1   H.377

2   Introduced by Representative Rachelson of Burlington

3   Referred to Committee on

4   Date:

5   Subject: Professions and occupations; license applications; conviction history

6   Statement of purpose of bill as introduced: This bill proposes to provide

7   statewide standards for the licensure of applicants with criminal conviction

8   histories.

9   An act relating to statewide professional regulation standards for the
10   licensure of applicants with criminal conviction histories

11   It is hereby enacted by the General Assembly of the State of Vermont:

12   Sec. 1. 26 V.S.A. chapter 57 is amended to read:

13   CHAPTER 57. ~~REVIEW OF REGULATORY LAWS~~ STATEWIDE

14   STANDARDS OF PROFESSIONAL REGULATION

15   Subchapter 1. Review of Regulatory Laws

16   * * *

17   Subchapter 2. Licensure of Applicants with a Criminal Conviction

18   § 3121. STANDARDS OF LICENSURE OF APPLICANTS WITH A

19   CRIMINAL CONVICTION HISTORY

1   (a) Notwithstanding any provision of law to the contrary, a regulatory

2   entity shall comply with the standards of licensure set forth in this section for

3   an applicant with a criminal conviction history, unless a regulatory law allows

4   for greater protection of such an applicant.

5   (1) Prohibition on automatic blanket bans. A regulatory entity may

6   consider an applicant's criminal conviction history in determining whether to

7   grant him or her licensure, but the existence of one or more convictions alone

8   shall not constitute a basis to deny licensure.

9   (2) Standards for and scope of criminal record inquiries.

10   (A)(i) Each regulatory entity shall adopt uniform standards for the

11   type or types of criminal convictions that would disqualify any applicant for

12   licensure for each profession that the entity regulates.

13   (ii) These standards shall be directly related to the profession,

14   shall be limited to felonies and violent misdemeanors, and shall be established

15   so that an applicant is disqualified only under the least restrictive standards

16   necessary.

17   (iii) A regulatory entity is prohibited from including in its

18   standards or otherwise considering an applicant's arrest that did not result in a

19   conviction.

20   (B) A regulatory entity may inquire into or consider only the

21   conviction history of an applicant that falls within the standards adopted under

1   subdivision (A) of this subdivision (2), and may only so inquire after the

2   applicant is found to be otherwise qualified for licensure.

3   (C) A regulatory entity shall not inquire into or consider any

4   applicant's misdemeanor convictions older than three years or felony

5   convictions older than five years.

6   (D) At any time, an applicant or potential applicant may petition a

7   regulatory entity for a determination regarding whether the individual's

8   criminal conviction history would disqualify the individual from licensure.

9   (3) Obtaining an applicant's criminal conviction history report.

10   (A)(i) A regulatory entity shall obtain an applicant's authorization

11   prior to obtaining a report of his or her criminal conviction history and shall

12   provide the applicant with a copy of the uniform standards for disqualification

13   adopted under subdivision (2) of this subsection along with its request for

14   authorization.

15   (ii) The regulatory entity shall provide the applicant with a copy of

16   the applicant's report and an accompanying notice that describes any

17   conviction the entity determines disqualifies the applicant under the entity's

18   uniform standards.

19   (B) In addition to the provisions of subdivision (4) of this subsection,

20   the regulatory entity shall provide the applicant with the opportunity to verify

21   or challenge the information contained in the report.

1   (4) Procedure for license denial.

2   (A) If a regulatory entity intends to deny licensure based on an

3   applicant's criminal conviction history, the regulatory entity shall provide the

4   applicant with notice of that intent and an opportunity to present evidence of

5   mitigating circumstances or of his or her rehabilitation.

6   (B) An applicant shall have 30 days from the date of the notice to

7   petition the regulatory entity for a review of its preliminary decision. At a

8   hearing upon petition, the State shall bear the burden of proving that the

9   applicant should be disqualified from licensure due to the applicant's criminal

10   conviction history.

11   (C) A regulatory entity shall not deny such an applicant licensure if

12   the applicant has demonstrated fitness to practice the profession by providing

13   sufficient mitigating circumstances or by showing competent evidence of

14   sufficient rehabilitation, such as completion or probation or parole. Each

15   regulatory entity shall specifically consider the amount of time that has elapsed

16   since a conviction or release from incarceration as a mitigating circumstance.

17   (5) Case-by-case assessments. A regulatory entity shall consider

18   applicants with a criminal conviction history on an individual, case-by-case

19   basis, and if the entity denies licensure to an applicant based on that history,

20   the entity shall provide to the applicant in writing the rationale for licensure

21   denial, which shall include an assessment of each of the following topics:

1   (A) the nature and seriousness of the crime;

2   (B) the circumstances under which the crime occurred;

3   (C) the date of the crime;

4   (D) the age of the applicant when the crime was committed;

5   (E) whether the crime was an isolated or repeated incident;

6   (F) any social conditions that may have contributed to the crime; and

7   (G) any evidence of the applicant's rehabilitation.

8   (b) A regulatory entity may adopt rules necessary to implement the

9   provisions of this section.

10 § 3122. BIENNIAL REPORT ON LICENSURE DENIALS BASED ON

11   CRIMINAL CONVICTION HISTORIES

12   On or before January 15 of each odd-numbered year, each State regulatory

13 entity shall submit to the General Assembly a report containing the following

14 information:

15   (1) the number of licenses granted in the previous two-year period; and

16   (2) the number of licenses denied in the previous two-year period based

17 on an applicant's criminal conviction history, along with a list of each

18 conviction that constituted the basis for each denial.

19 Sec. 2. EFFECTIVE DATE

20   This act shall take effect on July 1, 2019.