

1 AN ACT relating to professions and occupations.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 335B.010 is amended to read as follows:

4 As used in KRS 335B.010~~[335B.020]~~ to 335B.070, unless the context requires
5 otherwise:

6 (1) ***"Conviction of a crime" is limited to convictions of felonies or misdemeanors;***

7 (2) ***"Directly relate" means the nature of the criminal conduct for which the person***
8 ***was convicted has a direct bearing on the fitness or ability to perform one (1) or***
9 ***more duties or responsibilities necessary to the occupation;***

10 (3) ***"Hiring or licensing authority" means the person, board, commission, or***
11 ***department of the Commonwealth of Kentucky, its agencies, or political***
12 ***subdivisions, responsible by law for the hiring of persons for public employment***
13 ***or the licensing of persons for occupations;***

14 (4) ~~["Occupation" includes all occupations, trades, vocations, professions, businesses,~~
15 ~~or employment of any kind for which a license is required to be issued by the~~
16 ~~Commonwealth of Kentucky, its agencies, or political subdivisions.~~

17 (2) ~~["License" includes all licenses, permits, certificates, registrations, or other means~~
18 ~~required to engage in an occupation which are granted or issued by the~~
19 ~~Commonwealth of Kentucky, its agents or political subdivisions before a person~~
20 ~~can pursue, practice, or engage in any occupation;[-.]~~

21 (5) ***"Occupation" includes all occupations, trades vocations, professions, businesses,***
22 ***or employment of any kind for which a license is required to be issued by the***
23 ***Commonwealth of Kentucky its agencies, or political subdivisions;***

24 (6) ***"Pose a reasonable threat" means the nature of the criminal conduct for which***
25 ***the person was convicted involved an act or threat of harm against another and***
26 ***has a bearing on the fitness or ability to serve the public or work with others in***
27 ***the occupation; and***

1 ~~(Z)(3)~~ "Public employment" includes all employment with the Commonwealth of
 2 Kentucky, its agencies, or political subdivisions[.

3 ~~(4)~~ "Conviction of a crime" shall be limited to convictions of felonies or
 4 misdemeanors.

5 ~~(5)~~ "Hiring or licensing authority" shall mean the person, board, commission, or
 6 department of the Commonwealth of Kentucky, its agencies or political
 7 subdivisions, responsible by law for the hiring of persons for public employment or
 8 the licensing of persons for occupations].

9 ➔Section 2. KRS 335B.020 is amended to read as follows:

10 (1) No person shall be disqualified from public employment, nor shall a person be
 11 disqualified from pursuing, practicing, or engaging in any occupation for which a
 12 license is required, solely because of a prior conviction of a crime, unless the crime
 13 for which convicted directly relates to the position of employment sought or the
 14 occupation for which the license is sought **and poses a reasonable threat to public**
 15 **safety, health, or welfare.**

16 (2) In determining if a conviction directly relates to the position of public employment
 17 sought or the occupation for which the license is sought, the hiring or licensing
 18 authority shall consider:

19 (a) The nature and seriousness of the crime for which the **person**[individual] was
 20 convicted and the passage of time since its commission;

21 **(b) The age of the person at the time the crime was committed;**

22 ~~(c)(b)~~ The relationship of the crime to the purposes of regulating the position
 23 of public employment sought or the occupation for which the license is
 24 sought;

25 ~~(d)(c)~~ The relationship of the crime to the ability, capacity, and fitness required
 26 to perform the duties and discharge the responsibilities of the position of
 27 employment or occupation;

1 (e) Evidence relevant to the circumstances of the crime, including any
2 aggravating or mitigating circumstances or social conditions surrounding
3 the commission of the crime; and

4 (f) Any evidence of rehabilitation submitted by the applicant, including but not
5 limited to evidence related to the person's compliance with any conditions of
6 community supervision, parole, or mandatory supervision, the conduct and
7 work activity of the person, treatment undertaken by the person, and
8 testimonials or personal reference statements.

9 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 335B IS CREATED TO
10 READ AS FOLLOWS:

11 (1) No person shall be disqualified from public employment, nor shall a person be
12 disqualified from pursuing, practicing, or engaging in any occupation for which
13 a license is required, solely due to:

14 (a) A conviction that has been sealed or expunged;

15 (b) A conviction or plea of guilty or nolo contendere for which more than five
16 (5) years have elapsed since the date of conviction, plea, or release from
17 incarceration, whichever is later, so long as the person has not been
18 convicted of a new crime during that time; or

19 (c) A finding that an applicant lacks good character or fails to meet any other
20 similarly vague standard where a criminal conviction is the basis for the
21 finding.

22 (2) Subsection (1)(b) of this section shall not apply to any conviction or plea of guilty
23 or nolo contendere for a Class A felony, a Class B felony, or any felony offense
24 that would qualify the individual as a registrant as defined in KRS 17.500.

25 ➔Section 4. KRS 335B.030 is amended to read as follows:

26 (1) Before a hiring or licensing authority denies an individual a position of public
27 employment solely because of the individual's prior conviction of a crime, the

1 hiring or licensing authority shall notify the individual in writing of the
 2 following:

3 (a) The specific offense that is the basis of the intended denial;

4 (b) The reasons the offense was determined to directly relate to the duties and
 5 responsibilities of the occupation and posed a reasonable threat to public
 6 safety, health, or welfare, including findings for each of the factors in
 7 subsection (2) of Section 2 of this Act that the hiring or licensing authority
 8 deemed relevant to the determination; and

9 (c) The right to submit additional evidence relevant to each of the factors listed
 10 in subsection (2) of Section 2 of this Act within thirty (30) days, which the
 11 hiring or licensing authority shall consider before issuing a final
 12 determination.

13 ~~(2)(1)~~ (a) If a hiring or licensing authority denies an individual a position of public
 14 employment solely because of the individual's prior conviction of a crime, the
 15 hiring or licensing authority shall notify the individual in writing of the
 16 following:

- 17 1. The grounds and reasons for the denial or disqualification;
- 18 2. That the individual has the right to a hearing conducted in accordance
 19 with KRS Chapter 13B, if written request for hearing is made within ten
 20 (10) days after service of notice;
- 21 3. The earliest date the person may reapply for a position of public
 22 employment or a license; and
- 23 4. That evidence of rehabilitation may be considered upon reapplication.

24 (b) Any party aggrieved by a final order issued by a hiring or licensing authority
 25 after a hearing under this subsection may appeal to Franklin Circuit Court in
 26 accordance with KRS Chapter 13B.

27 ~~(3)(2)~~ (a) Except as provided in paragraph (b) of this subsection, a hiring or

1 licensing authority shall not disqualify an individual from pursuing,
2 practicing, or engaging in any occupation for which a license is required
3 solely because of the individual's prior conviction of a crime, unless the
4 authority provides the individual with a written notice that the authority has
5 determined that the prior conviction may disqualify the individual~~[person]~~,
6 demonstrates the connection between the prior conviction and the license
7 being sought, and affords the individual an opportunity to be personally heard
8 before the board prior to the board making a decision on whether to disqualify
9 the individual. If the license is denied after the individual~~[person]~~ was heard,
10 the hiring or licensing authority shall notify the individual in writing of the
11 following:

- 12 1. The grounds and reasons for the denial or disqualification;
- 13 2. That the individual has the right to a hearing conducted in accordance
14 with KRS Chapter 13B, if a written request for hearing is made within
15 ten (10) days after service of notice;
- 16 3. The earliest date the person may reapply for a license; and
- 17 4. That evidence of rehabilitation may be considered upon reapplication.

18 (b) If an individual's prior conviction was for a Class A felony, a Class B felony,
19 or any felony offense that would qualify the individual as a registrant pursuant
20 to KRS 17.500, there shall be a rebuttable presumption that a connection
21 exists between the prior conviction and the license being sought.

22 (c) Any party aggrieved by a final order issued by a hiring or licensing authority
23 after a hearing under this subsection may appeal to Franklin Circuit Court in
24 accordance with KRS Chapter 13B.

25 ~~(4)~~~~(3)~~ Except as provided in subsection ~~(3)~~~~(2)~~(b) of this section, in any
26 administrative hearing or civil litigation authorized under this section, the hiring or
27 licensing authority shall carry the burden of proof on the question of whether the

1 prior conviction directly relates to the position of employment sought or the
2 occupation for which the license is sought.

3 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 335B IS CREATED TO
4 READ AS FOLLOWS:

- 5 *(1) A person with a prior conviction of a crime may at any time, including before*
6 *obtaining any required education or training for an occupation, make a request*
7 *to a hiring or licensing authority for a determination of whether his or her prior*
8 *conviction may disqualify him or her from obtaining the desired license or*
9 *certification in the occupation.*
- 10 *(2) The request in subsection (1) of this section shall be in writing and shall include:*
11 *(a) A copy of the person's criminal history record with explanation of each*
12 *conviction mentioned in the criminal history record; or*
13 *(b) A statement describing each criminal conviction including the date of each*
14 *conviction, the court of jurisdiction, and the sentence imposed.*
- 15 *(3) The request under subsection (1) of this section may include a statement*
16 *describing additional information for consideration by the hiring or licensing*
17 *authority, including but not limited to information relevant to any of the factors*
18 *for consideration described in subsection (2) of Section 2 of this Act.*
- 19 *(4) Upon receipt of a written request in accordance with subsection (1) of this*
20 *section, the hiring or licensing authority shall:*
21 *(a) Evaluate the request and make a determination based upon the information*
22 *provided; and*
23 *(b) Provide notice of the determination to the requestor within sixty (60) days*
24 *from the date the request was received by the hiring or licensing authority*
25 *unless the hiring or licensing authority regulates fifty thousand (50,000) or*
26 *more members, in which case the hiring or licensing authority shall provide*
27 *notice of the initial determination to the requestor within ninety (90) days*

1 from the date such request was received by the hiring or licensing authority.

2 (5) The notice of determination under subsection (4)(b) of this section shall be in
3 writing and mailed to the requestor at the address provided in his or her request,
4 and shall include the following:

5 (a) Whether the person is eligible for licensure or certification in the
6 occupation at the current time based upon the information submitted by the
7 requestor;

8 (b) Whether there is a disqualifying offense that would disqualify the person
9 from engaging in the occupation at the current time and a statement
10 identifying such offense in the criminal history record or information
11 submitted for consideration;

12 (c) Any actions the person may take to remedy a disqualification, if any;

13 (d) The earliest date the person may submit another request for consideration,
14 if any; and

15 (e) A statement that the determination may be rescinded if, at the time before a
16 full application for a license or certificate is submitted, the applicant has
17 subsequently pled guilty or nolo contendere to a crime or it has a previously
18 undisclosed conviction of a crime.

19 (6) A hiring or licensing authority may charge a fee not to exceed ninety five dollars
20 (\$95) for each initial determination of eligibility it makes for the occupation
21 based upon the information provided by the requestor.

22 (7) A hiring or licensing authority may promulgate forms for requests for initial
23 determinations for the occupation in accordance with this section.

24 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 335B IS CREATED TO
25 READ AS FOLLOWS:

26 A determination made in accordance with Section 5 of this Act that a person may not
27 be disqualified for licensure or certification due to criminal history shall be binding

1 upon a hiring or licensing authority unless, at the time a full application for a license
2 or certificate is submitted, the applicant has subsequently pled guilty or nolo
3 contendere to a crime or has previously undisclosed convictions of a crime.

4 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 335B IS CREATED TO
5 READ AS FOLLOWS:

6 Each hiring or licensing authority shall include in its application for a license or
7 certificate and publish on its public website the following information:

8 (1) Whether an applicant's conviction of a crime may be used as a basis for denial;

9 (2) If conviction of a crime may be used as a basis for denial under Section 2 of this
10 Act, which offenses the hiring or licensing authority shall consider; and

11 (3) Notice of the right to request a determination in accordance with Section 5 of this
12 Act.

13 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 335B IS CREATED TO
14 READ AS FOLLOWS:

15 Each hiring or licensing authority authorized to consider the criminal conviction of an
16 applicant shall provide a report on or before September 30 of each year to the
17 Legislative Research Commission for referral to the Interim Joint Committee on
18 Economic Development and Workforce Investment and the Interim Joint Committee
19 on Licensing, Occupations, and Administrative Regulations detailing:

20 (1) The number of license applications received;

21 (2) The number of applications that resulted in a license being granted;

22 (3) The number of applications that resulted in a license being denied;

23 (4) The number of applications that were denied due to criminal history;

24 (5) A list of criminal offense reported by individuals who were granted a license;

25 (6) A list of criminal offense reported by individuals who were denied a license due to
26 criminal history, along with the time elapsed since the commission of the offense;

27 and

1 (7) The number of petitions received by the licensing or certification authority in
2 accordance with Section 5 of this Act.

3 ➔Section 9. KRS 309.362 is amended to read as follows:

4 (1) The board may deny or refuse to renew a license, may suspend or revoke a license,
5 may issue an administrative reprimand, or may impose probationary conditions or
6 fines not to exceed one thousand dollars (\$1,000) per violation when the licensee
7 has engaged in unprofessional conduct that has endangered or is likely to endanger
8 the health, welfare, or safety of the public. Unprofessional conduct shall include the
9 following:

- 10 (a) Obtaining or attempting to obtain a license by fraud, misrepresentation,
11 concealment of material facts, or making a false statement to the board;
- 12 (b) Being convicted of a felony in any court if the act or acts for which the
13 licensee or applicant for license was convicted are determined by the board to
14 have a direct bearing on whether the person is trustworthy to serve the public
15 as a licensed massage therapist, if in accordance with KRS Chapter 335B.
16 "Conviction," as used in this paragraph, shall include a finding or verdict of
17 guilty, an admission of guilt, or a plea of nolo contendere in a court of law;
- 18 (c) Violating any lawful order or administrative regulation promulgated by the
19 board;
- 20 (d) Violating any provision of this chapter or administrative regulations
21 promulgated thereunder;
- 22 (e) Having sexual contact as defined by KRS 510.010(7) with a client or having
23 engaged or attempted to engage in lewd or immoral conduct with any client or
24 patient;
- 25 (f) Engaging in fraud or material deception in the delivery of professional
26 services, including reimbursement or advertising services, in a false or
27 misleading manner;

- 1 (g) Evidence of gross negligence or gross incompetence in the practice of
2 massage therapy;
- 3 (h) Violating the standards of practice or the code of ethics as promulgated by
4 administrative regulations;
- 5 (i) Violating KRS 304.39-215; or
- 6 (j) Engaging in conduct that is subject to the penalties under KRS 304.99-060(4)
7 or (5).

8 **(2) In making a decision about alleged unprofessional conduct under subsection**
9 **(1)(e) of this section, the board shall follow the provisions in Sections 2, 3, 4, 5,**
10 **and 6 of this Act.**

11 ~~(3)(2)~~ The board may, at its discretion, deny, refuse to renew, suspend or revoke a
12 license, or impose probationary conditions following an administrative hearing
13 pursuant to KRS Chapter 13B and in accordance with administrative regulations
14 promulgated by the board.

15 ~~(4)(3)~~ The surrender of a license shall not deprive the board of jurisdiction to
16 proceed with disciplinary actions under KRS 309.350 to 309.364.

17 ➔Section 10. KRS 317A.140 is amended to read as follows:

18 (1) The board may refuse to issue or renew a license or permit, or may suspend or
19 revoke a license or permit, impose probationary conditions upon, impose an
20 administrative fine, issue a written reprimand or admonishment, or take any
21 combination of these actions regarding proof of any applicant's, permittee's, or
22 licensee's:

- 23 (a) Conviction of a felony, if in accordance with KRS Chapter 335B;
- 24 (b) Gross malpractice or incompetence;
- 25 (c) Mental or physical health that would endanger public health or safety;
- 26 (d) False or deceptive practice or misrepresentation including advertising;
- 27 (e) Practicing in an unlicensed salon or in a salon knowing that the salon is not in

1 compliance with this chapter or the administrative regulations of the board
2 promulgated pursuant to this chapter;

3 (f) Immoral conduct, unprofessional conduct, or a violation of the code of ethics;

4 (g) Teaching in an unlicensed school or in a school knowing that the school is not
5 in compliance with this chapter or the administrative regulations of the board
6 promulgated pursuant to this chapter;

7 (h) Failure to comply with the administrative regulations of the board.

8 **(2) In making a decision about alleged unprofessional conduct under subsection**
9 **(1)(f) of this section, the board shall follow the provisions in Sections 2, 3, 4, 5,**
10 **and 6 of this Act.**

11 ~~(3)(2)~~ Payments in lieu of suspension collected by the board shall be deposited in the
12 State Treasury and credited to the general fund.

13 ~~(4)(3)~~ The board may require retesting of any licensee upon proper showing of gross
14 malpractice or incompetence on the part of the licensee.

15 ➔Section 11. KRS 327.070 is amended to read as follows:

16 (1) The board, after due notice and an opportunity for an administrative hearing
17 conducted in accordance with KRS Chapter 13B may take any one (1) or a
18 combination of the following actions against any licensee, certificate holder, or
19 applicant:

20 (a) Refuse to license or certify any applicant;

21 (b) Refuse to renew the license or certificate of any person;

22 (c) Suspend or revoke or place on probation the license or certificate of any
23 person;

24 (d) Impose restrictions on the scope of practice of any person;

25 (e) Issue an administrative reprimand to any person;

26 (f) Issue a private admonishment to any person; and

27 (g) Impose fines for violations of this chapter not to exceed two thousand five

1 hundred dollars (\$2,500).

- 2 (2) The following acts by a licensee, certificate holder, or applicant may be considered
3 cause for disciplinary action:
- 4 (a) Indulgence in excessive use of alcoholic beverages or abusive use of
5 controlled substances;
- 6 (b) Engaging in, permitting, or attempting to engage in or permit the performance
7 of substandard patient care by himself or by persons working under his
8 supervision due to a deliberate or negligent act or failure to act, regardless of
9 whether actual injury to the patient is established;
- 10 (c) Having engaged in or attempted to engage in a course of lewd or immoral
11 conduct with any person:
- 12 1. While that person is a patient of a health care facility defined by KRS
13 216B.015 where the physical therapist or physical therapist's assistant
14 provides physical therapy services; or
- 15 2. While that person is a patient or client of the physical therapist or
16 physical therapist's assistant;
- 17 (d) Having sexual contact, as defined by KRS 510.010(7), without the consent of
18 both parties, with an employee or coworker of the licensee or certificate
19 holder;
- 20 (e) Sexually harassing an employee or coworker of the licensee or certificate
21 holder;
- 22 (f) Conviction of a felony or misdemeanor in the courts of this state or any other
23 state, territory, or country which affects his ability to continue to practice
24 competently and safely on the public, if in accordance with KRS Chapter
25 335B. "Conviction," as used in this paragraph, shall include a finding or
26 verdict of guilt, an admission of guilt, or a plea of nolo contendere;
- 27 (g) Obtaining or attempting to obtain a license or certificate by fraud or material

- 1 misrepresentation or making any other false statement to the board;
- 2 (h) Engaging in fraud or material deception in the delivery of professional
3 services, including reimbursement, or advertising services in a false or
4 misleading manner;
- 5 (i) Evidence of gross negligence or gross incompetence in his practice of
6 physical therapy;
- 7 (j) Documentation of being declared mentally disabled by a court of competent
8 jurisdiction and not thereafter having had his rights restored;
- 9 (k) Failing or refusing to obey any lawful order or administrative regulation of the
10 board;
- 11 (l) Promoting for personal gain an unnecessary device, treatment, procedure, or
12 service, or directing or requiring a patient to purchase a device, treatment,
13 procedure, or service from a facility or business in which he has a financial
14 interest;
- 15 (m) Being impaired by reason of a mental, physical, or other condition that
16 impedes his or her ability to practice competently;
- 17 (n) Violation of KRS 304.39-215; and
- 18 (o) Conduct that is subject to the penalties under KRS 304.99-060(4) or (5).

19 **(3) In making a decision about unprofessional conduct under subsection (2)(c) of**
20 **this section, the board shall follow the provisions in Sections 2, 3, 4, 5, and 6 of**
21 **this Act.**

22 ~~(4)~~⁽³⁾ A private admonishment shall not be subject to disclosure to the public under
23 KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action
24 but may be used by the board for statistical purposes or in subsequent disciplinary
25 action against the same licensee, certificate holder, or applicant.

26 ➔Section 12. This Act takes effect January 1, 2025.