

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: December 1, 2020

SUBJECT: Report on Bill 23-440, "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020"

The Committee of the Whole, to which Bill 23-440, the "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020" was sequentially referred, reports favorably thereon, and recommends approval by the Council.

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I. BACKGROUND AND NEED

On September 17, 2019, Bill 23-440, the "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019" was introduced by Councilmembers Allen, Bonds, Cheh, Grosso, McDuffie, Nadeau, and R. White. The bill was sequentially referred, first to the Committee on the Judiciary and Public Safety (J&PS) because it amends the Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011 to require that the Office, by January 1, 2022, submit a report to the Mayor and the Council identifying the statutory and regulatory collateral consequences of criminal records and recommendations for their mitigation or elimination. The bill is now with the Committee of the Whole because it amends the District of Columbia Health Occupations Revision Act of 1985 and the General License law codified in Title 47. The attached Committee Print from the Committee of the Whole is essentially identical to what was reported from J&PS.

The District's Occupational Licensing Laws and Criminal Records

There are over 175 occupational and professional license categories in the District. D.C.'s licensing law for health occupations stipulates that an individual's license may be revoked, suspended, or denied if the licensee has been convicted of a crime involving "moral turpitude" in any jurisdiction. The D.C. Code defines moral turpitude as an offense that offends "generally accepted moral code of mankind," an offense that "is one of baseness, vileness, or depravity," or an offense that is "contrary to justice, honesty, modesty, or good morals."¹ These terms are not defined with any more depth or clarity in the D.C. Municipal Regulations, nor are there any mechanisms in the code or regulations to recognize mitigating factors.

For all but 11 non-health related occupations, the code states that an applicant must establish that he or she has "not been convicted of an offense which bears directly on the fitness of the person to be licensed."² A conviction bears on the "fitness" of an individual being licensed only after consideration of the following criteria:

1. The specific duties and responsibilities necessarily related to the license sought;
2. The bearing that the criminal offense will have on the fitness or ability to perform one or more duties or responsibilities in paragraph (1);
3. The time elapsed since the criminal offense;
4. The age of the applicant at the time of the criminal offense;
5. The seriousness of the offense;
6. Any information produced by the applicant in regard to his or her rehabilitation; and
7. The legitimate interest in protecting property, safety, and welfare of individuals or the general public.

While these criteria at least provide some guidance to the licensing boards of non-health occupations, they are still unnecessarily vague and likely to result in the denial of licenses to formerly incarcerated individuals who otherwise meet the license qualifications.³

Vague Criminal History Provisions Disproportionately Impact Black Residents

According to the latest Survey of State Criminal History Records Systems, there are approximately 691,900 individuals in the District's criminal history file, 71% of whom have felony charges with final disposition.⁴ While the racial demographics of individuals in the District's Criminal History Records System are not publicly available, all evidence suggests that an overwhelming percentage are Black residents. Arrest data from the Metropolitan Police Department shows that, in any given year, roughly 90% of all adults arrested in the District are Black.⁵ From 2010 to 2019, around 90% of all felony sentences in D.C. Superior Court were

¹ D.C. Official Code § 3-1205.14(4).

² D.C. Code § 47-2853.12(a)(1).

³ See, for instance, *From Prisons to Professions: Increasing Access to Occupational and Professional Licenses for D.C.'s Returning Citizens*, Council for Court Excellence, 2017.

⁴ The number of current District residents in this system unknown, as these systems often contain records for individuals who are deceased or who no longer reside in the jurisdiction they have been arrested and sentenced in.

⁵ Author analysis of Metropolitan Police Department adult arrest data by year (2013-2019).

against Black defendants.⁶ And nearly 90% of all individuals admitted to the D.C. Department of Corrections in any given year are Black.⁷ The current criminal history provisions in the health and non-health occupational licensing laws therefore disproportionately impact Black residents. At a time when unemployment among Black District residents is above 18%⁸ and barriers to employment are a significant factor in recidivism, the Committee believes it is critical that the Council do what it can to reduce licensing barriers.

Changes Made by Bill 23-440 to Current Law

To decrease barriers to occupational and professional licenses for individuals with criminal records, Bill 23-440 makes a number of changes to the licensing laws for health and non-health occupations that the Committee of the Whole supports. First, the bill prohibits a licensing board from inquiring into an applicant's criminal history until after the applicant is found to be otherwise qualified. Additionally, a licensing board cannot inquire into any convictions that have been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information such as information regarding deferred sentencing agreements, participation in a diversion program, or an arrest that did not result in a conviction. Second, when considering a criminal conviction, the bill requires licensing boards to consider factors such as:

- Whether the offense is directly related to the specific duties and responsibilities of the occupation; and
- Evidence of rehabilitation such as recidivism, compliance with terms of supervision, the length of time that has passed since the offense, and letters of reference.

Finally, the bill requires licensing boards to notify the applicant in writing of denial, suspension, or revocation of a license that must include information on the conviction that forms the basis of denying, revoking, or suspending the license, a copy of criminal history records relied upon by the board, and a statement that the applicant may provide evidence of inaccuracies or rehabilitation to the board within 45 days of receiving notice from the board. These and other changes made by the bill will increase employment opportunities for people with criminal records, which research shows will further reduce the risk of these individuals recidivating and therefore enhance their quality of life.⁹

⁶ Author analysis of D.C. Sentencing Commission data on felony counts sentenced between 2010 and 2019.

⁷ Author analysis of D.C. Department of Corrections admission data via JSAT.

⁸ Author analysis of Current Population Survey data for September 2020. Not seasonally adjusted.

⁹ See, for instance, Uggen, Christopher. "Work as a turning point in the life course of criminals: A duration model of age, employment, and recidivism." *American sociological review* (2000): 529-546; Tripodi, Stephen J., Johnny S. Kim, and Kimberly Bender. "Is employment associated with reduced recidivism? The complex relationship between employment and crime." *International journal of offender therapy and comparative criminology* 54, no. 5 (2010): 706-720; and Denver, Megan, Garima Siwach, and Shawn D. Bushway. "A new look at the employment and recidivism relationship through the lens of a criminal background check." *Criminology* 55, no. 1 (2017): 174-204.

Conclusion

The Committee finds that removing barriers to occupational licensing for people with criminal records is consistent with best practices and increases their ability to stay out of the criminal justice system. Given this, the Committee recommends approval of Bill 23-440 as shown in the Committee Print, which is essentially identical to the recommendation from the Committee on the Judiciary and Public Safety.

II. LEGISLATIVE CHRONOLOGY (ABBREVIATED)

- | | |
|--------------------|---|
| September 17, 2019 | Bill 23-440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019” is introduced by Councilmembers Allen, Bonds, Cheh, Grosso, McDuffie, Nadeau, and R. White. |
| January 29, 2020 | The Committee on the Judiciary and Public Safety holds a public hearing on Bill 23-440. |
| November 12, 2020 | The Committee on the Judiciary and Public Safety marks up Bill 23-440. |
| December 1, 2020 | The Committee of the Whole marks up Bill 23-440. |

III. SUMMARY OF TESTIMONY (SEE JUDICIARY AND PUBLIC SAFETY REPORT FOR DETAILS)

Vincent Parker, Administrator of the Business and Professional Licensing Division of the Department of Consumer and Regulatory Affairs, testified on behalf of the Executive in support of Bill 23-440. Mr. Parker proposed several changes to the bill that he believed would bolster it, including changing “currently accused” to “pending criminal accusation,” and a more efficient application process that would allow an applicant to submit all necessary information at once. Mr. Parker also stated that boards should not be able to consider relevant criminal convictions until after an applicant has been deemed qualified.

Twelve other public witnesses provided testimony or written comments to the Committee on the Judiciary and Public Safety. All 12 witnesses were supportive of Bill 23-440. A summary of the testimony, as well as a more detailed summary of Mr. Parker’s testimony, is available in the Committee on the Judiciary and Public Safety’s committee report (attached).

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee did not receive comments from any Advisory Neighborhood Commissions regarding this bill.

V. IMPACT ON EXISTING LAW

Bill 23-440 amends the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*) and Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code to remove language that requires applicants for occupational licenses to be of “good moral character” and inserts language that prohibits licensing boards from inquiring about or considering an applicant’s criminal history until they have been deemed otherwise qualified, and prohibits consideration of convictions that have been sealed, expunged, vacated or pardoned, juvenile adjudications, and non-conviction information. Bill 23-440 also establishes criteria that licensing boards must consider when reviewing an applicant’s criminal history. This includes whether the elements of the offense are directly relevant, evidence of rehabilitation, and the District’s interest in promoting employment opportunities for individuals with criminal records.

VI. FISCAL IMPACT

The November 30, 2020 fiscal impact statement from the District’s Chief Financial Officer states that funds are sufficient in the fiscal year 2021 budget through fiscal year 2024 budget and financial plan to implement this bill.

VII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	States the short title of Bill 23-440.
<u>Section 2</u>	Amends D.C. Official Code § 1-301.191(c) to require the Office of the Deputy Mayor for Public Safety and Justice to submit a report identifying statutory and regulatory collateral consequences of criminal records in the District.
<u>Section 3</u>	Amends D.C. Official Code § 3-1201.01 <i>et seq.</i> by striking language that an applicant must be of “good moral character,” changing the language to ensure that consideration of criminal offenses are for offenses that are “directly related” to the occupation, and inserts new requirements for occupational licensing boards when considering an applicant’s criminal history.
Section 4	Amends Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code by striking language that an applicant must be of “good moral character,” changing the language to ensure that consideration

of criminal offenses are for offenses that are “directly related” to the occupation, and inserting new requirements for occupational licensing boards when considering an applicant’s criminal history.

Section 5 Fiscal impact statement.

Section 6 This provides the standard language for 30-day Congressional Review before Bill 23-440 is law.

VIII. COMMITTEE ACTION

On December 1, 2020, the Committee met to consider Bill 23-440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020.” The meeting was called to order at 12:21 p.m., and Bill 23-440 was item III-D on the agenda. Chairman Mendelson moved the print with leave for staff to make technical and conforming changes. Councilmember Robert White spoke in support of the bill. After an opportunity for more discussion, the vote on the print was unanimous (Chairman Mendelson and Councilmembers Allen, Bonds, Cheh, Gray, Grosso, McDuffie, Nadeau, Pinto, Silverman, Todd, and R. White, and T. White voting aye). Then Chairman Mendelson moved the committee report for Bill 23-440 with leave for staff to make technical, conforming, and editorial changes. The vote was unanimous (Chairman Mendelson and Councilmembers Allen, Bonds, Cheh, Gray, Grosso, McDuffie, Nadeau, Pinto, Silverman, Todd, and R. White, and T. White voting aye). The meeting was adjourned at 3:57 p.m.

IX. ATTACHMENTS

1. Bill 23-440 as introduced.
2. Committee on the Judiciary and Public Safety report on Bill 23-440 without attachments.
3. Fiscal Impact Statement for Bill 23-440.
4. Legal Sufficiency Determination for Bill 23-440.
5. Comparative Print for Bill 23-440.
6. Committee Print for Bill 23-440.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : September 18, 2019

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, September 17, 2019. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019", B23-0440

INTRODUCED BY: Councilmembers Allen, Grosso, Nadeau, Bonds, Cheh, McDuffie, and R. White

The Chairman is referring this legislation sequentially to the Committee on Judiciary and Public Safety and the Committee of the Whole (section 3) and then to the Committee of the Whole with comments from the Committee on Facilities and Procurement.

Attachment

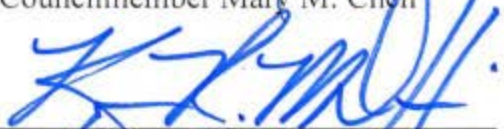
cc: General Counsel
Budget Director
Legislative Services

1 
2 Councilmember Anita Bonds


Councilmember Charles Allen

3
4 
5 Councilmember Mary M. Chen


Councilmember David Grosso

6
7 
8 Councilmember Kenyan R. McDuffie


Councilmember Brianne K. Nadeau

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10 
11 Councilmember Robert C. White, Jr.

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17 A BILL
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19 _____
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22 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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26

27 To amend Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code to
28 establish a uniform standard for occupational licensing boards to consider only pending
29 criminal accusations or prior convictions that are directly related to the occupation for
30 which the license is sought, as determined by enumerated factors, to require notice to and
31 an opportunity to respond with mitigating evidence for individuals who receive an adverse
32 decision based on their criminal history, and to require the Mayor to submit reports to the
33 Council with information about applications by individuals with criminal histories and
34 adverse decisions made by boards based on criminal histories; and to amend the Office of
35 the Deputy Mayor for Public Safety and Justice Establishment Act of 2011 to require the
36 Deputy Mayor for Public Safety and Justice to prepare and submit to the Mayor and
37 Council a report identifying the statutory and regulatory collateral consequences of
38 criminal histories in the District, along with recommendations for their mitigation or
39 elimination.
40

41 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
42 act may be cited as the "Removing Barriers to Occupational Licensing for Returning Citizens
43 Amendment Act of 2019".

Sec. 2. Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-2853.12 is amended as follows:

(1) Subsection (a)(1) is amended to read as follows:

“(1) Is not currently accused and has not been convicted of an offense that is directly related to the occupation for which the license is sought, pursuant to the determination made in § 47-2853.17(c-1):”.

(2) A new section (n) is added to read as follows:

“(n) A person may petition the board at any time, including before obtaining any required education or experience, for a determination as to whether the person’s criminal record would disqualify the person from obtaining a license pursuant to the determination made in section 514(f).”

(b) Section 47-2853.17 is amended as follows:

(1) Subsection (a) is amended as follows:

(A) The lead-in language is amended by striking the phrase “applicant or person” and inserting the word “person” in its place.

(B) Paragraph (2) is amended by striking the phrase “obtains, or attempts to obtain, a” and inserting the phrase “obtains a” in its place.

(C) Paragraph (5) is amended to read as follows:

“(5) Has a pending criminal accusation or conviction that is directly related to the occupation for which a license, registration, or certification is sought or for which the person is licensed, registered, or certified, pursuant to the determination made in subsection (c-1) of this section;”.

67 (2) A new subsection (a-1) is added to read as follows:

68 “(a-1) Each board, subject to the right of a hearing as provided by this subchapter, on an
69 affirmative vote of a majority of its members present and voting may take one or more of the
70 disciplinary actions provided in subsection (c-1) of this section against any applicant who
71 knowingly provides false or misleading information on or in support of an application or otherwise
72 fraudulently or deceptively attempts to obtain a license.”

73 (3) Subsection (c) is amended as follows:

74 (A) The lead-in language is amended by striking the phrase “an applicant,
75 licensee, or person” and inserting the phrase “a licensee or person” in its place.

76 (B) Paragraph (1) is amended to read as follows:

77 “(1) Deny an application for renewal.”.

78 (C) Paragraph (5) is amended by striking the phrase “any applicant, licensee
79 or” and insert the phrase “a licensee or person” in its place.

80 (4) Subsections (c-1) and (c-2) are redesignated as subsections (c-2) and (c-3).

81 (5) A new subsection (c-1) is added to read as follows:

82 “(c-1) Upon determination by a board that an applicant has committed an act described in
83 subsection (a-1) of this section, the board may direct the Mayor to:

84 “(1) Deny a license or certificate to an applicant; or

85 “(2) Impose a civil fine not to exceed \$5,000 for each violation by any applicant.”.

86 (6) The newly redesignated subsection (c-2) is amended to read as follows:

87 “(c-2) The board regulating the non-health occupation shall determine whether the pending
88 criminal accusation against or conviction of an applicant or person permitted by this subchapter to

89 practice a non-health occupation regulated by the board, is directly related to the occupation for
90 which a license is sought only by considering the totality of the following factors:

91 “(1) Whether the elements of the offense or offenses are directly related to the
92 specific duties and responsibilities of the occupation;

93 “(2) Any evidence produced by the applicant, licensee, person certified, or person
94 permitted by this title to practice an occupation regulated by the board concerning their
95 rehabilitation and fitness, including:

96 “(A) Evidence as to whether the applicant, licensee, person certified, or
97 person permitted by this title to practice a non-health occupation regulated by the board has
98 recidivated;

99 “(B) Evidence showing compliance with all terms and conditions of
100 probation, supervised release, and parole;

101 “(C) Length of time that has elapsed since the offense was committed;

102 “(D) Age of the applicant at the time the offense was committed;

103 “(E) Circumstances related to the offense, including mitigating
104 circumstances;

105 “(F) Evidence of work history, particularly any training or work experience
106 related to the occupation;

107 “(G) Letters of reference; and

108 “(3) The District’s interest promoting employment opportunities for individuals
109 with prior contact with the criminal justice system.

110 (7) The newly redesignated subsection (c-3) is amended to read as follows:

111 “(c-3) The board regulating the non-health occupation shall not:

112 “(1) Inquire into an applicant’s criminal history on the application for a license
113 pursuant to this act;

114 “(2) Inquire into or consider an applicant’s criminal history until after the applicant
115 is found to be otherwise qualified for licensure pursuant to this act; or

116 “(3) Consider the following criminal history information of an applicant, licensee,
117 person certified, or person permitted by this title to practice a non-health occupation regulated by
118 the board in connection with a denial, suspension, or revocation of a license, registration, or
119 certification:

120 “(A) Non-conviction information, including information related to a
121 deferred sentencing agreement, participation in a diversion program, or an arrest not followed by
122 a conviction that is no longer pending;

123 “(B) A conviction that has been sealed, expunged, vacated, or pardoned;

124 “(C) A juvenile adjudication; or

125 “(D) A conviction or pending criminal accusation that is not directly related
126 to the occupation for which a license is sought or for which the person is licensed, registered, or
127 certified, as determined under subsection (c-2) of this section.

128 (4) New subsections (c-4) and (c-5) are added to read as follows:

129 “(c-4) If the board regulating the non-health occupation intends to deny, suspend, or revoke
130 a license, registration, or certification due to a conviction or pending criminal accusation that is
131 directly related to the occupation for which a license, registration, or certification is sought or for
132 which the licensee, registrant, or person certified is licensed, registered, or certified, the board shall
133 notify the applicant, licensee, registrant, or person certified, in writing, prior to its final decision,
134 with the following information:

135 “(1) The offense that forms the basis for the potential denial, suspension, or
136 revocation, and the rationale for deeming the offense directly related to the occupation for which
137 the license, registration, or certification is sought or for which the licensee, registrant, or person
138 certified, is licensed, registered, or certified;

139 “(2) A copy of any criminal history records on which the board relies;

140 “(3) A statement that the applicant, licensee, registrant, or person certified may
141 provide evidence of inaccuracies within the applicant’s criminal history records;

142 “(4) A description of additional information that the applicant, licensee, registrant,
143 or person certified may produce to demonstrate his or her rehabilitation and fitness; and

144 “(5) Information about the right to request a hearing under § 47-2853.22 and the
145 process for requesting a hearing.

146 “(c-5) By January 1 of each year, the Mayor shall submit a report to the Council including
147 the following information from the prior fiscal year for each board regulating a non-health
148 occupation:

149 “(1) The total number of applications received for each type of license, registration,
150 or certification;

151 “(2) The number of individuals with a criminal history who were successful in
152 obtaining a license, registration, or certification;

153 “(3) Information about the individuals with a criminal history who received a notice
154 of intent to deny, suspend, or revoke based on their criminal history, including how many
155 individuals received such notice, what criminal offenses were used as a basis for the adverse
156 decision, and the justification for use of criminal history information in the adverse decision;

“(4) The number of individuals with a criminal history who provided evidence of mitigation or rehabilitation in response to notices of intent to deny;

“(5) The number of individuals with a criminal history who appealed the final decision, as well as the outcomes of each appeal;

“(6) A description of how each board has facilitated access to licenses, registrations, and certifications for individuals with a criminal history, in light of the District’s public policy of promoting employment opportunities for individuals with prior contact with the criminal justice system.”.

(c) Section 47–2853.22 is amended by adding subsections (j) and (k) to read as follows:

“(j) After receiving a notice of potential denial, suspension, or revocation under section 47-2853.17(c-4), the applicant, licensee, registrant, or person certified shall have 30 business days to respond. The board regulating the non-health occupation shall have 30 business days to make its final decision based on an individualized assessment of the response provided by the applicant, licensee, registrant, or person certified. In making a final decision, the board may only consider a conviction of or pending criminal accusation against an applicant or person permitted by this subchapter to practice a non-health occupation regulated by the board is directly related to the occupation for which a license is sought, pursuant to subsection (c-2) of section 47-2853.17.

“(k) If the board regulating the non-health occupation makes a final decision to deny, revoke, or suspend a license, registration, or certificate, based on the determination that a conviction or pending criminal accusation is directly related to the occupation for which a license is sought or for which the person is licensed, registered, or certified, the board shall provide the applicant, licensee, registrant, or person certified, in writing, with the following:

179 “(1) The offense that forms the basis for the denial, suspension, or revocation, and
180 the rationale for deeming the conviction to be directly related to the occupation for which the
181 license, registration, or certification is sought or for which the licensee, registrant, or person
182 certified, is licensed, registered, or certified; and

183 “(2) The process for judicial review under § 47-2853.23.”.

184 Sec. 3. Section 3022(c) of the Office of the Deputy Mayor for Public Safety and Justice
185 Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code §
186 1-301.191(c)), is amended as follows:

187 (a) Paragraph (4) is amended by striking the phrase “public-safety issues” and inserting the
188 phrase “public safety issues” in its place.

189 (b) Paragraph (5) is amended as follows:

190 (1) Subparagraph (A) is amended as follows:

191 (A) Sub-subparagraph (iii) is amended by striking the phrase “Council;” and
192 inserting the phrase “Council; and” in its place.

193 (B) Sub-subparagraph (iv) is amended to read as follows:

194 “(iv) Office of Victim Services and Justice Grants.”.

195 (C) Sub-subparagraph (v) is repealed.

196 (2) Subparagraph (B) is amended by striking the phrase “programs; and” and
197 inserting the phrase “programs;” in its place.

198 (c) Paragraph (6)(G)(viii) is amended by striking the phrase “suspect.” and inserting the
199 phrase “suspect; and” in its place.

200 (d) A new paragraph (7) is added to read as follows:

201 “(7) By January 1, 2021, the Deputy Mayor for Public Safety and Justice shall
202 prepare and submit to the Mayor and Council a report identifying the statutory and regulatory
203 collateral consequences of criminal histories in the District of Columbia, along with
204 recommendations for their mitigation or elimination.”.

205 Sec. 4. Fiscal impact statement.

206 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
207 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
208 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

209 Sec. 5. Effective date.

210 This act shall take effect following approval by the Mayor (or in the event of veto by the
211 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
212 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,
213 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
214 Columbia Register.

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Councilmember Charles Allen *CA*
Chairperson, Committee on the Judiciary and Public Safety

Date: November 12, 2020

Subject: Report on B23-0440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020”

The Committee on the Judiciary and Public Safety, to which Bill 23-0440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020”,¹ was referred, reports favorably thereon and recommends approval by the Council of the District of Columbia.

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¹ As introduced, the short title of the bill was the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019”.

STATEMENT OF PURPOSE AND EFFECT

I. Purpose and Effect

Bill 23-0440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020”, was introduced on September 17, 2019, by Committee Chairperson Charles Allen and Councilmembers Anita Bonds, Mary M. Cheh, David Grosso, Kenyan R. McDuffie, Brianne K. Nadeau, and Robert C. White, Jr.² The bill was referred to the Committee on the Judiciary and Public Safety and the Committee of the Whole, with comments from the Committee on Facilities and Procurement, on the same day. The Committee on the Judiciary and Public Safety held a public hearing on the bill on January 29, 2020, and now reports it favorably to the Committee of the Whole. The Executive has also expressed its support for the bill.

In the District, occupational licenses are required to practice an exceptionally large number of sought-after trades, including barber, cosmetologist, electrician, plumber, body artist, and athletic trainer.³ The Department of Regulatory Affairs (“DCRA”) regulates 125 occupational and professional licensing categories, and there are an additional 50 health and mental health occupations regulated by other boards.⁴ Working in one of these occupations can serve as a path to economic security for many residents of the District, and particularly for returning citizens. However, one of the most common collateral consequences of contact with the justice system is occupational licensing disqualification based on an individual’s criminal record.

The purpose of B23-0440 is promote fair access to occupational licenses and facilitate the District’s goal of creating employment opportunities for returning citizens – while continuing to protect public safety and those served by licensees. The bill creates a more modern and consistent standard by which occupational licensing boards must evaluate applicants’ criminal records by requiring that a board use only criminal conviction information that is “directly related” to the occupation for which a license is sought. A board determines if criminal conviction information is “directly related” based on enumerated factors, including, for example, the time that has elapsed since the conviction, whether the offense relates to the duties and responsibilities of the occupation, and mitigating evidence. In doing so, B23-0440 aligns with model occupational reforms that have been proposed by organizations like the National Employment Law Project and implemented in

² A prior version of this bill, B22-0523, the “Removing Barriers to Occupational Licensing Amendment Act of 2017”, was introduced by Committee Chairperson Allen, Councilmembers Bonds, Evans, Gray, Grosso, McDuffie, and Robert White on October 17, 2017. The bill was referred to the Committee on Health, which held a hearing on the bill on November 28, 2017.

³ In the District, licensing boards license 12 percent of all private sector employment, and nearly 70,000 workers in the District are in occupations regulated by a licensing board. Committee on the Judiciary and Public Safety, *Public Hearing on B23-0440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019”* (January 29, 2020) (testimony of Yesim Sayin Taylor, Executive Director, D.C. Policy Center), https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5337.

⁴ *Id.*

states across the country.⁵ It is important to note that the bill does not cover occupations regulated by agencies other than DCRA and the Department of Health (“DOH”).⁶

As the District has done in the context of housing and employment with “ban the box” legislation, this bill reforms laws regulating licensing boards’ ability to disqualify otherwise-qualified applicants based solely on the fact that they have a criminal record. It is both unfair to individuals and counterproductive to public safety to bar a broad swath of the population⁷ from occupational licenses for no compelling reason other than prior contact with the criminal justice system. Instead, this bill narrowly tailors the District’s licensing laws to protect public safety while offering opportunities to obtain licenses – and livelihoods – to the District’s returning citizens.

II. Background

a. *Overview of Occupational Licensing in the District*

Occupational licenses are required to practice more than seventy occupations in the District.⁸ DOH’s Office of Health Professional Boards administers licenses for health professions, supporting nineteen health boards that determine licensure.⁹ DCRA’s Occupational and Professional Licensing Administration (“OPLA”) administers licenses for non-health professions and supports nine boards that oversee the licensing of thirty-one occupations.¹⁰

Prior to applying for a license in the District, applicants often must meet time-consuming and costly preliminary requirements, such as profession-specific education or training, paying fees, taking one or more examinations, and completing a certain level of schooling.¹¹ In addition, applicants may even have to complete several years of an apprenticeship.¹² The Institute for Justice has reported that applicants in the District can expect to spend 311 days to complete these requirements on average, across forty-two commonly licensed occupations.¹³ Applicants can also expect to pay \$240 on average in fees to obtain a license.¹⁴ For example, in order to obtain a barbering license – one of the most sought-after licenses in the District – an individual must attend barbering school for 500 hours and fulfill at least 2,000 hours of training after completing school.¹⁵

⁵ Beth Avery, Maurice Emsellem, and Han Lu, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions*, National Employment Law Project (2019), <https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-v4-2019.pdf>. This report lays out model legislation. *Id.* at 25.

⁶ Occupations regulated outside of DCRA and DOH include: attorneys, teachers, notaries, taxi drivers, funeral directors, boxers, commercial drivers, and insurance agents.

⁷ As of 2017, the Urban Institute estimated that approximately 68,000 District residents, or 1 in 7, have criminal records. *Criminal Background Checks and Access to Jobs: A Case Study of Washington, DC*, Urban Institute (2017), https://www.urban.org/sites/default/files/publication/91456/2001377-criminal-background-checks-and-access-to-jobs_2.pdf. Nationwide, 1 in 3 individuals have criminal records. *Id.*

⁸ *From Prisons to Professions: Increasing Access to Occupational and Professional Licenses for D.C.’s Returning Citizens*, Council for Court Excellence at 5 (2017), <http://www.courtexcellence.org/uploads/publications/FromPrisonsToProfessions.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 8.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 9-10.

An individual has to then pay \$230 before taking the necessary examination.¹⁶ Only once the preliminary requirements are satisfied can an individual apply for a license.

b. *Consideration of Criminal Records*

If an individual seeking a license has a criminal record, the preliminary requirements and application process can be daunting and filled with uncertainty as to how an individual's criminal record may affect the outcome. The District's current licensing laws are archaic and vague as to how a board should consider an applicant's criminal record. For health-related licenses, the D.C. Code currently allows each board to deny or take action against any applicant or current license, registration, or certification holder, respectively, for a conviction of "any crime of moral turpitude", which includes crimes that offend the "generally accepted moral code of mankind", crimes that are ones of "baseness, vileness, or depravity", and crimes that are "of conduct contrary to justice, honesty, modesty, or good morals".¹⁷ There exists no further guidance as to how a board should interpret this standard, so what results are summary denials or revocations without individualized consideration of the whole applicant. Another section of the same subchapter requires that individuals applying for a health-related license must establish that the applicant has not been convicted of an offense "which bears directly on the fitness of the individual to be licensed".¹⁸ Again, the law does not provide clarity for a board as to how to apply this outdated standard or how the standard should be used in tandem with the other standard laid out in the same subchapter. Moreover, the law leaves unclear whether a board *must* deny someone convicted of a criminal offense meeting these standards, or whether it is discretionary.

For non-health related licenses, current law provides that an applicant must not have been convicted of a crime that "bears directly on the fitness of the person to be licensed".¹⁹ The law then carves out eleven occupations to which this prohibition does not apply.²⁰ Unlike the health-related licensing law, the non-health related licensing law does provide boards with seven criteria to consider when making a determination of whether a criminal offense meets the standard.²¹ However, it is unclear that boards differentiate between the carved out occupations and other occupations in the standard it uses to make decisions – and there is no publicly available guidance to demonstrate that these two prongs are used as intended.²² And most importantly, these standards are implemented differently by each licensing board, and grants and denials, and the reasons for each, are not reported.

Overall, the existing standards to be used by both health and non-health related licensing decisions are confusing, inconsistent, and lacking in clarity. The health-related standards particularly are expansive, irrelevant, internally conflicting, and out of date. The standards for both types of licenses fail to adequately limit the scope of the criminal history information a board may consider and give a board entirely too much discretion to make adverse decisions – and, essentially, discriminate based on information that does not bear directly on an individual's fitness for

¹⁶ *Id.* at 10.

¹⁷ D.C. Code § 3-1205.14(a)(4).

¹⁸ D.C. Code § 3-1205.03(a)(1).

¹⁹ D.C. Code § 47-2853.12(a)(1).

²⁰ *Id.*

²¹ D.C. Code § 47-2853.17(c-1).

²² *Supra* note 3.

licensure, “morality”, or likelihood of recidivism. Moreover, while the current statutory language only explicitly mentions convictions, there exists no explicit prohibition on a board’s ability to consider non-conviction information. The effect of these laws is to exclude many District residents from access to a livelihood without a fair determination that exclusion is justified by any evidence whatsoever.

c. *Other Jurisdictions*

Since 2015, thirty-three states have reformed their occupational licensing laws to make it easier for returning citizens to find work in licensed fields.²³ To varying degrees, the reforms eliminate automatic blanket bans against people with criminal records, expand transparency, remove vague statutory language, and adopt fairer evaluation criteria. According to the Institute for Justice, seventeen states now allow returning citizens to petition a licensing board at any time to determine whether their criminal record would disqualify them from licensure.²⁴ This petition process enables individuals with criminal records to have some idea as to whether they would be approved before they incur the time and expense of education and training. Fifteen states prevent boards from using vague standards like “good moral character” in licensing decisions.²⁵ Seventeen states ban boards from using non-conviction information in making determinations.²⁶ Sixteen states allow boards to consider only criminal information that is “directly related” to the license sought.²⁷ Nine states have implemented new reporting requirements.²⁸

III. Committee Reasoning

Employment is a foundational requirement for successful reentry after incarceration. Without income, returning citizens are unable to meet their basic needs like housing and food or to take care of their children. However, returning citizens often find it challenging to find employment.²⁹ The Committee Print increases access to employment for returning citizens by expanding opportunities for occupational licenses by making several important reforms to ensure that individuals with criminal records are not unfairly and unnecessarily denied from obtaining licensure that could lead to a successful livelihood, while at the same time ensuring public health and safety.

First, the Committee Print creates a mechanism by which returning citizens can petition a board at any time, including before applying, to find out whether their criminal records would

²³ *State Occupational Licensing Reforms for Workers with Criminal Records*, Institute for Justice, <https://ij.org/activism/legislation/state-occupational-licensing-reforms-for-people-with-criminal-records/>. The following states have enacted such reforms: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, West Virginia, Wisconsin, Wyoming. *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Supra* note 7. The Urban Institute reported that, according to a 14-state survey of returning citizens, 76 percent of respondents were unemployed five years after their release from incarceration, and roughly three in four District residents entering community supervision were unemployed.

preclude them from licensure. This can save returning citizens the oftentimes large sums of money and significant time investment needed to obtain preliminary qualifications. At the Committee's hearing on the bill, numerous witnesses testified to the importance and best practice of including such a pre-application petition process.³⁰ Katya Semyonova, representing the Public Defender Service for the District of Columbia, testified about how the many District residents serving felony sentences in the Bureau of Prisons complete years of vocational programming and gain industry-specific experience, only to face barriers to licensure upon reentry.³¹ She noted that allowing a pre-application petition process can not only save returning citizens heartache but can allow them to focus their time and resources on other efforts to find employment that have a chance of being fruitful.³² The Committee Print also includes a time frame of 90 days for a board to respond to these petitions, per the suggestion of several witnesses, to ensure there are not unreasonable delays causing even more uncertainty for applicants.³³

In addition, the Committee Print creates a consistent, clear standard for when a board may use criminal information to make an adverse decision. It requires that a board use only information that is "directly related" to the occupation for which a license is sought and lays out enumerated factors that a board must consider in deciding what is "directly related". These factors include: the time that has passed since the conviction, whether the elements of the offense relate to the duties and responsibilities of the occupation, and mitigating and rehabilitative evidence. At the hearing, several witnesses suggested that the Print include a specific standard of review for boards to use in their determination of what is "directly related".³⁴ The Print therefore includes a "clear and convincing" standard, which is oftentimes used in administrative proceedings and will give direction to the reviewing entity on appeal. Where the current laws lack clarity, the Print provides a well-defined standard to guide boards in their individualized decision-making and ensure transparency during the process.

The Print also explicitly prohibits a board from considering non-conviction criminal information of any kind, which in current law is implied. As Satcha Robinson, Skadden Fellow in the Reentry Justice Project at the Legal Aid Society of the District of Columbia, testified at the Committee's hearing that the presumption of innocence is a cornerstone of the criminal justice system and should protect individuals in the licensing process, as well.³⁵ She further noted that any public safety concerns can be addressed by an existing mechanism in the statute, which allows a board to take immediate action if the conduct of a licensee presents an imminent danger to the health and safety of the public.³⁶ The Executive's witness from DCRA agreed that non-

³⁰ See Committee on the Judiciary and Public Safety, *Public Hearing on B23-0440, the "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019"* (January 29, 2020) (testimony of Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia), https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5337; (testimony of Emily Tatro, Deputy Director, Council for Court Excellence).

³¹ *Id.* (testimony of Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia).

³² *Id.*

³³ *Id.*

³⁴ *Id.* (testimony of Emily Tatro, Deputy Director, Council for Court Excellence).

³⁵ *Id.* (testimony of Satcha Robinson, Skadden Fellow, Reentry Justice Project, Legal Aid Society of the District of Columbia).

³⁶ *Id.*

convictions, even ones that may be “directly related”, should not be considered.³⁷ He stated that boards should not be able to disqualify an individual from a license before the completion of the judicial process.³⁸

Importantly, the Print does not require boards to accept all applications for occupational licensing by applicants with criminal convictions; in fact, the Print maintains a structure by which boards may deny applications and disqualify applicants based on a past criminal conviction. However, before excluding an individual based on a criminal conviction, the Print requires that a board make an individualized determination that the conviction is “directly related” to the occupation sought based on the enumerated factors. In this way, the Print allows boards to make decisions to protect public health and safety, while not unnecessarily excluding individuals who pose no threat if licensed.

In this new framework, the Committee Print includes both health-related and non-health related occupational licensing to eliminate inconsistencies and confusion. The “directly related” standard allows both types of boards to effectively screen individuals who might be at greater risk of recidivism and should not have access to a particular occupational license for that reason. Numerous witnesses at the hearing testified in support of including both types of licenses in the Print. Emily Tatro testified that health care is one of the District’s “top five high-demand workforce sectors”, and returning citizens must have the opportunity to access these occupations to both fill the high demand for healthcare work and to address unemployment among this population.³⁹ She further noted that the Print’s standard protects public health and safety for both types of boards; for example, a board could deny a pharmacy technician license to an individual who had a conviction for drug distribution by determining that this conviction is “directly related” to the occupation sought.⁴⁰ Doni Crawford, a Policy Analyst at the D.C. Fiscal Policy Institute, similarly testified about the importance of covering both health and non-health related occupational licenses in the Print.⁴¹ Chad Reese, from the Institute for Justice, also stressed the need to include health-related occupations in the Print’s reforms.⁴² The Committee agrees that including health as well as non-health related occupations in the Print is both necessary to expand employment opportunities and plain commonsense. It simply does not make sense to have two separate licensing schemes running in parallel, and again, there are safeguards in place to allow both types of boards to exclude applicants who may pose a threat to public health or safety.

The Committee Print also expands due process for applicants or license holders who receive adverse decisions based on a directly-related conviction. The Print requires that a board notify an individual in writing, prior to its final decision, with information about the conviction used to make the adverse decision; a copy of the individual’s criminal record; a statement that the individual can provide evidence of inaccuracies in the criminal record; a description of additional information that may be provided to demonstrate rehabilitation or fitness; and information about the opportunity for a hearing. The individual then has 45 days to respond, and the board then has

³⁷ *Id.* (testimony of Vincent Parker, Administrator, Business and Professional Licensing, Department of Consumer and Regulatory Affairs).

³⁸ *Id.*

³⁹ *Id.* (testimony of Emily Tatro, Deputy Director, Council for Court Excellence).

⁴⁰ *Id.*

⁴¹ *Id.* (testimony of Doni Crawford, Policy Analyst, D.C. Fiscal Policy Institute).

⁴² *Id.* (testimony of Chad Reese, Activism Policy Manager, Institute for Justice).

45 days to make its final decision. Once the board makes a final decision, it must notify the individual in writing with information about the conviction used to make the adverse decision and information about the process for judicial review.

There is very little data available on how boards are currently using criminal records in their determinations. To increase transparency and track over time how boards use the new standard created, the Print requires the Mayor to submit a report to the Council on January 1 of every year including: (1) the total number of pre-application petitions filed and the board's decisions on those petitions; (2) the number of applications filed, of those, the number that were not pursued by the applicant, granted, or denied, and applicants' demographic information; (3) the number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who received a notice of intent to deny, suspend, or revoke based on the person's criminal conviction, which criminal offenses were used as a basis for the decision, and the number of applicants, licensees, registrants, persons certified, or persons permitted by the act to practice in the District who provided additional information in response to the notice; (4) the number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who proceeded to a hearing, and whether those individuals were represented by counsel; (5) the number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who appealed the board's final decision, as well as the outcome of each appeal; and (6) a description of how each board has facilitated access to licenses, registrations, and certifications for persons with a criminal record in light of the District's interest in promoting employment opportunities for individuals with criminal records.

Lastly, the Print requires the Office of the Deputy Mayor for Public Safety and Justice to prepare and submit to the Mayor and Council a report identifying statutory and regulatory collateral consequences in the District that remain as barriers to returning citizens. The report must also include recommendations for the mitigation or elimination of these barriers.

LEGISLATIVE HISTORY

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|--------------------|--|
| September 17, 2019 | B23-0440 is introduced by Committee Chairperson Allen, Councilmembers Anita Bonds, Mary M. Cheh, David Grosso, Kenyan R. McDuffie, Brianne K. Nadeau, and Robert C. White, Jr. |
| September 17, 2019 | B23-0440 is referred sequentially to the Committee on Judiciary and Public Safety and the Committee of the Whole (section 3), then to the Committee of the Whole with comments from the Committee on Facilities and Procurement. |
| September 27, 2019 | Notice of Intent to Act on B23-0440 is published in the <i>District of Columbia Register</i> . |
| January 10, 2020 | Notice of Public Hearing on B23-0440 is published in the <i>District of Columbia Register</i> . |

January 29, 2020 Public Hearing on B23-0440 is held by the Committee on the Judiciary and Public Safety.

November 12, 2020 Consideration and vote on B23-0440 by the Committee on the Judiciary and Public Safety.

POSITION OF THE EXECUTIVE

The Committee received testimony at its January 29, 2020 public hearing on B23-0440 from Vincent Parker, Administrator, Business and Professional Licensing, Department of Consumer and Regulatory Affairs, whose testimony is summarized below:

Vincent Parker – Administrator, Business and Professional Licensing, Department of Consumer and Regulatory Affairs

Mr. Parker testified in support of B23-0440. He stated that DCRA supports the intent of the bill and believes that people with criminal records should be able to obtain a license for a particular occupation as long as the criminal record is not directly related to the occupation sought. He noted that the Executive has long supported removing barriers for returning citizens who seek to reenter society and rebuild their lives. He then offered a few recommendations that he believed will bolster the bill. First, he recommended removing the “currently accused” and “pending criminal accusation” language, which he believed would create a further barrier to licensure. He stated that decision-makers should not be able to disqualify a person from a license without the completion of the judicial process. He noted that our country's justice system was founded on the principle that one is innocent until proven guilty, and that, therefore, the language regarding pending accusations should be removed. He also recommended a more efficient application process in which an applicant would submit all necessary information at once, but the board only considers the relevant convictions after the applicant has otherwise been deemed qualified. In addition, he recommended that the time period for an applicant to appeal a notice of denial, suspension, or revocation (30 days), and the time period for a board to make a decision (30 days), be extended.

ADVISORY NEIGHBORHOOD COMMISSION COMMENTS

The Committee did not receive comments from Advisory Neighborhood Commissions.

WITNESS LIST AND HEARING TESTIMONY

On Wednesday, January 29, 2020, the Committee on the Judiciary and Public Safety held a public hearing on B23-0440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020”. A video recording of the hearing can be viewed at <https://entertainment.dc.gov/page/demand-2020-a>. The following witnesses testified at the hearing or submitted statements to the Committee:

Public Witnesses

Emily Tatro – Deputy Director, Council for Court Excellence

Ms. Tatro testified in support of the bill. She noted that professional licenses are a way out of the cycle of poverty. She stated that returning citizens are not connected to the employment they desperately seek, and licensing has had the unfortunate consequence of keeping this population out of the workforce. She also testified that over the last three years, twenty states have passed occupational licensing reforms.

Ms. Tatro then offered five suggestions to improve the bill. First, the bill should include a standard of review for decisions – specifically a “clear and convincing evidence” standard. This would give clear instructions for any appeal. Second, the pre-licensing petition process should be strengthened by adding a 60-day time limit for boards to respond, and require data about this process to be reported. Third, the bill should prohibit boards from considering old convictions by including a three- and seven-year time limit on misdemeanors and felonies, respectively. Fourth, the bill should cover all health occupational licenses, not just licenses governed by DCRA. Fifth, the bill should provide for education about the new law for boards and applicants.

Yesim Sayin Taylor – Executive Director, D.C. Policy Center

Ms. Taylor testified in support of the bill. She stated that occupational licensing is a roadblock to employment for returning citizens. Such licenses are a pathway to middle income wages, and this is entirely closed off to this population for no good reason. The D.C. Policy Center conducted a study in 2017, reviewing people in DOC custody, and found that many do not have high school degrees, while fewer than one percent had any college education. This means that the types of jobs regulated by licenses may be the only employment options for this population.

Tyrone Walker, Associate – Justice Policy Institute

Mr. Walker testified in support of the bill, as a returning citizen himself. He stated that while incarcerated in the Federal Bureau of Prisons, he had many ideas about what life would be like after prison. He was offered programs to develop his workforce skills for occupations like plumber and electrician. However, when he and others return to the community, with hope of finding a job, significant barriers exist to the very occupations for which they have spent hours training. They are unable to get licenses based on a past mistake. Mr. Walker wanted to become a certified public accountant, and he was very good at his classes in accounting, but he knew he could not get an accounting position due to licensing barriers. He believes this bill represents a pathway to the middle class for returning citizens.

Maya Dimant – Visiting Associate Professor of Clinical Law, Prisoner & Reentry Clinic, The George Washington University Law School

Ms. Dimant testified in support of the bill. She told the story of one of her clients who had non-violent convictions from the 1980s. The client wants to pursue a CPA degree but has not been able to do so because of her criminal record. Ms. Dimant believes this bill would allow her client

and others an opportunity to pursue meaningful career growth without stigma. The bill gives returning citizens the chance to be contributing members of society.

Satcha Robinson – Skadden Fellow, Reentry Justice Project, Legal Aid Society of the District of Columbia

Ms. Robinson testified in support of the bill. She stated that one in eight District residents has been convicted of a crime. She noted that excluding this population from occupational licenses limits employment opportunities. She offered two amendments to the proposed legislation on behalf of the Legal Aid Society. First, she stated that pending criminal accusations should not be considered in occupational licensing decisions. She noted that the current law does not allow this, and we should not be expanding barriers to licenses in this bill. The presumption of innocence is a cornerstone of the criminal justice system and should protect individuals who are applying for or already have occupational licenses. She stated that any public safety concerns can be addressed by an existing mechanism in the statute, which allows a board to take immediate action if the conduct of a licensee presents an imminent danger to the health and safety of the public. This mechanism balances protecting the public with the due process rights of those who have licenses. Second, she suggested that convictions that have been set aside under the YRA should not be considered in licensing decisions.

Shayla Thompson – Government Affairs Manager, National Employment Law Project

Ms. Thompson testified in support of the bill. She offered examples of reforms from other states on the topic. For example, in 2018, Massachusetts passed a major reform which allowed people with sealed records to deny a record when applying for occupational licenses. She also noted that several federal laws have been introduced including provisions to make the occupational licensing process fairer and more transparent. She stated that the bill includes many best practices, but she recommends two additions: that the bill (1) limit pending criminal accusations that can be considered (other jurisdictions have established specific time periods, for example), and (2) adopt a “washout” period, recognizing that after 3 years for misdemeanors and 7 years for felonies, individuals are no more likely to commit a crime than other members of society.

Chad Reese – Activism Policy Manager, Institute for Justice

Mr. Reese testified in support of the bill. He noted that occupational licensing barriers cost the economy approximately two million jobs per year. He stated that restrictions on licensing negatively impact everyone in the District, not just returning citizens. We all benefit when everyone can participate in the economy, and returning citizens are valuable members of society. He also pointed out that many individuals who train for licensed jobs while in prison do not even bother applying for a license upon release from incarceration because they assume they are barred from the process. This leads to an underreporting of how many individuals have been denied licenses as a result of criminal records. He recommended that the Council expand the bill to cover health-related occupations.

Doni Crawford – Policy Analyst, D.C. Fiscal Policy Institute

Ms. Crawford testified in support of the bill. She stated that the D.C. Fiscal Policy Institute recommends that the Committee amend the bill in several ways: (1) to clarify the definition of “directly related” and use a clear and convincing evidence standard; (2) add time limits to the pre-petition process; (3) expand the bill to include health-related occupations; and (4) mandate education and outreach about the new law.

Reentry Action Network

The Reentry Action Network submitted written testimony in support of the bill. The testimony highlighted three suggestions for increasing access to employment for returning citizens: the bill should (1) prohibit boards from considering old convictions; (2) cover all health occupation licenses; and (3) provide for education about the new law for boards and applicants.

Maya Sheppard – Managing Attorney, Economic Security Unit, Neighborhood Legal Services Program

Ms. Sheppard submitted written testimony in support of the bill. She stated that many of her clients are returning citizens who are eager to access employment, but who are discouraged by that fact that they are unable to access many opportunities because of their criminal record. She offered several suggestions to strengthen the bill and assist her clients. First, she recommended include a clearly articulated standard of “clear and convincing evidence” be placed on the boards in order to deny an applicant based on a criminal record. Second, she recommended creating a time limit on pending charges that boards may consider. Third, she recommended implementing a time limit on consideration of criminal convictions to exclude stale convictions from being considered. Fourth, she noted the high demand of healthcare occupations in the District and the accessibility of many of these positions to entry-level workers without college education. She recommended that the bill include health-related, as well as non-health related occupations. Fifth, she suggested that the bill include an education component to stave off misinformation about eligibility. Lastly, she recommended that the bill include a requirement that information about free legal counsel be disseminated by boards.

Joanna Wasik – Counsel, Washington Lawyers’ Committee for Civil Rights and Urban Affairs

Ms. Wasik submitted written testimony in support of the bill. She stated that the bill is a critical step towards addressing barriers to employment for returning citizens; however, she believes it needs to go further. She testified that her organization is “deeply concerned” about the bill’s provision that allows licensing authorities to consider pending criminal accusations. She believes this provision undermines the goals of the bill and leads to unfair results. She urged the Council to allow licensing authorities to only consider convictions that are directly related to the occupation sought, and not pending accusations.

Government Witness

Katya Semyonova – Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia (“PDS”)

Ms. Semyonova testified in support of the bill as an important step forward in increasing employment opportunities for returning citizens by improving the fairness of occupational licensing requirements. She noted that a job is often transformative for a returning citizen – it provides a means of self-sufficiency, a way of supporting children, and way of reconnecting with the community. A job is a powerful driver of successful reentry. However, many returning citizens are unemployed. By some estimates, 42 percent of the District’s returning citizens are unemployed. She also noted that District residents serving in BOP facilities have access to vocational programs to prepare for employment upon release. Many of these occupations require a license in the District. Individuals often spend years gaining industry-specific experience through these programs, and this population leaves prison with a skill set that they should be able to put to immediate use in the District. However, the licensing process often stands in the way.

Ms. Semyonova further testified that PDS recommends amending the bill to require an inquiry of whether an offense currently demonstrates by clear and convincing evidence a direct and specific negative bearing on the ability of an applicant to perform the core duties or responsibilities of the occupation. She also recommended allowing applicants to submit “any” material and evidence related to their application to support their application, rather than offering a non-exclusive list. She noted that a majority of individuals will be unrepresented in these matters. In addition, she recommended that convictions that are set aside under the YRA should not be considered in the licensing process. Lastly, she recommended adding a provision that would preclude the consideration of misdemeanor offenses three years after the individual’s release from any period of incarceration imposed for the offense, and a provision that would preclude the consideration of felony offenses five years after the individual’s release from any incarceration in relation to the offense.

IMPACT ON EXISTING LAW

B23-0440 amends the Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011 to require that the Office, by January 1, 2022, submit a report to the Mayor and the Council identifying the statutory and regulatory collateral consequences of criminal records and recommendations for their mitigation or elimination; to amend District of Columbia Health Occupations Revision Act of 1985 to establish as a qualification for a license, registration, or certification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, create a pre-application petition process for individuals to determine their eligibility based on a criminal conviction and requires the board to respond within 90 days, allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, prohibit a board from inquiring into or considering an applicant’s criminal conviction until after the applicant is found to be otherwise qualified, prohibit a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile

adjudication, or non-conviction information, prohibit a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held, enumerate factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held, require the Mayor, by January 1 of each year, to submit to the Council a report with enumerated data points relating to each board regulating health-related occupations, allow the Mayor to summarily suspend or restrict the health-related license, registration, or certification of a person who has been convicted of an offense that is directly related to the occupation for which a license, registration, or certification held, require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process, allow the applicant, licensee, registrant, or person certified 45 business days to respond, and require the board to issue a final decision within 45 business days after it receives a response, and require a board to provide information on legal resources along with a hearing notice; to amend Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code to establish as a qualification for a license, registration, or certification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, create a pre-application petition process for individuals to determine their eligibility based on a criminal conviction and requires the board to respond within 90 days, allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, prohibit a board from inquiring into or considering an applicant's criminal conviction until after the applicant is found to be otherwise qualified, prohibit a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information, prohibit a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held, enumerate factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held, require the Mayor, by January 1 of each year, to submit to the Council a report with enumerated data points relating to each board regulating non-health related occupations; require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process, allow the applicant, licensee, registrant, or person certified 45 business days to respond, and require the board to issue a final decision within 45 business days after it receives a response, and require a board to provide information on legal resources along with a hearing notice, and make conforming changes.

FISCAL IMPACT

B23-0440 is sequentially referred to the Committee on the Judiciary and Public Safety, followed by the Committee of the Whole, and the latter will therefore obtain a fiscal impact statement from the Office of the Chief Financial Officer.

SECTION-BY-SECTION ANALYSIS

- Section 1** States the short title.
- Section 2** Amends Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011 to require that the Office, by January 1, 2022, submit a report to the Mayor and the Council identifying the statutory and regulatory collateral consequences of criminal records and recommendations for their mitigation or elimination.
- Section 3** Amends the District of Columbia Health Occupations Revision Act of 1985 to:
- (a) Make conforming changes; establish as a qualification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought; creates a process for an individual to petition the board at any time to determine whether the individual would be disqualified for a criminal conviction and requires the board to respond within 90 days;
 - (b) Strike the requirement that a dentist be “of good moral character” to qualify for teaching license;
 - (c) Allow a board, when granting a license to foreign doctors, to consider whether an individual has been convicted of an offense that is directly related to the occupation;
 - (d) Allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held; prohibits a board from inquiring into or considering an applicant’s criminal conviction until after the applicant is found to be otherwise qualified; prohibits a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information; prohibits a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held; enumerates factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held; requires the Mayor, by January 1 of each year, to submit to the Council a report with enumerated data points relating to each board regulating health occupations;

(e) Allow the Mayor to summarily suspend or restrict the license, registration, or certification of a person who has been convicted of an offense that is directly related to the occupation for which a license, registration, or certification held; requires legal resources to be provided if an action is taken;

(f) Require the Mayor to provide information on legal resources available to individuals to whom the Mayor issues cease and desist orders;

(g) Require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process; allows the applicant, licensee, registrant, or person certified 45 business days to respond, and requires the board to issue a final decision within 45 business days after it receives a response; requires a board to provide information on legal resources along with a hearing notice;

(h) Make conforming changes;

(i) Make conforming changes;

(j) Make conforming changes;

(k) Make conforming changes;

(i) Make conforming changes.

Section 4

Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code is amended to:

(a) Establish as a qualification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought; creates a process for an individual to petition the board at any time to determine whether the individual would be disqualified for a criminal conviction and requires the board to respond within 90 days;

(b) Allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held; prohibits a board from inquiring into or considering an applicant's criminal conviction until after the applicant is found to be otherwise qualified; prohibits a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or

pardoned, a juvenile adjudication, or non-conviction information; prohibits a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held; enumerates factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held; requires the Mayor, by January 1 of each year, to submit to the Council a report with enumerated data points relating to each board regulating health occupations;

(c) Allow the Mayor to summarily suspend or restrict, without a hearing, a licensee, registrant, person certified, or person permitted to practice who presents an imminent danger to the health and safety of persons in the District; require that the Mayor provide legal resources to the individual if action is taken;

(d) Require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process; allows the applicant, licensee, registrant, or person certified 45 business days to respond, and requires the board to issue a final decision within 45 business days after it receives a response; requires a board to provide information on legal resources along with a hearing notice;

(e) Make conforming changes;

(f) Make conforming changes;

(g) Make conforming changes;

(h) Make conforming changes;

(i) Make conforming changes;

(j) Make conforming changes;

(k) Make conforming changes;

(l) Make conforming changes;

(m) Make conforming changes; and

(n) Make conforming changes.

Section 5 Contains the fiscal impact statement.

Section 6 Contains the effective date.

COMMITTEE ACTION

On November 12, 2020, the Committee on the Judiciary and Public Safety held an Additional Meeting to consider B23-0440, the “Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020”. The meeting was called to order at 9:35 a.m. Chairperson Charles Allen recognized a quorum consisting of himself and Councilmembers Anita Bonds and Brooke Pinto. Councilmember Bonds commented that the bill is an important step in addressing fairness in the District. She noted that the bill facilitates employment for returning citizens, and that having an opportunity to earn a living is critical to successful reentry. Without objection, Chairperson Allen moved the Committee Report and Print for B23-0440 en bloc with leave for staff to make technical, editorial, and conforming changes. The Committee then voted 3-0 to approve the Committee Report and Committee Print, with the Members voting as follows:

YES: Chairperson Allen and Councilmembers Bonds and Pinto

NO: None

PRESENT: None

ABSENT: Councilmembers Mary M. Cheh and Vincent C. Gray

LIST OF ATTACHMENTS

- (A) B23-0440, as introduced
- (B) Notice of Public Hearing, as published in the *District of Columbia Register*
- (C) Agenda and Witness List
- (D) Witness Testimony
- (E) Legal Sufficiency Determination
- (F) Comparative Committee Print
- (G) Committee Print

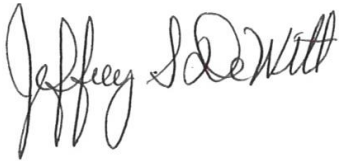
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 30, 2020

SUBJECT: Fiscal Impact Statement – Removing Barriers to Occupational Licensing
for Returning Citizens Amendment Act of 2020

REFERENCE: Bill 23-440, Committee Print provided to the Office of Revenue
Analysis on November 17, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The bill prohibits occupational licensing boards from disqualifying otherwise qualified candidates, solely based on an applicant's criminal record. The bill only affects occupations regulated by the Department of Consumer and Regulatory Affairs and the Department of Health. Specifically, the bill creates standards by which boards can use criminal conviction information that is directly related to the occupation for which a license is sought.

The bill requires two reports from the Mayor. First, the Mayor must provide an annual report with details on board applications for licenses, including information on applications that proceeded to a hearing, the number of appeals, and those applications and appeals involving a criminal record. Second, the Office of the Deputy Mayor for Public Safety and Justice must submit a one-time report on statutory barriers to returning citizens and provide recommendations on mitigating any barriers.

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. Requiring that occupational boards consider applicants with criminal records when issuing occupational licenses does not have a fiscal impact. The cost of the required reports can be done within current resources.



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Chairman Phil Mendelson

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: December 1, 2020

**RE: Legal sufficiency determination for Bill 23-440, the
Removing Barriers to Occupational Licensing for
Returning Citizens Amendment Act of 2020**

The measure is legally and technically sufficient for Council consideration.

The proposed bill would amend the Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011 to require the Office of the Deputy Mayor for Public Safety and Justice to prepare and submit to the Mayor and Council a report identifying the statutory and regulatory collateral consequences of criminal records in the District, along with recommendations for their mitigation or elimination.

The proposed bill also would amend the District of Columbia Health Occupations Revision Act of 1985 and Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code to:

- Establish as a qualification for a license, registration, or certification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought;
- Create a pre-application petition process for individuals to determine their eligibility based on a criminal conviction;
- Allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held;
- Prohibit a board from inquiring into or considering an applicant's criminal conviction until after the applicant is found to be otherwise qualified;
- Prohibit a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information;

- Prohibit a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held;
- Provide factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held;
- Require the Mayor, by January 1 of each year, to submit to the Council a report with enumerated data relating to each board;
- Allow the Mayor to summarily suspend or restrict the license, registration, or certification of a person who has been convicted of an offense that is directly related to the occupation for which a license, registration, or certification held; and
- Require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process.

I am available if you have any questions.

D.C. OFFICIAL CODE § 1-301.191, THE OFFICE OF THE DEPUTY MAYOR FOR PUBLIC SAFETY AND JUSTICE ESTABLISHMENT ACT OF 2011.

(c) The Office shall:

(6)(g)(viii) The victim's relationship, if any, to the suspect; ~~and~~

(7) By January 1, 2022, the Office shall prepare and submit to the Mayor and Council a report identifying the statutory and regulatory collateral consequences of criminal records in the District, along with recommendations for their mitigation or elimination.

* * *

D.C. OFFICIAL CODE § 3-1205.03, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. GENERAL QUALIFICATIONS OF APPLICANTS.

(a) An individual applying for ~~a license~~ **a license, registration, or certification** under this chapter shall establish to the satisfaction of the board regulating the health occupation that the individual:

(1) Has not been convicted of an ~~offense which bears directly on the fitness of the individual to be licensed~~ **offense that is directly related to the occupation for which the license, registration, or certification is sought, pursuant to a determination made in section 514(f)(2).**

(e)(1) An individual may petition the board at any time, including before obtaining education or training required for the occupation for which the license, registration, or certification is sought, to determine whether the individual would be disqualified by the board pursuant to section 514(f)(2).

(2) The board shall render its decision on an individual's petition within 90 days after receipt of the petition.

* * *

D.C. OFFICIAL CODE § 3-1205.08B, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. TEACHING LICENSE FOR DENTISTRY AND DENTAL HYGIENE.

(a) A dentist is eligible for a teacher's license if the dentist, in addition to meeting the requirements of this subchapter, meets the following criteria:

(1) ~~Is of good moral character and professionally~~ Is professionally competent;

(b) A dentist who does not meet the criteria set forth in subsection (a) of this section may be eligible for a dental teacher's license if the dean of the dental school where the dentist will practice requests that the dentist be granted the license, circumstances exist that justify granting the request, and the dentist meets the following criteria:

(4) ~~Is of good moral character and professionally~~ Is professionally competent;

and

(d) The Board may grant a teacher's license in dental hygiene if it finds that:

(3) The applicant is found to be ~~of good moral character and professionally competent~~ professionally competent;

* * *

D.C. OFFICIAL CODE § 3-1205.09A, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. LICENSES FOR FOREIGN DOCTORS OF EMINENCE AND AUTHORITY.

(d) In determining whether an applicant is a recognized and conceded eminence and authority in the profession, the Board shall consider, but not be limited to, whether the applicant meets the following criteria:

(10) ~~Has never been convicted of a felony; and~~ Has not been convicted of an offense that is directly related to the occupation for which the license is sought, pursuant to a determination made in section 514(f)(2); and

* * *

D.C. OFFICIAL CODE § 3-1205.14. THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. REVOCATION, SUSPENSION, OR DENIAL OF LICENSE OR PRIVILEGE; CIVIL PENALTY; REPRIMAND.

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of a quorum of its appointed members may take one or more of ~~the disciplinary actions~~ the actions provided in subsection (c) of this section against any applicant for a license, registration, or certification, an applicant to establish or operate a school of nursing or nursing program, or a person permitted by this subchapter to practice a health occupation regulated by the board in the District who:

(4) ~~Has been convicted in any jurisdiction of any crime involving moral turpitude, which for the purposes of this paragraph means a crime that:~~

~~(A) Offends the generally accepted moral code of mankind;~~

~~(B) Is one of baseness, vileness, or depravity in the conduct of the private and social duties that an individual owes to his or her fellow man or to society in general; or~~

~~(C) Is one of conduct contrary to justice, honesty, modesty, or good morals.~~ Has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to a determination made in subsection (f)(2) of this section;

(c) Upon determination by the board that an applicant, licensee, registrant, person certified, or person permitted by this subchapter to practice in the District has committed any of the acts described in subsection (a) of this section, the board may:

(6) Require a course of remediation, approved by the board, which may include:

(D) Require participation in continuing education and professional mentoring; ;

(f)(1) A board shall not:

(A) Inquire into or consider:

(i) An applicant's criminal conviction until after the applicant is found by the board to be otherwise qualified; or

(ii) For an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District:

(I) A conviction that has been sealed, expunged, vacated, or pardoned, including a conviction that has been set aside pursuant to the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901 et seq.);

(II) A juvenile adjudication; or

(III) Non-conviction information, including information related to a deferred sentencing agreement, participation in a diversion program, or an arrest that did not result in a conviction; or

(B) Consider a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District that is not directly related to the occupation for which the license, registration, or certification is sought or held.

(2) Pursuant to paragraph (1)(B) of this subsection, a board shall determine whether a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District is directly related to the occupation

for which a license, registration, or certification is sought or held by considering the totality of the following factors:

(A) Whether the elements of the offense are directly related, by clear and convincing evidence, to the specific duties and responsibilities of the occupation;

(B) Any evidence produced by the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District concerning their rehabilitation and fitness, including:

(i) Evidence as to whether the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District has recidivated;

(ii) Evidence demonstrating compliance with any terms and conditions of probation, supervised release, or parole;

(iii) The length of time that has elapsed since the offense was committed;

(iv) The age at which the offense was committed;

(v) Any circumstances related to the offense, including mitigating circumstances;

(vi) Evidence of work history, particularly any training or work experience related to the occupation; and

(vii) Letters of reference; and

(C) The District's interest in promoting employment opportunities for individuals with criminal records.

(g) By January 1 of each year, the Mayor shall submit a report to the Council that includes the following information from the prior fiscal year for each board regulating a health occupation:

(1) The number of petitions filed pursuant to section 503(e) and the board's decisions on those petitions;

(2) The number of applications filed, of those, the number that were not pursued by the applicant, granted, or denied, and applicants' demographic information;

(3) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who received a notice of intent to deny, suspend, or revoke based on the person's criminal conviction, which criminal offenses were used as a basis for the decision, and the number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who provided additional information in response to the notice, pursuant to section 519(a-1)(1)(D);

(4) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who proceeded to a hearing, and whether those individuals were represented by counsel;

(5) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who appealed the board's final decision, as well as the outcome of each appeal; and

(6) A description of how each board has facilitated access to licenses, registrations, and certifications for persons with a criminal record in light of the District's interest in promoting employment opportunities for individuals with criminal records.

* * *

D.C. OFFICIAL CODE § 3-1205.15, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. SUMMARY ACTION.

(a)(1) The Mayor may summarily suspend or restrict, without a hearing, the license, registration, or certification of a person:

(B) Who has been convicted of a ~~felony~~ **an offense that is directly related to the occupation for which the license, registration, or certification is held, pursuant to a determination made in section 514(f)(2);**

(b) The Mayor, at the time of the summary suspension or restriction of a license, registration, or certification, shall provide the licensee, registrant, or person certified with written notice stating the action that is being taken, the basis for the ~~action, and the right of the licensee, registrant, or person certified to request a hearing~~ **action, the right of the licensee, registrant, person certified, or person permitted by this act to practice in the District to request a hearing, and legal resources available in the District.**

* * *

D.C. OFFICIAL CODE § 3-1205.16, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. CEASE AND DESIST ORDERS.

(a) When a board or the Mayor, after investigation but prior to a hearing, has cause to believe that any person is violating any provision of this chapter and the violation has caused or may cause immediate and irreparable harm to the public, the board or the Mayor may issue an order requiring the alleged violator to cease and desist immediately from the violation. The order shall be served by certified mail or delivery ~~in person~~ **in person, and shall include information on legal resources available in the District.**

* * *

D.C. OFFICIAL CODE § 3-1205.19, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. HEARINGS.

(a-1)(1) Before holding a hearing under this section for the denial of an application for or suspension or revocation of a license, registration, or certification due to a determination made in section 514(f)(2), the board shall notify the applicant, licensee, registrant, or person certified, in writing, with the following information:

(A) The conviction that forms the basis for the potential denial, suspension, or revocation, and the board's reasoning for determining the offense is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to section 514(f)(2);

(B) A copy of any criminal history records on which the board relies;

(C) A statement that the applicant, licensee, registrant, or person certified may provide evidence of inaccuracies within the criminal history records;

(D) A description of additional information that the applicant, licensee, registrant, or person certified may provide to demonstrate their rehabilitation and fitness; and

(E) Information about the hearing procedures in this section.

(2)(A) After receiving notice pursuant to paragraph (1) of this subsection, the applicant, licensee, registrant, or person certified shall have 45 business days to respond.

(B) The board shall have 45 business days after the response is received to issue its final decision."

(d) The hearing notice to be given to the individual shall be sent by certified mail to the last known address of the individual at least 15 days before the **hearing hearing, and shall include information on legal resources available in the District"** in its place.

* * *

D.C. OFFICIAL CODE § 3-1205.21, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. REINSTATEMENT OF SUSPENDED OR REVOKED LICENSE, REGISTRATION, OR CERTIFICATION.

(b)(1) If an order of suspension or revocation was based on the conviction ~~of a crime which bears directly on the fitness of the individual to be licensed, registered, or certified for an offense that is directly related to the occupation for which the license, registration, or certification was held, pursuant to a determination made in section 514(f)(2)~~, and the conviction subsequently is overturned at any stage of an appeal or other postconviction proceeding, the suspension or revocation shall end when the conviction is overturned.

* * *

D.C. OFFICIAL CODE § 3-1205.22, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. CRIMINAL BACKGROUND CHECK.

(a) ~~No license~~ Subject to the limitations in section 514(f), no license or registration shall be issued to a health professional before a criminal background check has been conducted for that person. The applicant for a license or registration shall pay the fee established by the Department of Health for the criminal background check.

* * *

D.C. OFFICIAL CODE § 3-1205.23, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. SUSPENSION OF LICENSE, REGISTRATION, OR CERTIFICATION DURING ~~INCARCERATION FOR FELONY OR MISDEMEANOR CONVICTION~~ INCARCERATION.

A board may suspend the license, registration, or certification of a person during any time that the person is incarcerated after conviction ~~of a felony or misdemeanor~~ of an offense that is directly related to the occupation for which the license, registration, or certification is held, pursuant to section 514(f)(2), regardless of whether the conviction has been appealed. A board, immediately upon receipt of a certified copy of a record of a criminal conviction, shall notify the person in writing at that person's address of record with the board, and at the facility in which the person is incarcerated, of the suspension and that the person has a right to request a hearing. If requested, the hearing shall be held within 6 months of the release of the licensee, registrant, or person certified.

* * *

D.C. OFFICIAL CODE § 3-1208.62, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. QUALIFICATIONS FOR LICENSE TO PRACTICE VETERINARY MEDICINE.

(a) The Board of Veterinary Medicine shall issue a license to practice veterinary medicine to a person who, in addition to meeting the requirements of subchapter V of this chapter [§ 3-1205.01 et seq.]:

(3) ~~Has not been convicted of a crime involving moral turpitude or animal cruelty.~~ Has not been convicted of an offense that is directly related to the practice of veterinary medicine, pursuant to a determination made in section 514(f)(2).

* * *

D.C. OFFICIAL CODE § 3-1210.10, THE DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT OF 1985. INJUNCTIONS.

(b) ~~The Corporation Counsel~~ The Attorney General may bring an action in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin the unlawful sale of drugs or the unlawful trade practice or unlawful operation of a pharmacy, nursing home, community residential facility, or any other establishment purporting to provide health services.

* * *

D.C. OFFICIAL CODE § 47-2853.12. LICENSE, CERTIFICATION, AND REGISTRATION CRITERIA; WAIVER.

(a) A person applying for licensure, certification, or registration under this subchapter shall establish to the satisfaction of the Mayor that the person:

~~(1) Has not been convicted of an offense which bears directly on the fitness of the person to be licensed; provided, that this restriction shall not apply to the following occupations, unless the Mayor has issued rules before [May 24, 2005], specifying the criteria for the determination of fitness for licensure based on a specific offense committed by an applicant: (1) Has not been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, pursuant to a determination made in § 47-2853.17(c-1)(2);~~

(n)(1) A person may petition a board at any time, including before obtaining education or training required for the occupation for which the license, registration, or certification is sought, to determine whether the person would be disqualified by the board pursuant to § 47-2853.17(c-1)(2).

(2) The board shall render its decision on a person's petition within 90 days after receipt of the petition.

* * *

D.C. OFFICIAL CODE § 47-2853.17. REVOCATION, SUSPENSION, OR DENIAL OF LICENSE OR PRIVILEGE; CIVIL PENALTY; REPRIMAND.

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of its members present and ~~voting may take 1 or more of the disciplinary actions~~ voting, may take one or more of the actions provided in subsection (c) of this section against any applicant or person permitted by this subchapter to practice an occupation or profession regulated by the board who:

~~(5) Has been convicted in any jurisdiction of any crime involving any offense that bears directly on the fitness of the person to be licensed; provided, that this restriction shall not apply to the following occupations, unless the Mayor has issued rules before [May 24, 2005], specifying the criteria for the determination of fitness for licensure based on a specific offense committed by an applicant: Has been convicted of an offense that is directly~~

related to the occupation for which the license, registration, or certification is sought or held, pursuant to a determination made in subsection (c-1)(2) of this section;

(c) Upon determination by a board that an applicant, ~~licensee, or person~~ **licensee, registrant, person certified, or person** permitted by this subchapter to practice in the District has committed any of the acts described in subsection (a) of this section, the board may direct the Mayor to:

(2) Revoke or suspend ~~the license of any licensee or the certificate of a certified person, or may refuse to register a person~~ **the license, registration, or certification of any licensee, registrant, or person certified;**

(4) Reprimand ~~any licensee or person~~ **any licensee, registrant, person certified, or person** permitted by this subchapter to practice in the District;

(5) Impose a civil fine not to exceed \$5,000 for each violation by any applicant, ~~licensee, or person~~ **licensee, registrant, person certified, or person** permitted by this subchapter to practice in the District;

(c-1)(1) A board shall not:

(A) Inquire into or consider:

(i) An applicant's criminal conviction until after the applicant is found by the board to be otherwise qualified; or

(ii) For an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District:

(I) A conviction that has been sealed, expunged, vacated, or pardoned, including a conviction that has been set aside pursuant to the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901 et seq.);

(II) A juvenile adjudication; or

(III) Non-conviction information, including information related to a deferred sentencing agreement, participation in a diversion program, or an arrest that did not result in a conviction; or

(B) Consider a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District that is not directly related to the occupation for which the license, registration, or certification is sought or held.

(2) Pursuant to paragraph (1)(B) of this subsection, a board shall determine whether a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District is directly related to the occupation

for which a license, registration, or certification is sought or held by considering the totality of the following factors:

(A) Whether the elements of the offense are directly related, by clear and convincing evidence, to the specific duties and responsibilities of the occupation;

(B) Any evidence produced by the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District concerning their rehabilitation and fitness, including:

(i) Evidence as to whether the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District has recidivated;

(ii) Evidence demonstrating compliance with any terms and conditions of probation, supervised release, or parole;

(iii) The length of time that has elapsed since the offense was committed;

(iv) The age at which the offense was committed;

(v) Any circumstances related to the offense, including mitigating circumstances;

(vi) Evidence of work history, particularly any training or work experience related to the occupation; and

(vii) Letters of reference; and

(C) The District's interest in promoting employment opportunities for individuals with criminal records.

(c-2) By January 1 of each year, the Mayor shall submit a report to the Council that includes the following information from the prior fiscal year for each board:

(1) The number of petitions filed pursuant to § 47-2853.12(n) and the board's decisions on those petitions;

(2) The number of applications filed, of those, the number that were not pursued by the applicant, granted, or denied, and applicants' demographic information;

(3) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who received a notice of intent to deny, suspend, or revoke based on the person's criminal conviction, which criminal offenses were used as a basis for the decision, and the number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who provided additional information in response to the notice, pursuant to § 47-2853.22(a-1)(1)(D);

(4) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who proceeded to a hearing, and whether those individuals were represented by counsel;

(5) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who appealed the board's final decision, as well as the outcome of each appeal; and

(6) A description of how each board has facilitated access to licenses, registrations, and certifications for persons with a criminal record in light of the District's interest in promoting employment opportunities for individuals with criminal records.

* * *

D.C. OFFICIAL CODE § 47-2853.18. SUMMARY SUSPENSION OR RESTRICTION OF LICENSE.

(a) If the Mayor determines, after investigation, that the conduct of ~~a licensee presents an imminent danger to the health and safety of persons in the District, the Mayor may summarily suspend or restrict, without a hearing, the license to a licensee, registrant, person certified, or person permitted by this act to practice in the District,~~ presents an imminent danger to the health and safety of persons in the District, the Mayor may summarily suspend or restrict, without a hearing, the license, registration, certification, or permission to practice an occupation or profession.

(b) The Mayor, at the time of the summary suspension or restriction of a license, shall provide the licensee with written notice stating the ~~action that is being taken, the basis for the action, and the right of the licensee to request a hearing~~ action that is being taken, the right of the licensee, registrant, person certified, or person permitted by this act to practice in the District to request a hearing, and legal resources available in the District.

(c) ~~A licensee shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license~~ A licensee, registrant, person certified, or person permitted by this act to practice in the District shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license, registration, certification, or permission. The board shall hold a hearing within 72 hours of receipt of a timely request, and shall issue a decision within 72 hours after the hearing.

(d) Every decision and order ~~adverse to a licensee~~ adverse to a licensee, registrant, person certified, or person permitted to practice by this act in the District shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings shall be supported by, and in accordance with, reliable, probative, and substantial evidence. The relevant board shall provide a copy of the decision and order and accompanying findings of fact and conclusions of law to each party to a case or to his or her attorney of record.

* * *

D.C. OFFICIAL CODE § 47-2853.22. HEARINGS; FINAL DECISION.

(a-1)(1) Before holding a hearing under this section due to a determination made in § 47-2853.17(c-1)(2), the board shall notify the applicant, licensee, registrant, person certified, or person permitted to practice by this act in the District, in writing, with the following information:

(A) The conviction that forms the basis for the action, and the board's reasoning for determining the offense is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to section § 47-2853.17(c-1)(2);

(B) A copy of any criminal history records on which the board relies;

(C) A statement that the applicant, licensee, registrant, person certified, or person permitted to practice by this act in the District may provide evidence of inaccuracies within the criminal history records;

(D) A description of additional information that the applicant, licensee, registrant, person certified, or person permitted to practice by this act in the District may provide to demonstrate their rehabilitation and fitness; and

(E) Information about the hearing procedures in this section.

(2)(A) After receiving notice pursuant to paragraph (1) of this subsection, the applicant, licensee, registrant, person certified, or person permitted to practice shall have 45 business days to respond.

(B) The board shall have 45 business days after the response is received to issue its final decision.

(d) The hearing notice to be given to the person shall be sent by certified mail to the last known address of the person at least 15 days before the ~~hearing~~ hearing, and shall include information on legal resources available in the District.

* * *

D.C. OFFICIAL CODE § 47-2853.24. REINSTATEMENT OF SUSPENDED OR REVOKED LICENSE.

(b)(1) If an order of suspension or revocation was based on the conviction ~~of a crime which bears directly on the fitness of the person to be licensed~~ of an offense that is directly related to the occupation for which the license, registration, or certification was held, pursuant to a determination made in § 47-2853.17(c-1)(2), and the conviction subsequently is overturned at any stage of an appeal or other post-conviction proceeding, the suspension or revocation shall end when the conviction is overturned.

* * *

D.C. OFFICIAL CODE § 47–2853.42. ELIGIBILITY REQUIREMENTS.

(a) An applicant for licensure as a certified public accountant shall establish to the satisfaction of the Board of Accountancy that the applicant:

(1) ~~Is of good moral character~~ **[Repealed]**;

* * *

D.C. OFFICIAL CODE § 47–2853.62. ELIGIBILITY REQUIREMENTS.

(a) An applicant for a license as an architect shall establish to the satisfaction of the Board of Architecture, Interior Design, and Landscape Architecture that the applicant:

(1) ~~Is of good moral character~~ **[Repealed]**;

* * *

D.C. OFFICIAL CODE § 47–2853.112. ELIGIBILITY REQUIREMENTS.

(a) An applicant for licensure as a land surveyor shall establish to the satisfaction of the Board of Professional Engineers that the applicant:

(1) ~~Is of good moral character~~ **[Repealed]**;

* * *

D.C. OFFICIAL CODE § 47–2853.117. ELIGIBILITY REQUIREMENTS.

(a) An applicant for a license as a landscape architect shall establish to the satisfaction of the Board of Architecture, Interior Design, and Landscape Architecture that the applicant:

(1) ~~Is of good moral character~~ **[Repealed]**;

* * *

D.C. OFFICIAL CODE § 47-2885.10. DENIAL, SUSPENSION, OR REVOCATION OF PHARMACY LICENSE.

(a) The Mayor may refuse the issuance or renewal, or may revoke, or may suspend for not more than 90 days, a license issued pursuant to this part for any 1 or a combination of the following reasons:

(1) ~~Conviction of any felony, or a finding by the Mayor that any provision of this part has been violated, or that any law or regulation of the District of Columbia or of the United States relating to drugs has been violated by any person named in the~~

~~application for pharmacy licensure; Conviction of an offense that is directly related to the occupation for which the license is held, pursuant to a determination made in § 47-2853.17(c-1)(2), or a finding by the Mayor that any provision of this part has been violated;~~

* * *

D.C. OFFICIAL CODE § 47-2887.04. REGISTRATION AS ATHLETE AGENT; FORM; REQUIREMENTS.

(a) An applicant for registration shall submit an application for registration to the Mayor in a form prescribed by the Mayor. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(8) Whether the applicant or any person named pursuant to paragraph (7) of this subsection has been convicted ~~of a crime that, if committed in the District of Columbia, would be a crime involving moral turpitude or a felony~~ of an offense that is directly related to the occupation for which the registration is sought, pursuant to a determination made in § 47-2853.17(c-1)(2);

* * *

D.C. OFFICIAL CODE § 47-2887.05. CERTIFICATE OF REGISTRATION; ISSUANCE OR DENIAL; RENEWAL.

(b) The Mayor may refuse to issue a certificate of registration if the Mayor determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Mayor may consider whether the applicant has:

(1) Been convicted ~~of a crime that, if committed in the District of Columbia, would be a crime involving moral turpitude or a felony~~ of an offense that is directly related to the occupation for which the registration is sought, pursuant to a determination made in § 47-2853.17(c-1)(2);

(c) ~~In making~~ Except as otherwise provided in § 47-2853.17(c-1), in making a determination under subsection (b) of this section, the Mayor shall consider:

* * *

D.C. OFFICIAL CODE § 47-2888.04. DENIAL, SUSPENSION, OR REVOCATION OF VETERINARY FACILITY LICENSE.

(a) The Mayor may deny issuance or renewal of or suspend or revoke a license issued pursuant to this part for any one of a combination of the following reasons:

(1) ~~Conviction of any person named on an application of any felony or any crime of moral turpitude, as defined in 3-1205.14(a)(4);~~ Conviction of an offense that is directly related to the occupation for which the license is sought or held, pursuant to a determination made in § 47-2853.17(c-1)(2);

(3) A finding by the Mayor that any provision of this part has been ~~violated, or that any law or regulation of the District or of the United States relating to animals or drugs has been violated by any person named in the application for a veterinary facility~~ violated; or

COMMITTEE PRINT
Committee of the Whole
December 1, 2020

A BILL

23-440

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011 to require that the Office, by January 1, 2022, submit a report to the Mayor and the Council identifying the statutory and regulatory collateral consequences of criminal records and recommendations for their mitigation or elimination; to amend the District of Columbia Health Occupations Revision Act of 1985 to establish as a qualification for a license, registration, or certification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, create a pre-application petition process for individuals to determine their eligibility based on a criminal conviction and require the board to respond within 90 days, allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, prohibit a board from inquiring into or considering an applicant's criminal conviction until after the applicant is found to be otherwise qualified, prohibit a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information, prohibit a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held, enumerate factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held, require the Mayor, by January 1 of each year, to submit to the Council a report with data relating to each board regulating health-related occupations, allow the Mayor to summarily suspend or restrict the health-related license, registration, or certification of a person who has been convicted of an offense that is directly related to the occupation for which a license, registration, or certification held, require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process, allow the applicant, licensee, registrant, or person certified 45 business days to respond, and require the board to issue a final decision within 45 business days after it receives a response, and require a board to provide information on legal resources along with a hearing notice; and to amend Subchapter I-B of Chapter 28 of Title 47 of the

District of Columbia Official Code to establish as a qualification for a license, registration, or certification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, create a pre-application petition process for individuals to determine their eligibility based on a criminal conviction and require the board to respond within 90 days, allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, prohibit a board from inquiring into or considering an applicant's criminal conviction until after the applicant is found to be otherwise qualified, prohibit a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information, prohibit a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held, enumerate factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held, require the Mayor, by January 1 of each year, to submit to the Council a report with data relating to each board regulating non-health related occupations, require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process, allow the applicant, licensee, registrant, or person certified 45 business days to respond, and require the board to issue a final decision within 45 business days after it receives a response, require a board to provide information on legal resources along with a hearing notice, and make conforming changes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020".

Sec. 2. Section 3022(c) of the Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 1-301.191(c)), is amended as follows:

(a) Paragraph (6)(G)(viii) is amended by striking the period and inserting the phrase “; and” in its place.

(b) A new paragraph (7) is added to read as follows:

81 “(7) By January 1, 2022, the Office shall prepare and submit to the Mayor and Council
82 a report identifying the statutory and regulatory collateral consequences of criminal records in the
83 District, along with recommendations for their mitigation or elimination.”.

84 Sec. 3. The District of Columbia Health Occupations Revision Act of 1985, effective March
85 25, 1986 (D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*), is amended as follows:

86 (a) Section 503 (D.C. Official Code § 3-1205.03) is amended as follows:

87 (1) Subsection (a) is amended as follows:

88 (A) The lead-in language is amended by striking the phrase “a license” and
89 inserting the phrase “a license, registration, or certification” in its place.

90 (B) Paragraph (1) is amended by striking the phrase “offense which bears
91 directly on the fitness of the individual to be licensed” and inserting the phrase “offense that is directly
92 related to the occupation for which the license, registration, or certification is sought, pursuant to a
93 determination made in section 514(f)(2)”.

94 (2) A new subsection (e) is added to read as follows:

95 “(e)(1) An individual may petition the board at any time, including before obtaining education
96 or training required for the occupation for which the license, registration, or certification is sought, to
97 determine whether the individual would be disqualified by the board pursuant to section 514(f)(2).

98 “(2) The board shall render its decision on an individual's petition within 90 days after
99 receipt of the petition.”.

100 (b) Section 508b (D.C. Official Code § 3-1205.08b) is amended as follows:

101 (1) Subsection (a)(1) is amended by striking the phrase “Is of good moral character and
102 professionally” and inserting the phrase “Is professionally” in its place.

(2) Subsection (b)(4) is amended by striking the phrase “Is of good moral character and professionally” and inserting the phrase “Is professionally” in its place.

(3) Subsection (d)(3) is amended by striking the phrase “of good moral character and professionally competent” and inserting the phrase “professionally competent” in its place.

(c) Section 509a(d)(10) (D.C. Official Code § 3-1205.09a(d)(10)) is amended to read as follows:

“(10) Has not been convicted of an offense that is directly related to the occupation for which the license is sought, pursuant to a determination made in section 514(f)(2); and”.

(d) Section 514 (D.C. Official Code § 3-1205.14) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) The lead-in language is amended by striking the phrase “the disciplinary actions” and inserting the phrase “the actions” in its place.

(B) Paragraph (4) is amended to read as follows:

“(4) Has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to a determination made in subsection (f)(2) of this section;”.

(2) Subsection (c)(6)(D) is amended by striking the period and inserting a semicolon in its place.

(3) New subsections (f) and (g) are added to read as follows:

“(f)(1) A board shall not:

“(A) Inquire into or consider:

“(i) An applicant’s criminal conviction until after the applicant is found by the board to be otherwise qualified; or

“(ii) For an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District:

“(I) A conviction that has been sealed, expunged, vacated, or pardoned, including a conviction that has been set aside pursuant to the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901 *et seq.*);

“(II) A juvenile adjudication; or

“(III) Non-conviction information, including information related to a deferred sentencing agreement, participation in a diversion program, or an arrest that did not result in a conviction; or

“(B) Consider a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District that is not directly related to the occupation for which the license, registration, or certification is sought or held.

“(2) Pursuant to paragraph (1)(B) of this subsection, a board shall determine whether a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District is directly related to the occupation for which a license, registration, or certification is sought or held by considering the totality of the following factors:

“(A) Whether the elements of the offense are directly related, by clear and convincing evidence, to the specific duties and responsibilities of the occupation;

“(B) Any evidence produced by the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District concerning their rehabilitation and fitness, including:

“ (i) Evidence as to whether the applicant, licensee, registrant, person
certified, or person permitted by this act to practice in the District has recidivated;

“ (ii) Evidence demonstrating compliance with any terms and conditions
of probation, supervised release, or parole;

“ (iii) The length of time that has elapsed since the offense was
committed;

“ (iv) The age at which the offense was committed;

“ (v) Any circumstances related to the offense, including mitigating
circumstances;

“ (vi) Evidence of work history, particularly any training or work
experience related to the occupation; and

“ (vii) Letters of reference; and

“ (C) The District’s interest in promoting employment opportunities for
individuals with criminal records.

“ (g) By January 1 of each year, the Mayor shall submit a report to the Council that includes
the following information from the prior fiscal year for each board regulating a health occupation:

“ (1) The number of petitions filed pursuant to section 503(e) and the board’s decisions
on those petitions;

“ (2) The number of applications filed, of those, the number that were not pursued by
the applicant, granted, or denied, and applicants’ demographic information;

“ (3) The number of applicants, licensees, registrants, persons certified, or persons
permitted by this act to practice in the District who received a notice of intent to deny, suspend, or
revoke based on the person’s criminal conviction, which criminal offenses were used as a basis for the

171 decision, and the number of applicants, licensees, registrants, persons certified, or persons permitted
172 by this act to practice in the District who provided additional information in response to the notice,
173 pursuant to section 519(a-1)(1)(D);

174 “(4) The number of applicants, licensees, registrants, persons certified, or persons
175 permitted by this act to practice in the District with a criminal conviction who proceeded to a hearing,
176 and whether those individuals were represented by counsel;

177 “(5) The number of applicants, licensees, registrants, persons certified, or persons
178 permitted by this act to practice in the District with a criminal conviction who appealed the board’s
179 final decision, as well as the outcome of each appeal; and

180 “(6) A description of how each board has facilitated access to licenses, registrations,
181 and certifications for persons with a criminal record in light of the District’s interest in promoting
182 employment opportunities for individuals with criminal records.”.

183 (e) Section 515 (D.C. Official Code § 3-1205.15) is amended as follows:

184 (1) Subsection (a)(1)(B) is amended by striking the phrase “a felony” and inserting the
185 phrase “an offense that is directly related to the occupation for which the license, registration, or
186 certification is held, pursuant to a determination made in section 514(f)(2)”.

187 (2) Subsection (b) is amended by striking the phrase “action, and the right of the
188 licensee, registrant, or person certified to request a hearing” and inserting the phrase “action, the right
189 of the licensee, registrant, person certified, or person permitted by this act to practice in the District to
190 request a hearing, and legal resources available in the District” in its place.

191 (f) Section 516(a) (D.C. Official Code § 3-1205.16(a)) is amended by striking the phrase “in
192 person” and inserting the phrase “in person, and shall include information on legal resources available
193 in the District” in its place.

(g) Section 519 (D.C. Official Code § 3-1205.19) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) Before holding a hearing under this section for the denial of an application for or suspension or revocation of a license, registration, or certification due to a determination made in section 514(f)(2), the board shall notify the applicant, licensee, registrant, or person certified, in writing, with the following information:

“(A) The conviction that forms the basis for the potential denial, suspension, or revocation, and the board’s reasoning for determining the offense is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to section 514(f)(2);

“(B) A copy of any criminal history records on which the board relies;

“(C) A statement that the applicant, licensee, registrant, or person certified may provide evidence of inaccuracies within the criminal history records;

“(D) A description of additional information that the applicant, licensee, registrant, or person certified may provide to demonstrate their rehabilitation and fitness; and

“(E) Information about the hearing procedures in this section.

“(2)(A) After receiving notice pursuant to paragraph (1) of this subsection, the applicant, licensee, registrant, or person certified shall have 45 business days to respond.

“(B) The board shall have 45 business days after the response is received to issue its final decision.”.

(2) Subsection (d) is amended by striking the phrase “hearing.” and inserting the phrase “hearing, and shall include information on legal resources available in the District” in its place.

(h) Section 521(b)(1) (D.C. Official Code § 3-1205.21(b)(1)) is amended by striking the phrase “of a crime which bears directly on the fitness of the individual to be licensed, registered, or certified”

and inserting the phrase “for an offense that is directly related to the occupation for which the license, registration, or certification was held, pursuant to a determination made in section 514(f)(2)” in its place.

(i) Section 522(a) (D.C. Official Code § 3-1205.22) is amended by striking the phrase “No license” and inserting the phrase “Subject to the limitations in section 514(f), no license” in its place.

(j) Section 523 (D.C. Official Code § 3-1205.23) is amended as follows:

(1) The section heading is amended by striking the phrase “incarceration for felony or misdemeanor conviction.” and inserting the phrase “incarceration.” in its place.

(2) The lead-in language is amended by striking the phrase “of a felony or misdemeanor” and inserting the phrase “of an offense that is directly related to the occupation for which the license, registration, or certification is held, pursuant to section 514(f)(2)” in its place.

(k) Section 862(a)(3) (D.C. Official Code § 3-1208.62(a)(3)) is amended to read as follows:

“(3) Has not been convicted of an offense that is directly related to the practice of veterinary medicine, pursuant to a determination made in section 514(f)(2).”.

(l) Section 1010 (D.C. Official Code § 3-1210.10) is amended by striking the phrase “The Corporation Counsel” and inserting the phrase “The Attorney General” in its place.

Sec. 4. Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-2853.12 is amended as follows:

(1) Subsection (a)(1) is amended to read as follows:

“(1) Has not been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, pursuant to a determination made in § 47-2853.17(c-1)(2);”.

240 (2) A new section (n) is added to read as follows:

241 “(n)(1) A person may petition a board at any time, including before obtaining education or
242 training required for the occupation for which the license, registration, or certification is sought, to
243 determine whether the person would be disqualified by the board pursuant to § 47-2853.17(c-1)(2).

244 “(2) The board shall render its decision on a person’s petition within 90 days after
245 receipt of the petition.”.

246 (b) Section 47-2853.17 is amended as follows:

247 (1) Subsection (a) is amended as follows:

248 (A) The lead-in language is amended by striking the phrase “voting may take 1
249 or more of the disciplinary actions” and inserting the phrase “voting, may take one or more of the
250 actions” in its place.

251 (B) Paragraph (5) is amended to read as follows:

252 “(5) Has been convicted of an offense that is directly related to the occupation for which
253 the license, registration, or certification is sought or held, pursuant to a determination made in
254 subsection (c-1)(2) of this section;”.

255 (2) Subsection (c) is amended as follows:

256 (A) The lead-in language is amended by striking the phrase “licensee, or
257 person” and inserting the phrase “licensee, registrant, person certified, or person” in its place.

258 (B) Paragraph (2) is amended by striking the phrase “the license of any licensee
259 or the certificate of a certified person, or may refuse to register a person” and inserting the phrase “the
260 license, registration, or certification of any licensee, registrant, or person certified” in its place.

261 (C) Paragraph (4) is amended by striking the phrase “any licensee or person”
262 and inserting the phrase “any licensee, registrant, person certified, or person” in its place.

(D) Paragraph (5) is amended by striking the phrase “licensee, or person” and inserting the phrase “licensee, registrant, person certified, or person” in its place.

(3) Subsections (c-1) is amended to read as follows:

“(c-1)(1) A board shall not:

“(A) Inquire into or consider:

“(i) An applicant’s criminal conviction until after the applicant is found by the board to be otherwise qualified; or

“(ii) For an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District:

“(I) A conviction that has been sealed, expunged, vacated, or pardoned, including a conviction that has been set aside pursuant to the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901 *et seq.*);

“(II) A juvenile adjudication; or

“(III) Non-conviction information, including information related to a deferred sentencing agreement, participation in a diversion program, or an arrest that did not result in a conviction; or

“(B) Consider a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District that is not directly related to the occupation for which the license, registration, or certification is sought or held.

“(2) Pursuant to paragraph (1)(B) of this subsection, a board shall determine whether a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by

this act to practice in the District is directly related to the occupation for which a license, registration, or certification is sought or held by considering the totality of the following factors:

“(A) Whether the elements of the offense are directly related, by clear and convincing evidence, to the specific duties and responsibilities of the occupation;

“(B) Any evidence produced by the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District concerning their rehabilitation and fitness, including:

“(i) Evidence as to whether the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District has recidivated;

“(ii) Evidence demonstrating compliance with any terms and conditions of probation, supervised release, or parole;

“(iii) The length of time that has elapsed since the offense was committed;

“(iv) The age at which the offense was committed;

“(v) Any circumstances related to the offense, including mitigating circumstances;

“(vi) Evidence of work history, particularly any training or work experience related to the occupation; and

“(vii) Letters of reference; and

“(C) The District’s interest in promoting employment opportunities for individuals with criminal records.

“(c-2) By January 1 of each year, the Mayor shall submit a report to the Council that includes the following information from the prior fiscal year for each board:

308 “(1) The number of petitions filed pursuant to § 47-2853.12(n) and the board’s
309 decisions on those petitions;

310 “(2) The number of applications filed, of those, the number that were not pursued by
311 the applicant, granted, or denied, and applicants’ demographic information;

312 “(3) The number of applicants, licensees, registrants, persons certified, or persons
313 permitted by this act to practice in the District who received a notice of intent to deny, suspend, or
314 revoke based on the person’s criminal conviction, which criminal offenses were used as a basis for the
315 decision, and the number of applicants, licensees, registrants, persons certified, or persons permitted
316 by this act to practice in the District who provided additional information in response to the notice,
317 pursuant to § 47–2853.22(a-1)(1)(D);

318 “(4) The number of applicants, licensees, registrants, persons certified, or persons
319 permitted by this act to practice in the District with a criminal conviction who proceeded to a hearing,
320 and whether those individuals were represented by counsel;

321 “(5) The number of applicants, licensees, registrants, persons certified, or persons
322 permitted by this act to practice in the District with a criminal conviction who appealed the board’s
323 final decision, as well as the outcome of each appeal; and

324 “(6) A description of how each board has facilitated access to licenses, registrations,
325 and certifications for persons with a criminal record in light of the District’s interest in promoting
326 employment opportunities for individuals with criminal records.”.

327 (c) Section 47-2853.18 is amended as follows:

328 (1) Subsection (a) is amended by striking the phrase “a licensee presents an imminent
329 danger to the health and safety of persons in the District, the Mayor may summarily suspend or restrict,
330 without a hearing, the license to” and inserting the phrase “a licensee, registrant, person certified, or

person permitted by this act to practice in the District, presents an imminent danger to the health and safety of persons in the District, the Mayor may summarily suspend or restrict, without a hearing, the license, registration, certification, or permission to” in its place.

(2) Subsection (b) is amended by striking the phrase “action that is being taken, the basis for the action, and the right of the licensee to request a hearing” and inserting the phrase “action that is being taken, the right of the licensee, registrant, person certified, or person permitted by this act to practice in the District to request a hearing, and legal resources available in the District” in its place.

(3) Subsection (c) is amended by striking the phrase “A licensee shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license” and inserting the phrase “A licensee, registrant, person certified, or person permitted by this act to practice in the District shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license, registration, certification, or permission” in its place.

(4) Subsection (d) is amended by striking the phrase “adverse to a licensee” and inserting the phrase “adverse to a licensee, registrant, person certified, or person permitted to practice by this act in the District” in its place.

(d) Section 47–2853.22 is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) Before holding a hearing under this section due to a determination made in § 47-2853.17(c-1)(2), the board shall notify the applicant, licensee, registrant, person certified, or person permitted to practice by this act in the District, in writing, with the following information:

352 “(A) The conviction that forms the basis for the action, and the board’s
353 reasoning for determining the offense is directly related to the occupation for which the license,
354 registration, or certification is sought or held, pursuant to section § 47-2853.17(c-1)(2);

355 “(B) A copy of any criminal history records on which the board relies;

356 “(C) A statement that the applicant, licensee, registrant, person certified, or
357 person permitted to practice by this act in the District may provide evidence of inaccuracies within the
358 criminal history records;

359 “(D) A description of additional information that the applicant, licensee,
360 registrant, person certified, or person permitted to practice by this act in the District may provide to
361 demonstrate their rehabilitation and fitness; and

362 “(E) Information about the hearing procedures in this section.

363 “(2)(A) After receiving notice pursuant to paragraph (1) of this subsection, the
364 applicant, licensee, registrant, person certified, or person permitted to practice shall have 45 business
365 days to respond.

366 “(B) The board shall have 45 business days after the response is received to
367 issue its final decision.”.

368 (2) Subsection (d) is amended by striking the phrase “hearing.” and inserting the phrase
369 “hearing, and shall include information on legal resources available in the District” in its place.

370 (e) Section 47–2853.24(b)(1) is amended by striking the phrase “of a crime which bears
371 directly on the fitness of the individual to be licensed,” and inserting the phrase “of an offense that is
372 directly related to the occupation for which the license, registration, or certification was held, pursuant
373 to a determination made in § 47-2853.17(c-1)(2)” in its place.

374 (f) Section 47-2853.42(1) is repealed.

(g) Section 47-2853.62(1) is repealed

(h) Section 47-2853.112(1) is repealed.

(i) Section 47-2853.117(1) is repealed.

(j) Section 47-2853.132(a)(1) is repealed.

(k) Section 47-2885.10(a)(1) is amended to read as follows:

“(1) Conviction of an offense that is directly related to the occupation for which the license is held, pursuant to a determination made in § 47-2853.17(c-1)(2), or a finding by the Mayor that any provision of this part has been violated;”.

(l) Section 47-2887.04(a)(8) is amended by striking the phrase “of a crime that, if committed in the District of Columbia, would be a crime involving moral turpitude or a felony, and identify the crime” and inserting the phrase “of an offense that is directly related to the occupation for which the registration is sought, pursuant to a determination made in § 47-2853.17(c-1)(2)” in its place.

(m) Section 47-2887.05 is amended as follows:

(1) Subsection (b)(1) is amended by striking the phrase “of a crime that, if committed in the District of Columbia, would be a crime involving moral turpitude or a felony” and inserting the phrase “of an offense that is directly related to the occupation for which the registration is sought, pursuant to a determination made in § 47-2853.17(c-1)(2)” in its place.

(2) Subsection (c) is amended by striking the phrase “In making” and inserting the phrase “Except as otherwise provided in § 47-2853.17(c-1), in making” in its place.

(n) Section 47-2888.04(a) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

“(1) Conviction of an offense that is directly related to the occupation for which the license is sought or held, pursuant to a determination made in § 47-2853.17(c-1)(2);”.

(2) Paragraph (3) is amended by striking the phrase “violated, or that any law or regulation of the District or of the United States relating to animals or drugs has been violated by any person named in the application for a veterinary facility;” and inserting the phrase “violated;” in its place.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.