SB 157  (Strickland-17th)

Provides for changes to existing licensing requirements for applicants, specifically pertaining to use of criminal history records, and also with records restrictions and petitions for the sealing of records. Section 1-1 of SB 157 adds a definition of "covered misdemeanor" as a misdemeanor conviction in the last five years prior to the application and an offense listed in O.C.G.A. 35-3-37(j)(4)(B), which provides for family violence offenses, offenses against children, sexual offenses, and serious traffic offenses. The section also defines "conviction" and "felony". Section 1-2 replaces the "crime of moral turpitude" standard and requires the professional licensing board to bear the burden of denying an applicant for a license due to their criminal record by the standard of clear and convincing evidence. An applicant is also entitled to a hearing before the professional licensing board per the 'Georgia Administrative Procedure Act'. Section 1-3 makes a denial of a request for reinstatement of a revoked license and the refusal to issue a previously denied license a contested case under the 'Georgia Administrative Procedure Act'. Section 1-4 permits license denial only if a direct relationship is found between a criminal record and the licensed occupation, and the applicant's licensure would pose a direct and substantial risk to public safety because they have not been rehabilitated to safely perform the licensed duties and responsibilities. This section clarifies what rehabilitation evidence will be considered and the disclosure of criminal records to those that are serious, recent, and relevant convictions that have not been expunged or pardoned. A list of specific crimes must always be disclosed, while others must be excluded.

Requirements related to character standards are modified to require individualized consideration of applicants, and boards are required to provide a procedure, including written findings that it uses to justify a license denial due to a criminal record. Further, the section requires boards to allow an applicant to apply for a predetermination procedure to determine whether their criminal history record will lead to a denial in the future. Boards are also required to post public information on their websites and application about the criminal record consideration, including the legal standard, disclosure rules, predetermination process, and appeal. By March 31 of each year, the occupational licensing board will be required to file with the Secretary of State's office an annual report containing required information on licensing and criminal records, including the racial and ethnic distribution of applicants whom were denied. Section 1-5 changes a referenced definition for the term "felony". Parts II, III, IV, and VI replace the "crime of moral turpitude" standard; require the review of an applicant's criminal history to be directly related to the profession; require a denial on criminal history records grounds to be due to a substantial risk to public safety standards; and regulate disclosure of criminal records to serious, recent, and relevant convictions, for the following boards: Georgia State Board of Accountancy, Georgia Board of Dentistry, Georgia Composite Medical Board, Georgia Real Estate Commission and Appraisers Board, Structural Pest Control Commission, Professional Standards Commission, and Georgia Board of Pharmacy. Only some of the provisions are applied to requirements of the insurance commissioner due to conflicts with federal law. Part V applies to long-term care facilities and modifies the definition of "criminal record" to exclude certain parties who received a general pardon from the State Board of Pardons and Paroles for their convictions, starting from the date of their conviction or adjudication rather than the completion of their sentence. Parts VII through IX revise O.C.G.A. 35-3-37 to make those who commit the crime of theft eligible for a record restriction. The bill removes the limitation that only two misdemeanor convictions, or a series of misdemeanors arising from one incident, could be requested to be restricted through a petition. It increases eligibility for who can petition the court to seal records to those who have had records restricted pursuant to O.C.G.A. 17-10-21 (vacating of sentence for trafficking victim defendants), and an individual who was cited for a criminal offense and later had the charge dismissed, nolle prossed, or reduced to a violation of a local ordinance. The court is required to order all records held by the clerk to be restricted and unavailable to the public if the record has been restricted through a pardon by the Board of Pardons and Paroles. The bill allows restricted information to always be available to criminal justice agencies for law enforcement or criminal investigative purposes. It removes the requirement that the prosecutor must agree with a petition to the court for a retroactive grant of first offender status. The bill does not allow a court to provide retroactive first offender status for a conviction that was used as the underlying conviction pursuant to 16-11-131 (possession of firearms by convicted felons and first offender probationers) or if the conviction was used to enhance a sentence pursuant to 17-10-7 (punishment of repeat offenders). Part X makes the bill effective on January 1, 2024, and applies to all applications for licensure submitted on or after that date.

Status: PASSED SENATE. Recommended Do Pass by the House Judiciary Non-Civil Committee. The bill remained in House Rules Committee and therefore DID NOT PASS.

Legislative Update – April 3, 2023