

Chart #5 –Consideration of Criminal Record in Licensing and Employment

CHART #5 –CONSIDERATION OF CRIMINAL RECORD IN LICENSING AND EMPLOYMENT						
State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
AL						None
AK						None
AZ					If civil rights restored cannot be barred from licensure or public employment “solely because of” conviction; offense must have “reasonable relationship” to employment or occupation. Ariz. Rev. Stat. § 13-904(E).	
AR			Conviction may be considered but may not bar from licensure; 5 years of law-abiding conduct is “prima facie evidence of rehabilitation.” Reasons for rejection must be in writing. Ark Code Ann. § 17-1-103.			
CA	It is unlawful for a public or private employer to inquire into or seek information about a conviction that has been set-aside and dismissed. CAL. LABOR CODE § 432.7(a); CAL. CODE REGS. tit. 2 § 7287.4(d)(1)		“[N]o person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation . . . or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license. . . .”. CAL. BUS. & PROF. § 480(b). Suspension or revocation of license allowed only if crime “substantially related” to qualifications. Id. § 490.	<i>Ban-the-Box:</i> A state or local agency may not inquire into criminal history “until the agency has determined the applicant meets the minimum employment qualifications. . . .” CAL. LABOR § 432.9.		

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<p>CO</p>	<p>Court imposing a non-prison sentence may enter order relieving defendant of any collateral consequence. Colo. Rev. Stat. §§ 18-1.3-107 (sentencing alternatives), 18-1.3-213 (probation), and 18-1.3-303 (community corrections).</p> <p>Negligent hiring protection for convictions not “directly related” to employment, or that have been sealed or pardoned. Colo. Rev. Stat. § 8-2-201(b).</p>	<p>Conviction alone may not be basis for refusing employment or licensure unless law specifically authorizes. Colo. Rev. Stat. § 24-5-101(1).</p> <p><i>Ban-the-Box</i>: State agencies and licensing boards may not conduct background check until applicant is a finalist for the position or receives a conditional offer. In determining disqualification, agency must consider (1) the nature of the conviction; (2) the relationship of the conviction to the job; (3) the applicant’s rehabilitation and good conduct; and (4) time elapsed since conviction. § 24-5-101(4). Arrest records not leading to conviction may not be used.</p>			
<p>CT</p>		<p>With limited exceptions relating to law enforcement and certain mortgage-related licenses, public employers and licensing authorities may not disqualify a person automatically on the grounds of a prior conviction but must consider: 1) the nature of crime and its relationship to the job; 2) information pertaining to rehabilitation; and 3) time elapsed since conviction. Conn. Gen. Stat. §§ 46a-80(a) and (c). If conviction used as a basis for rejection of an applicant, it must be in writing and specifically state the evidence presented and reasons for rejection. § 46a-80(d).</p>		<p><i>Ban-the Box</i> in public employment. Conn. Gen. Stat. § 46a-80(b) (“no [state employer] shall inquire about a prospective employee's past convictions until such prospective employee has been deemed otherwise qualified for the position”).</p>	<p>May not deny employment or licensure based on pardoned offense. Conn. Gen. Stat. §§ 46a-80(a) and (c).</p>
<p>DE</p>		<p><i>Ban-the-Box</i> - public employers and contractors prohibited from inquiring into criminal records prior the making an offer of employment. Del. Code Ann. tit. 19, § 711(g); tit. 29, § 6909B(a). Uniform licensing policy that crimes must be “substantially related” to the profession or occupation at issue. 74 Del. Laws 262 (2004) (codified in scattered sections of Del. Code. Ann., tit. 24).</p>			

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DC	D.C. Code § 1-601.01	Licensing: Crimes must “bears directly upon the fitness” of the person to be licensed. D.C. Code §§ 47-2853.17(a), 3-1205.03. Public employment: Limits pre-employment inquiries for most government positions until after the initial screening. Must consider: duties and responsibilities of the position, bearing on performance of duties, time elapsed, age at time of the offense, the frequency and seriousness of the offense, rehabilitation and good conduct, and public policy interest. D.C. Code § 1-620.42–.43.				
FL		Crime may be basis of disqualification only if “directly related” to the job. Fla. Stat. §112.011(1)(a). Additional treatment requirements for drug offenders. Fla. Stat. ch. 775.16.			Licensing boards may not reject based on conviction if the person’s civil rights have been restored, unless offense conduct is “directly related” to license. Fla. Stat. 112.011(1)(b).	
GA	State-wide “ban-the-box” in public employment by executive order (2/23/15). “Program and Treatment Completion Certificate” issued by the Board of Corrections, or pardon, protect against liability for negligence. Ga. Code Ann. § 51-1-54.					[Conviction of a felony or any crime involving moral turpitude may be grounds for revocation or refusal of a license, without regard to whether it is related to the practice of the licensed business or profession. <i>See</i> Ga. Code Ann. § 43-1-19(a)(3).]

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HI	<p><i>Ban-the-Box</i> Plus: General FEP law prohibits inquiry into arrest and conviction before a conditional offer of employment, which may be withdrawn if a conviction within the previous 10 years “bears a rational relationship to the duties and responsibilities of the position.” Haw. Rev. Stat. §§ 378-2.5(b), (c). In addition, crime w/in 10 years may be considered only if rational relationship to job or occupation. Haw. Rev. Stat. § 831-3.1(a). Exceptions for healthcare, corrections, and law enforcement. Haw. Rev. Stat. § 831-3.1(f). Arrest records may not be considered at all. See Haw. Rev. Stat. § 378-2.5(b), (c).</p>			
ID				None
IL	<p>Negligent hiring protection where employer relied on certificate of certificate of relief from disabilities. 730 ILCS 5/5-5.5-15(f).</p> <p><i>Ban-the-Box</i> policy in private employment by statute, 30 ILCS 105/5.855, and in public employment by administrative order.</p>	<p>In general, Illinois limits consideration of conviction in connection with occupational licensing only for certain employments, and only where a person has received a certificate of relief from disabilities. ILCS 5/5-5-5. Certain occupational licensing boards use “direct relationship” test. See, e.g., ILCS 450/20.1 (accountant); § 335./9.1(b) (roofer).</p>	<p>Human Rights Act prohibits discrimination based on conviction only if expunged or sealed. ILCS § 5/2-103(A). Waiver by agency permits for certain health-care positions. See § 46/40.</p>	
IN		<p>Except for serious drug offenses, “a license or certificate of registration that an individual is required by law to hold to engage in a business, profession, or occupation may not be denied, revoked, or suspended because the applicant or holder has been convicted of a crime.” Ind. Code § 25-1-1.1-1.</p>	<p>It is “unlawful discrimination” for any person to refuse to employ or license a person because of a record that has been expunged or sealed. Ind. Code § 35-38-9-10(a). Inquiry into expunged convictions prohibited. § 35-38-9-10(c). In negligence action an expungement order may be introduced as evidence of due care. § 35-38-9-10(f) and (g). Non-conviction records and records that have been expunged may not be reported to credit reporting companies. § 24-4-18-6(a).</p>	

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IA						Iowa has no general law regulating consideration of conviction in employment or licensure, but applies a direct relationship test in connection with some licenses. <i>See, e.g.</i> , Iowa Code § 147.3 (health-related professions licensing)
KS						No nondiscrimination rule, but it is a misdemeanor for an employer to inquire into an applicant’s criminal history record without the applicant’s consent. <i>See Kan. Stat. Ann. § 22-4710(a)-(c).</i>
KY		<p>“No person shall be disqualified from public employment, [or from] . . . any occupation for which a license is required, solely because of a prior conviction of a crime, unless the crime for which convicted is [a felony or misdemeanor punishable by imprisonment] or otherwise directly relates to the position of employment sought or the occupation for which the license is sought.”</p> <p>Factors include nature and seriousness of the crime; the relationship of the crime to duties and responsibilities of the position sought.</p> <p>Ky. Rev. Stat. Ann § 335B.020(1) –(3).</p>				

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<p>LA</p>		<p>A person may be held ineligible to practice or engage in any licensed trade, occupation, or profession solely because of a prior criminal record only if conviction involves a felony, and the conviction “directly relates to the position of employment sought, or to the specific occupation, trade or profession for which the license, permit or certificate is sought.” Exemptions for law enforcement, nursing, various other licensed professions. Reasons required, APA enforcement. La. Rev. Stat. Ann. § 37:2950.</p>			
<p>ME</p>		<p>May not consider convictions more than 3 years old, or which call for less than a year in prison. Me. Rev. Stat. Ann. tit. 5, § 5303. Certain professions (medical, nursing) have 10 year debarment. <i>Id.</i></p>			
<p>MD</p>		<p>Standards for licensing in COMAR 09.01.10.02 include nature of offense, relationship to licensed activity, length of time since conviction, conduct before and after conviction.</p>	<p><i>Ban-the-Box:</i> State government employers may not inquire about criminal history until after interview. Md. Code Ann., State Pers. & Pens. § 2-203</p>		<p>No general law, but a consumer reporting agency cannot report conviction information that is older than seven years for purposes of employment, if the job about which information sought is expected to pay an annual salary less than \$20,000. Md. Code Ann., Com. Law § 14-1203(a)(5).</p>
<p>MA</p>	<p><i>Ban-the-Box:</i> Public and private employers may not inquire into criminal records on an initial job application, unless the job is one for which a convicted person is presumptively disqualified by law. Mass. Gen. Laws ch. 151B, § 4(9 ½).</p>			<p>Licensing authorities may not disqualify applicant based on pardoned felony conviction. Mass. Gen. Laws ch. 127, § 152 (2011).</p>	<p>Licensing agency may not disqualify based on conviction alone in certain professions. <i>See, e.g.,</i> Mass. Gen. Laws ch. 112 § 52D (dentistry); ch.112, § 61 (medical license); ch. 112, § 189 (real estate appraiser). Limits on inquiry. E.g., employers may not inquire into misdemeanor convictions more than 5 years old or arrest records. Mass. Gen. Laws ch. 151B, § 4(9).</p>

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MI			Conviction “shall not be used, in and of itself, by a licensing board or agency as proof of a person’s lack of good moral character,” but it may be used as evidence in the determination. Mich. Comp. Laws § 338.42. Cannot consider non-conviction records, convictions that did not result in incarceration, or convictions unrelated to capacity to serve the public. § 338.43(1).			
MN	Negligent hiring protections. Minn. Stat. §181.981. <i>Ban-the-Box</i> for public and private employers. § 364.021(a).	Must be “direct relationship” between occupation or license and conviction history <u>and</u> individual must not have shown “sufficient rehabilitation and present fitness to perform” the duties of the public employment or licensed occupation. Minn. Stat § 364.03. Factors to be considered set out. Rehabilitation established by 1 yr. w/o arrest after release, or successful completion of probation or parole. <i>See id.</i>			Data mining companies: if they know that a criminal record has been sealed, expunged, or is the subject of a pardon, the screening service shall promptly delete the record. Minn. Stat. 332.70 subd 3a.	
MS						None
MO			No denial of license “primarily” because of conviction where sentence fully discharged. Mo. Rev. Stat. § 324.029. Conviction may be considered as “some evidence of an absence of good moral character” but licensing board shall also consider the nature and date of crime, evidence of good character. Mo. Rev. Stat. § 314.200.			

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MT			Conviction shall not operate as bar to licensure for any profession, but may be considered. Mont. Code Ann. § 37-1-201. 203.			
NE						None
NV						Nevada has no general law but applies a direct relationship test in connection with some licenses. <i>See, e.g.</i> , Nev. Rev. Stat. § 625.410(4) (engineering and land surveying).
NH			No license may be denied or impaired on the basis of conviction unless the licensing entity determines the crime is substantially and directly related to the licensed activity. N.H. Rev. Stat. Ann. § 332-G:10.		Inquiry into annulled offenses limited. N.H. Rev. Stat. Ann. § 651:5(X)(c).	
NJ	2014 Opportunity to Compete Law (A1999), imposes ban-the-box rule for public and private employment. Sentencing court or thereafter a supervisory agency may issue certificate of rehabilitation suspending disabilities, forfeitures or bars to employment or professional licensure. N.J. Stat. Ann. § 2A:168A-7.		Licensing authorities may not “discriminate” on grounds of conviction unless reasonably related to occupation. N.J. Stat. Ann. § 2A:168A-1. Reasons in writing. § 2A:168A-2.		Pardon or expungement, or certificate of rehabilitation, “shall preclude a licensing authority from disqualifying or discriminating against the applicant.” N.J. Stat. Ann. § 2A:168A-3.	

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NM		<p>A person may be disqualified for public employment or licensure based on prior conviction if: 1) conviction relates directly to the position sought; 2) agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or 3) an applicant for a teaching certificate or employment at child-care facility has been convicted of drug trafficking or sex offenses, regardless of rehabilitation. N.M. Stat. Ann. § 28-2-4(A). Completion of parole or probation or a three-year period following release from incarceration creates a presumption of rehabilitation. N.M. Stat. Ann. § 28-2-4(B). Must state reasons in writing.</p> <p><i>Ban-the-Box:</i> N.M. Stat. Ann. § 28-2-3(A)(“A board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.”). Records of arrest not resulting in conviction, and misdemeanor convictions not involving “moral turpitude,” may not be considered in any application for public employment or licensure. § 28-2-3(B).</p>				

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<p>NY</p>	<p>Prohibits discrimination in employment and licensing based on conviction. N.Y. Correct. Law §§ 750-755. Must be direct relationship and unreasonable risk to property or safety. § 752. Individual is entitled to reasons. § 754. N.Y.S. Human Rights Law, N.Y. Exec. Law § 296(16), prohibits public and private employers and occupational licensing agencies from denying any individual employment or a license (or otherwise discriminating against that person) because of any arrest that did NOT result in a conviction. Negligent hiring: N.Y. Exec. Law § 296(15) excludes evidence in suit for negligent hiring where employer complied with antidiscrimination law. Certificate of Relief from Disabilities, N.Y. Correct. Law §§ 700-706, or a Certificate of Good Conduct, §§ 703-a, 703-b, may be obtained to restore rights, at sentencing for first felony offenders or thereafter for all.</p>					
<p>NC</p>	<p>Reliance on Certificate of Relief provides protection in negligent hiring action, N.C. §15A.173.5</p>	<p>Certificate of Relief relieve collateral sanctions, and agency may consider a Certificate favorably in determining whether a conviction should result in disqualification from public employment or licensure. N.C. Gen. Stat. § 15A-173.2(d).</p>				

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ND			Licenses for most professions and occupations may be denied only if offense has direct bearing, or if insufficient rehabilitation; factors to be considered include nature of offense, evidence of rehabilitation, and date of offense (5 yrs. deemed prima facie evidence of rehabilitation). N.D. Cent. Code § 12.1-33-02.1. Written statement of reasons if denied in whole or in part because of conviction. <i>Id.</i>			
OH	Certificate of qualification for employment “immunity” from negligent hiring liability. Ohio Rev. Code Ann. § 2953.25-G(2).	An individual barred from a particular occupation or license may apply to the court for a "certificate of qualification for employment" that allows consideration on the merits. Ohio Rev. Code Ann. § 2953.25.	Ohio Rev. Code Ann. § 4743.06 (each agency authorized to deny licensure without a hearing based on specified criminal offenses may not add disqualifying offenses without specifying by rule their “substantial relationship” to a person’s fitness for the occupation.		May be questioned about sealed conviction only if it bears if direct and substantial relationship to the position. Ohio Rev. Code Ann. §§ 2953.33(B).	
OK					No public or private employer may ask about or consider a sealed conviction. 22 Okla. Stat. Ann. § 19(F).	
OR			May not bar from licensure solely on grounds of conviction; may consider facts of conviction and all intervening circumstances in determining the fitness of the person. Or. Rev. Stat. 670.280(2), (3). Teacher licenses excepted. <i>Id.</i>			

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PA	Felony and misdemeanor convictions may be considered only to the extent they “relate to” the applicant’s suitability for employment or licensure in the position for which he has applied. 18 Pa. Cons. Stat. §§ 9124 (licensure) 9125 (employment).					
RI	<p>“Certificate of recovery & re-entry” if no more than one non-violent felony conviction relieves petitioner of some collateral consequences. R.I. Gen. Laws § 13-8.2-1.</p> <p><i>Ban-the-Box</i>: Oral or written inquiries about arrests to applicants for public or private employment prohibited as an unlawful employment practice; and (effective January 1, 2014) convictions until the first interview. R.I. Gen. Laws § 28-5-7(7).</p>					Prohibits inquiries about arrests as unlawful employment practice, but specifically permits inquiries about convictions. See R.I. Gen. Laws § 28-5-7(7) ,
SC			May not be denied a license solely due to conviction unless the criminal conviction is directly related to the profession or occupation. S.C. Code. Ann. § 40-1-140. But, board may refuse “if . . . it finds the applicant is unfit or unsuited to engage in the profession or occupation.” <i>Id.</i>			
SD						None
TN	Judicial restoration of rights and “Certificate of Employability” limits licensing denials, protects against negligent hiring liability. Tenn. Code Ann. § 40-29-107.					None
TX	Limitation on negligent hiring suits based solely on conviction. Tex. Civil Practice and Remedies Code § 142.002.		Licensing authority may deny/suspend/revoke license if conviction “directly relates” to the the licensed occupation,” if offense does not directly relate but is less than 5 years old, or if specified violent and sexual offenses. Tex. Occupations Code § 53.021(a). §§ 53.022 and 53.023 require licensing agencies to consider a number of factors in determining whether a conviction is directly related to the occupation.			

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UT			“Unprofessional conduct” includes commission of crime that “bears a reasonable relationship to the licensee’s or applicant’s ability to safely or competently practice the occupation or profession.” Utah Code Ann. § 58-1-501(2). Regulations define further at U.A.C. R156-1-302 to include various aggravating and mitigating factors.			
VT	Order of relief or certificate of restoration of rights issued under 13 VSA §§8010 and 8011 are admissible as evidence of due care.		“Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession,” basis for denial of license in over 40 professions. See Vt. Stat. Ann. tit. 3, § 129a(10)			
VA	Ban-the-box in government employment by Executive Order (2014).		May not be denied a license “solely because of” conviction unless “directly related” to the occupation or profession for which the license is sought. Board can refuse a license if applicant is “unfit or unsuited.” Va. Code Ann. § 54.1-204. Standards for determining “direct relationship” spelled out in § 54.1-204(B).			
WA		May consider a conviction only if within the last 10 years and the crime “directly relates” to the employment or license sought. Several exceptions. Wash. Rev. Code § 9.96A.020(1)-(2).				

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WV						No general provision; a few professions require that conviction be “directly related” to the activity. <i>See</i> W. Va Code § 30-3-14(c)(2) (medicine); § 30-16-11(a)(3) (chiropractic); § 47-14-11(a)(4) (pre-need funeral contracts).
WI	Fair employment act bars discrimination by public and private employers, licensing boards, unless crime “substantially relates” to the particular job or licensed activity. Wis. Stat. §§ 111.32, 111.335(1)(c).					
WY						None
FED				Only limitation on employment in Title VII of Civil Rights Act.		No general limitation on licensure.