



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3342

by Rep. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

See Index

Amends the Department of Professional Regulation Law of the Civil Administrative Code of Illinois. Requires the Department of Financial and Professional Regulation to consider certain mitigating factors and evidence of rehabilitation for certain applicants of licenses, certificates, and registrations. Requires the Department, upon denial of a license, certificate, or registration, to provide the applicant certain information concerning the denial. Provides that no application for licensure or registration shall be denied by reason of a finding of lack of good moral character when the finding is based solely upon the fact that the applicant has one or more previous convictions. Provides that the Department shall not require applicants to report certain criminal history information and the Department shall not consider the information. Provides that on May 1 of each year, the Department shall prepare, publicly announce, and publish certain statistical information. Amends the Criminal Identification Act. Includes applications for license, certification, and registration that must contain specific language which states that the applicant is not obligated to disclose sealed or expunged records of conviction or arrest and entities authorized to grant professional licenses, certifications, and registrations that may not ask if an applicant has had records expunged or sealed. Provides that certain sealed or impounded felony records shall not be disseminated in connection with an application for a professional or business license, except specified health care worker licenses. Effective immediately.

LRB100 08528 SMS 18653 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Professional Regulation Law of
5 the Civil Administrative Code of Illinois is amended by
6 changing Sections 2105-130, 2105-131, 2105-135, 2105-205, and
7 2105-207 as follows:

8 (20 ILCS 2105/2105-130)

9 Sec. 2105-130. Determination of disciplinary sanctions.

10 (a) Following disciplinary proceedings as authorized in
11 any licensing Act administered by the Department, upon a
12 finding by the Department that a person has committed a
13 violation of the licensing Act with regard to licenses,
14 certificates, or authorities of persons exercising the
15 respective professions, trades, or occupations, the Department
16 may revoke, suspend, refuse to renew, place on probationary
17 status, fine, or take any other disciplinary action as
18 authorized in the licensing Act with regard to those licenses,
19 certificates, or authorities. When making a determination of
20 the appropriate disciplinary sanction to be imposed, the
21 Department shall consider only evidence contained in the
22 record. The Department shall consider any aggravating or
23 mitigating factors contained in the record when determining the

1 appropriate disciplinary sanction to be imposed.

2 (b) When making a determination of the appropriate
3 disciplinary sanction to be imposed on a licensee, the
4 Department shall consider, but is not limited to, the following
5 aggravating factors contained in the record:

6 (1) the seriousness of the offenses;

7 (2) the presence of multiple offenses;

8 (3) prior disciplinary history, including actions
9 taken by other agencies in this State, by other states or
10 jurisdictions, hospitals, health care facilities,
11 residency programs, employers, or professional liability
12 insurance companies or by any of the armed forces of the
13 United States or any state;

14 (4) the impact of the offenses on any injured party;

15 (5) the vulnerability of any injured party, including,
16 but not limited to, consideration of the injured party's
17 age, disability, or mental illness;

18 (6) the motive for the offenses;

19 (7) the lack of contrition for the offenses;

20 (8) financial gain as a result of committing the
21 offenses; and

22 (9) the lack of cooperation with the Department or
23 other investigative authorities.

24 (c) When making a determination of the appropriate
25 disciplinary sanction to be imposed on a licensee, the
26 Department shall consider, but is not limited to, the following

1 mitigating factors contained in the record:

2 (1) the lack of prior disciplinary action by the
3 Department or by other agencies in this State, by other
4 states or jurisdictions, hospitals, health care
5 facilities, residency programs, employers, insurance
6 providers, or by any of the armed forces of the United
7 States or any state;

8 (2) contrition for the offenses;

9 (3) cooperation with the Department or other
10 investigative authorities;

11 (4) restitution to injured parties;

12 (5) whether the misconduct was self-reported; and

13 (6) any voluntary remedial actions taken.

14 (Source: P.A. 98-1047, eff. 1-1-15.)

15 (20 ILCS 2105/2105-131 new)

16 Sec. 2105-131. Applicants with criminal convictions;
17 notice of denial.

18 (a) Except as provided in Section 2105-130 of this Act
19 regarding licensing restrictions based on enumerated offenses
20 for health care workers as defined in the Health Care Worker
21 Self-Referral Act, the Department, upon a finding that an
22 applicant for a license, certificate, or registration was
23 previously convicted of a felony or misdemeanor that may be
24 grounds for refusing to issue a license or certificate or
25 granting registration, shall consider any mitigating factors

1 and evidence of rehabilitation contained in the applicant's
2 record, including any of the following, in determining whether
3 to grant a license, certificate, or registration:

4 (1) the lack of direct relation of the offense for
5 which the applicant was previously convicted to the duties,
6 functions, and responsibilities of the position for which a
7 license is sought;

8 (2) unless otherwise specified, whether 5 years since a
9 felony conviction or 3 years since release from confinement
10 for the conviction, whichever is later, have passed without
11 a subsequent conviction;

12 (3) if the applicant was previously licensed or
13 employed in this State or other states or jurisdictions,
14 the lack of prior misconduct arising from or related to the
15 licensed position or position of employment;

16 (4) the age of the person at the time of the criminal
17 offense;

18 (5) successful completion of sentence and, for
19 applicants serving a term of parole or probation, a
20 progress report provided by the applicant's probation or
21 parole officer that documents the applicant's compliance
22 with conditions of supervision;

23 (6) evidence of the applicant's present fitness and
24 professional character;

25 (7) evidence of rehabilitation or rehabilitative
26 effort during or after incarceration, or during or after a

1 term of supervision, including, but not limited to, a
2 certificate of good conduct under Section 5-5.5-25 of the
3 Unified Code of Corrections or certificate of relief from
4 disabilities under Section 5-5.5-10 of the Unified Code of
5 Corrections; and

6 (8) any other mitigating factors that contribute to the
7 person's potential and current ability to perform the job
8 duties.

9 (b) It is the affirmative obligation of the Department to
10 demonstrate that a prior conviction would impair the ability of
11 the applicant to engage in a practice requiring registration,
12 licensure, or certification by the Department. If the
13 Department refuses to issue a license or certificate or grant
14 registration to an applicant, the Department shall notify the
15 applicant of the denial in writing with the following included
16 in the notice of denial:

17 (1) a statement about the decision to refuse to grant a
18 license, certificate, or registration;

19 (2) a list of the conviction items that formed the sole
20 or partial basis for the refusal to issue a license;

21 (3) a list of the mitigating evidence presented by the
22 applicant;

23 (4) reasons for refusing to issue a license specific to
24 the evidence presented in mitigation of conviction items
25 that formed the partial or sole basis for the Department's
26 decision; and

1 (5) a summary of the appeal process or the earliest the
2 applicant may reapply for a license, whichever is
3 applicable.

4 (20 ILCS 2105/2105-135)

5 Sec. 2105-135. Qualification for licensure or
6 registration; good moral character; applicant conviction
7 records.

8 (a) The practice of professions licensed or registered by
9 the Department is hereby declared to affect the public health,
10 safety, and welfare and to be subject to regulation and control
11 in the public interest. It is further declared to be a matter
12 of public interest and concern that persons who are licensed or
13 registered to engage in any of the professions licensed or
14 registered by the Department are of good moral character, which
15 shall be a continuing requirement of licensure or registration
16 so as to merit and receive the confidence and trust of the
17 public. Upon a finding by the Department that a person has
18 committed a violation of the disciplinary grounds of any
19 licensing Act administered by the Department with regard to
20 licenses, certificates, or authorities of persons exercising
21 the respective professions, trades, or occupations, the
22 Department is authorized to revoke, suspend, refuse to renew,
23 place on probationary status, fine, or take any other
24 disciplinary action it deems warranted against any licensee or
25 registrant whose conduct violates the continuing requirement

1 of good moral character.

2 (b) No application for licensure or registration shall be
3 denied by reason of a finding of lack of good moral character
4 when the finding is based solely upon the fact that the
5 applicant has previously been convicted of one or more criminal
6 offenses. When reviewing a prior conviction of an initial
7 applicant for the purpose of determining good moral character,
8 the Department shall consider evidence of rehabilitation and
9 mitigating factors in the applicant's record, including those
10 set forth in subsection (a) of Section 2105-131 of this Act.

11 (c) The Department shall not require applicants to report
12 the following information and shall not consider the following
13 criminal history records in connection with an application for
14 licensure or registration:

15 (1) juvenile adjudications of delinquent minors as
16 defined in Section 5-105 of the Juvenile Court Act of 1987
17 subject to the restrictions set forth in Section 5-130 of
18 that Act;

19 (2) law enforcement, court, and conviction records of
20 an individual who was 17 years old at the time of the
21 offense and before January 1, 2014, unless the offense
22 required automatic transfer to adult court;

23 (3) records of arrest not followed by a conviction
24 unless related to the practice of the profession; however,
25 applicants shall not be asked to report any arrests, and an
26 arrest not followed by a conviction shall not be the basis

1 of a denial and may be used only to assess an applicant's
2 rehabilitation;

3 (4) convictions overturned by a higher court; or

4 (5) convictions or arrests that have been sealed or
5 expunged.

6 (Source: P.A. 98-1047, eff. 1-1-15.)

7 (20 ILCS 2105/2105-205) (was 20 ILCS 2105/60.3)

8 Sec. 2105-205. Publication of disciplinary actions; annual
9 report.

10 (a) The Department shall publish on its website, at least
11 monthly, final disciplinary actions taken by the Department
12 against a licensee or applicant pursuant to any licensing Act
13 administered by the Department. The specific disciplinary
14 action and the name of the applicant or licensee shall be
15 listed.

16 (b) No later than May 1 of each year, the Department must
17 prepare, publicly announce, and publish a report of summary
18 statistical information relating to new and renewal license,
19 certification, or registration applications during the
20 preceding calendar year. Each report shall show at minimum:

21 (1) the number of applicants for each new or renewal
22 license, certificate, or registration administered by the
23 Department in the previous calendar year;

24 (2) the number of applicants for a new or renewal
25 license, certificate, or registration within the previous

1 calendar year who had any criminal conviction;

2 (3) the number of applicants for a new or renewal
3 license, certificate, or registration in the previous
4 calendar year who were granted a license, registration, or
5 certificate;

6 (4) the number of applicants for a new or renewal
7 license, certificate, or registration within the previous
8 calendar year with a criminal conviction who were granted a
9 license, certificate, or registration in the previous
10 calendar year;

11 (5) the number of applicants for a new or renewal
12 license, certificate, or registration in the previous
13 calendar year who were denied a license, registration, or
14 certificate;

15 (6) the number of applicants for new or renewal
16 license, certificate, or registration in the previous
17 calendar year with a criminal conviction who were denied a
18 license, certificate, or registration in part or in whole
19 because of such conviction;

20 (7) the number of probationary licenses issued without
21 monitoring within the previous calendar year to applicants
22 with a criminal conviction;

23 (8) the number of probationary licenses issued with
24 monitoring within the previous calendar year to applicants
25 with a criminal conviction; and

26 (9) the number of licensees, certificate holders, or

1 permittees who were granted expungement for a record of
2 discipline based on a conviction predating licensure,
3 certification, or registration or a criminal charge,
4 arrest, or conviction that was dismissed, sealed, or
5 expunged or did not arise from the regulated activity, as a
6 share of the total such expungement requests.

7 (Source: P.A. 99-227, eff. 8-3-15.)

8 (20 ILCS 2105/2105-207)

9 Sec. 2105-207. Records of Department actions.

10 (a) Any licensee subject to a licensing Act administered by
11 the Division of Professional Regulation and who has been
12 subject to disciplinary action by the Department may file an
13 application with the Department on forms provided by the
14 Department, ~~along with the required fee of \$200,~~ to have the
15 records classified as confidential, not for public release, and
16 considered expunged for reporting purposes if:

17 (1) the application is submitted more than 3 7 years
18 after the disciplinary offense or offenses occurred;

19 (2) the licensee has had no incidents of discipline
20 under the licensing Act since the disciplinary offense or
21 offenses identified in the application occurred;

22 (3) the Department has no pending investigations
23 against the licensee; and

24 (4) the licensee is not currently in a disciplinary
25 status.

1 (b) An application to make disciplinary records
2 confidential shall only be considered by the Department for an
3 offense or action relating to:

4 (1) failure to pay taxes or student loans;

5 (2) continuing education;

6 (3) failure to renew a license on time;

7 (4) failure to obtain or renew a certificate of
8 registration or ancillary license;

9 (5) advertising; ~~or~~

10 (5.1) discipline based on criminal charges or
11 convictions:

12 (A) that did not arise from the licensed activity
13 and was unrelated to the licensed activity; or

14 (B) for which the records have been sealed,
15 expunged, or dismissed;

16 (5.2) a probationary license issued to new applicants
17 on the sole or partial basis of prior convictions; or

18 (6) any grounds for discipline removed from the
19 licensing Act.

20 (c) An application shall be submitted to and considered by
21 the Director of the Division of Professional Regulation upon
22 submission of an application and the required non-refundable
23 fee. The Department may establish additional requirements by
24 rule. The Department is not required to report the removal of
25 any disciplinary record to any national database. Nothing in
26 this Section shall prohibit the Department from using a

1 previous discipline for any regulatory purpose or from
2 releasing records of a previous discipline upon request from
3 law enforcement, or other governmental body as permitted by
4 law. Classification of records as confidential shall result in
5 removal of records of discipline from records kept pursuant to
6 Sections 2105-200 and 2105-205 of this Act.

7 (Source: P.A. 98-816, eff. 8-1-14.)

8 Section 10. The Criminal Identification Act is amended by
9 changing Sections 12 and 13 as follows:

10 20 ILCS 2630/12)

11 Sec. 12. Entry of order; effect of expungement or sealing
12 records.

13 (a) Except with respect to law enforcement agencies, the
14 Department of Corrections, State's Attorneys, or other
15 prosecutors, and as provided in Section 13 of this Act, an
16 expunged or sealed record may not be considered by any private
17 or public entity in employment matters, certification,
18 licensing, revocation of certification or licensure, or
19 registration. Applications for employment, certification,
20 registration, or licensure must contain specific language
21 which states that the applicant is not obligated to disclose
22 sealed or expunged records of conviction or arrest. Employers
23 and entities authorized to grant a professional license,
24 certification, or registration may not ask if an applicant has

1 had records expunged or sealed.

2 (b) A person whose records have been sealed or expunged is
3 not entitled to remission of any fines, costs, or other money
4 paid as a consequence of the sealing or expungement. This
5 amendatory Act of the 93rd General Assembly does not affect the
6 right of the victim of a crime to prosecute or defend a civil
7 action for damages. Persons engaged in civil litigation
8 involving criminal records that have been sealed may petition
9 the court to open the records for the limited purpose of using
10 them in the course of litigation.

11 (Source: P.A. 93-211, eff. 1-1-04; 93-1084, eff. 6-1-05.)

12 (20 ILCS 2630/13)

13 Sec. 13. Retention and release of sealed records.

14 (a) The Department of State Police shall retain records
15 sealed under subsection (c) or (e-5) of Section 5.2 or
16 impounded under subparagraph (B) or (B-5) of paragraph (9) of
17 subsection (d) of Section 5.2 and shall release them only as
18 authorized by this Act. Felony records sealed under subsection
19 (c) or (e-5) of Section 5.2 or impounded under subparagraph (B)
20 or (B-5) of paragraph (9) of subsection (d) of Section 5.2
21 shall be used and disseminated by the Department only as
22 otherwise specifically required or authorized by a federal or
23 State law, rule, or regulation that requires inquiry into and
24 release of criminal records, including, but not limited to,
25 subsection (A) of Section 3 of this Act, except those records

1 shall not be used or disseminated in connection with an
2 application for a professional or business license,
3 registration, or certification not involving a licensed health
4 care worker as defined in the Health Care Worker Self-Referral
5 Act. However, all requests for records that have been expunged,
6 sealed, and impounded and the use of those records are subject
7 to the provisions of Section 2-103 of the Illinois Human Rights
8 Act. Upon conviction for any offense, the Department of
9 Corrections shall have access to all sealed records of the
10 Department pertaining to that individual.

11 (b) Notwithstanding the foregoing, all sealed or impounded
12 records are subject to inspection and use by the court and
13 inspection and use by law enforcement agencies and State's
14 Attorneys or other prosecutors in carrying out the duties of
15 their offices.

16 (c) The sealed or impounded records maintained under
17 subsection (a) are exempt from disclosure under the Freedom of
18 Information Act.

19 (d) The Department of State Police shall commence the
20 sealing of records of felony arrests and felony convictions
21 pursuant to the provisions of subsection (c) of Section 5.2 of
22 this Act no later than one year from the date that funds have
23 been made available for purposes of establishing the
24 technologies necessary to implement the changes made by this
25 amendatory Act of the 93rd General Assembly.

26 (Source: P.A. 97-1026, eff. 1-1-13; 97-1120, eff. 1-1-13;

1 98-399, eff. 8-16-13; 98-463, eff. 8-16-13.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 2105/2105-130

4 20 ILCS 2105/2105-131 new

5 20 ILCS 2105/2105-135

6 20 ILCS 2105/2105-205 was 20 ILCS 2105/60.3

7 20 ILCS 2105/2105-207

8 20 ILCS 2630/12

9 20 ILCS 2630/13