MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Mickens

To: Judiciary B

HOUSE BILL NO. 421

AN ACT TO AMEND SECTIONS 73-77-1, 73-77-3, 73-77-5, 73-77-7 AND 73-77-9, MISSISSIPPI CODE OF 1972, TO REVISE THE FRESH START ACT; TO PROVIDE THAT THE FRESH START ACT SHALL SUPERSEDE ANY OTHER PROVISION OF LAW TO THE CONTRARY; TO MAKE TECHNICAL, NONSUBSTANTIVE CHANGES; TO AMEND SECTION 99-19-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON CONVICTED OF CERTAIN CRIMES MAY PRACTICE MEDICINE OR DENTISTRY ONCE THE RECORD HAS BEEN EXPUNGED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-77-1, Mississippi Code of 1972, is amended as follows:

73-77-1. This chapter shall be known and may be cited as the "Fresh Start Act *** * ***."

SECTION 2. Section 73-77-3, Mississippi Code of 1972, is amended as follows:

73-77-3. **Definitions.** As used in this chapter, the following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Criminal record" *** * *** means any type of felony or misdemeanor conviction.

(b) "Licensing" * * * means any required training, education * * * or fee to work in a specific profession.

(c) "Licensing authority" * * * means an agency, examining board, credentialing board * * * or other * * * entity with the authority to impose occupational fees or licensing requirements on * * * a profession.

SECTION 3. Section 73-77-5, Mississippi Code of 1972, is amended as follows:

73-77-5. * * * Notwithstanding any other provision of law to the contrary, no person shall be disqualified from pursuing, practicing * * * or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime, unless the crime for which * * * the person was convicted directly relates to the duties and responsibilities for the licensed occupation. * * *

SECTION 4. Section 73-77-7, Mississippi Code of 1972, is amended as follows:

73-77-7. (1) * * * Notwithstanding any other provision of law to the contrary, licensing authorities shall not * * * use vague or generic terms including, but not limited to, "moral turpitude," "any felony," and "good character * * *" when promulgating rules and regulations related to the qualifications for licensure. * * * Notwithstanding any other provision of law to the contrary, when promulgating rules and regulations related to the qualifications for licensure, licensing authorities * * *

shall only consider criminal records that are specific and directly related to the duties and responsibilities * * * of the licensed occupation * * *.

(2) Notwithstanding any other provision of law to the contrary, the licensing authority shall * * * apply the clear and convincing standard of proof * * * when examining the following factors to determine whether * * * a person with a * * * criminal record will be disqualified from receiving a license:

(a) The nature and seriousness of the crime for which the * * * person was convicted;

(b) The passage of time since the * * * crime was committed;

(c) The relationship of the crime to the ability, capacity * * * and fitness required to perform the duties and discharge the responsibilities of the licensed occupation; and

(d) Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against a direct relation.

(3) All licensing authorities shall meet the requirements listed in subsection (1) * * * one hundred twenty (120) days after July 1, * * * 2021.

(4) * * * The requirements listed in subsections (1) and (2) shall also apply to any new occupational licenses created after July 1, * * * 2021.

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SECTION 5. Section 73-77-9, Mississippi Code of 1972, is amended as follows:

73-77-9. (1) * * * Notwithstanding any other provision of law to the contrary, * * * a person with a criminal record may petition a licensing authority at any time for a determination of whether the * * * person's criminal record will disqualify * * * that person from obtaining a license. This petition shall include details on the * * * person's criminal record. The licensing authority shall inform the individual of his or her standing within thirty (30) days of receiving the petition from the * * * person. The licensing authority may charge a fee * * * not to exceed Twenty-five Dollars ($25.00) for each petition.

(2) If a licensing authority * * * disqualifies a person from receiving a license solely or in part because of the * * * person's * * * criminal record, the licensing authority shall notify the * * * person in writing of the following:

(a) The grounds and reasons for * * * disqualification;

(b) That the * * * person has the right to a hearing to challenge the licensing authority's decision;

(c) The earliest date the person may reapply for a license; and

(d) That evidence of rehabilitation may be considered upon reapplication.

(3) If * * * a person's criminal * * * record * * * disqualifies a person from receiving a license and the licensing

authority determines that the criminal record is directly related to the duties and responsibilities of the licensed occupation, the licensing authority must document its findings in writing sufficient for a reviewing court.

(4) In any administrative hearing or civil litigation authorized under this section, the licensing authority shall carry the burden of proof on the question of whether the * * * person's criminal * * * record directly relates to the * * * duties and responsibilities of the licensed occupation.

(5) The licensing authority shall * * * promulgate the necessary rules and regulations * * * to implement the provisions of this section.

(6) The provisions of * * * the Fresh Start Act shall supersede any other provision of law to the contrary.

SECTION 6. Section 99-19-35, Mississippi Code of 1972, is amended as follows:

99-19-35. A person convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy, shall not be allowed to practice medicine or dentistry, or be appointed to hold or perform the duties of any office of profit, trust, or honor, unless after full pardon or expungement for the same.

SECTION 7. This act shall take effect and be in force from and after July 1, 2021.