senators Climer, Fanning, Bennett and Allen

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Read the first time January 12, 2021.

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 1, TITLE 40 OF THE 1976 CODE, RELATING TO BOARD REGULATION OF PROFESSIONS AND OCCUPATIONS, BY ADDING SECTION 40-1-75 AND SECTION 40-1-77, TO PROVIDE THAT PROFESSIONAL BOARDS AND COMMISSIONS MAY NOT SOLELY DENY A LICENSE APPLICATION BASED UPON AN APPLICANT’S PRIOR CRIMINAL CONVICTION UNLESS THE CONVICTION IS FOR A CRIME THAT DIRECTLY RELATES TO THE DUTIES AND RESPONSIBILITIES FOR THE SPECIFIC OCCUPATION OR PROFESSIONAL LICENSE BEING SOUGHT, TO PROVIDE THAT BOARDS AND COMMISSIONS MUST IDENTIFY CRIMES THAT WOULD LEAD TO AN AUTOMATIC DISQUALIFICATION FROM LICENSURE, TO PROVIDE THAT AN APPLICANT MAY OBTAIN A DETERMINATION FROM THE APPROPRIATE BOARD OR COMMISSION CONCERNING WHETHER HIS PRIOR CRIMINAL CONVICTION IS A DISQUALIFYING CONVICTION, TO PROVIDE NOTICE TO APPLICANTS WHO SEEK SUCH A DETERMINATION, TO PROVIDE FOR LICENSURE BY BOARDS AND COMMISSIONS FOR APPLICANTS WHO COMPLETE CERTAIN APPRENTICESHIP PROGRAMS, AND TO DEFINE NECESSARY TERMS.

Amend Title To Conform

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

SECTION 1. Article 1, Chapter 1, Title 40 of the 1976 Code is amended by adding:

“Section 40-1-75. (A)(1) A regulatory board or commission may not solely or in part deny a license to an applicant because of a prior criminal conviction, unless the criminal conviction directly relates to the duties and responsibilities of the occupation or profession for which the applicant is seeking a license. Regulatory boards and commissions are prohibited from using vague or generic terms including, but not limited to, ‘moral turpitude’ or ‘good character’, and from considering charges that have been dismissed, nol prossed, or adjudicated with a finding of not guilty as a justification for denying an applicant a license.

(2) An applicant who has completed relevant pre-licensing requirements may not be denied a license unless the appropriate regulatory board or commission has given the applicant an opportunity to appear at a hearing to determine the applicant’s fitness for the occupation or profession. The hearing must include specific references to which crimes, if any, the board or commission is considering in relation to the applicant’s fitness. The hearing must be scheduled within ninety days of the appropriate board or commission receiving notice that all relevant pre-licensing requirements have been completed.

(B)(1) In determining whether an applicant with a directly related criminal conviction shall be denied a license, the relevant regulatory board or commission shall apply a preponderance of the evidence standard that the applicant would pose a threat to public safety. The board or commission shall make its determination based upon the following factors:

(a) the nature and severity of the crime for which the applicant was convicted;

(b) the length of time since his conviction;

(c) the direct relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

(d) evidence of rehabilitation or treatment undertaken by the applicant that may mitigate the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation or profession; and

(e) any combination of the relevant factors identified in this subsection that the regulatory board or commission determines is necessary considering the totality of the circumstances.

(2) If a regulatory board or commission denies a license application solely or in part because of the applicant’s prior conviction of a crime, then the regulatory board or commission must notify the applicant in writing of its decision. The notice shall provide:

(a) the grounds for the denial;

(b) notice that the individual has the right to a hearing to challenge the denial;

(c) the earliest date that the applicant may again apply for licensure; and

(d) a statement that evidence of rehabilitation may be considered upon reapplication.”

SECTION 2. Chapter 1, Title 40 of the 1976 Code is amended by adding:

“Section 40-1-77. (A) This section may be cited and referred to as the ‘Earn and Learn Act of 2022’.

(B) The purpose of this section is to expand economic opportunities and build a skilled workforce according to industry standards by allowing a worker to earn a paycheck while he fulfills applicable licensing requirements.

(C) For the purposes of this section:

(1) ‘Apprenticeship’ means a United States Department of Labor approved registered apprenticeship or industry recognized apprenticeship that encompasses an occupation or profession licensed by a South Carolina regulatory board or commission.

(2) ‘Board’ means a government board, agency, department, or other governmental entity that regulates a profession or occupation and issues a license to an individual. This definition of ‘board’ does not include boards and commissions established and operating pursuant to Chapter 15, Title 54.

(3) ‘License’ means a license, certificate, registration, permit, or other evidence that an individual is qualified to engage in an occupation or profession before that person may engage in or represent himself as a member of an occupation or profession.

(4) ‘Scope of practice’ means the procedures, actions, processes, and work that a person may perform pursuant to a license issued by an occupation’s or profession’s regulatory board.

(D) A board shall issue a license to an applicant, if the applicant:

(1) completes an apprenticeship in an occupation or profession that has a similar scope of practice, as determined by the board, to an occupation or profession regulated by this State through license requirements;

(2) successfully passes requisite examinations; and

(3) pays all applicable fees.

(E) A license issued pursuant to this section is subject to the same provisions of law governing a license for the occupation or profession.

(F) A board shall not require an applicant pursuant to this section to complete an apprenticeship for a greater duration of time than that is required pursuant to federal law.

(G) A board may require an applicant pursuant to this section to successfully pass an examination only if the board imposes the same examination requirement on other license applicants. A board shall not require an applicant pursuant to this section to receive a higher score on an examination than the score required of other license applicants.

(H) A board may require an applicant pursuant to this section to pay a licensing fee only if the board imposes a licensing fee on other license applicants. A board shall not impose on an applicant pursuant to this section a licensing fee greater than the licensing fee imposed on other applicants.

(I) A board shall promulgate regulations necessary for the implementation of this act.”

SECTION 3. Section 40-1-140 of the 1976 Code, relating to the effect of prior convictions on license applications for professions and occupations, is repealed.

SECTION 4. This act takes effect January 1, 2024.

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