

# Nationwide Trend to Reform Unfair Occupational Licensing Laws

*Building on momentum from recent years, criminal justice reform movements have increasingly called on state legislatures to recognize how criminal records create unfair exclusions from employment. In 2019, legislatures adopted “fair chance licensing” reforms in at least **nine states: Arkansas, Iowa, Maryland, Mississippi, Oklahoma, Nevada, North Carolina, Texas, and Utah**. These new laws take steps to reduce unfair occupational licensing barriers facing the 70 million people—disproportionately people of color—with arrest and conviction records. To varying degrees, the laws eliminate automatic blanket bans against people with records, expand transparency, remove vague statutory language, and adopt fairer evaluation criteria. All 50 states can and should do more to expand access to the approximately one in four jobs that require a license.*

## New Laws Signed in 2019

■ **Arkansas:** On April 10, Governor Asa Hutchinson (R) signed **Act 990** into law. The law lists over 30 convictions that disqualify an applicant from most occupational licenses unless that offense is sealed, pardoned, or expunged. For non-violent and non-sexual offenses, the period of ineligibility is limited to five years after release from incarceration or probation, assuming no new conviction is incurred during that time. Additionally, for all but the 12 most “serious” offenses that require permanent disqualification, the relevant licensing authority may grant a waiver after considering specific factors. Individuals may, at any time, petition a licensing entity to consider their conviction record and potential for a waiver. The act further prohibits licensing authorities from considering arrest records and using vague terms such as “moral turpitude” and “good character.” The bill passed unanimously in the Senate and 69-11 in the House.

■ **Iowa:** On May 9, Governor Kim Reynolds (R) approved **SF 567**, a limited licensing reform that unanimously cleared the legislature. Effective July 1, 2019, the Electrical Examining Board and the Plumbing and Mechanical Systems Board may deny a license based only on those disqualifying felony convictions listed in the new law. An applicant convicted of a listed disqualifying felony shall be denied the license unless granted an exception by the licensing authority after considering specific factors. The act additionally prohibits the Department of Corrections from enrolling an incarcerated person in apprenticeship programs without written confirmation from the relevant licensing authority. Unfortunately, this broad prohibition may result in the exclusion of qualified persons from apprenticeship programs. The law further requires the Barbering Board to allow any incarcerated person who completes a barbering apprenticeship program to take the license examination.

■ **Maryland:** On May 25, **HB 22** became law in Maryland and will take effect October 1, 2019. The law prohibits six state departments from denying an occupational license or certificate based solely on an applicant's prior conviction of a nonviolent offense if at least seven years have passed since the applicant completed sentencing, “including all imprisonment, mandatory supervision, probation, and parole” and the individual has not

been charged with a subsequent crime. The bill passed 99-39 in the House of Delegates and unanimously in the Senate.

■ **Mississippi:** On April 16, Governor Phil Bryant (R) signed into law [SB 2781](#). Absent other applicable state law, the new law prohibits most licensing authorities from denying a license based solely or in part on a prior conviction unless, after considering certain specific factors, it can establish that the offense is “directly related” to the duties of the occupation. An applicant may at any time petition a licensing authority for a written determination as to whether their criminal record is disqualifying, and they may request a hearing to contest an unfavorable decision. Licensing authorities are prohibited from including vague terminology, such as “moral turpitude,” “any felony,” and “good character,” in their rules and regulations establishing license qualifications. The bill passed with near unanimous support—44-7 in the Senate and 109-1 in the House.

■ **Oklahoma:** On May 14, Governor Kevin Stitt (R) approved [HB 1373](#), a 150-page law that removes vague terminology such as “good moral character” and “moral turpitude” from the requirements for most occupational licenses. In their place, the law inserts new standards: for the most part, disqualifying offenses must “substantially relate” to the duties and responsibilities of the occupation and “pose a reasonable threat to public safety.” The law additionally requires all licensing entities to specifically list disqualifying offenses for each occupation and entitles an applicant to petition for an initial written determination as to whether their conviction would disqualify them from their chosen occupation. The bill passed almost unanimously, with only two votes against in the House and none in the Senate. The law is effective November 1, 2019.

■ **Nevada:** On June 7, Governor Steve Sisolak (D) approved [AB 319](#), which requires most state and county licensing authorities to implement a petition process by which an applicant can receive a determination of whether the applicant's conviction history will disqualify them from obtaining a license. The licensing authority is required to inform (a written determination is not specified) the applicant of its determination within 90 days, however, the non-binding determination may be rescinded at any time. Each regulatory body is required to regularly report the number of petitions received and determinations of disqualification issued. The bill passed unanimously in both chambers of the legislature.

■ **North Carolina:** On July 8, following unanimous passage in the House and Senate, Governor Roy Cooper (D) signed [SL 2019-91](#) into law. The comprehensive law prohibits most licensing authorities in the state from denying any license based on a conviction unless the conviction is either found to be “directly related” to the duties and responsibilities of the occupation or “violent or sexual in nature.” Furthermore, boards “shall not automatically deny licensure” based on criminal history, including any “crime of moral turpitude,” and instead must consider several mitigating factors. The law also imposes additional procedural requirements on boards, including providing written notice of specific record-related issues to any applicant who may be denied, giving the applicant 30 days to respond with additional information, and thereafter issuing detailed written findings explaining the denial. Additionally, an applicant may at any time petition a board for a binding predetermination that their conviction history will not disqualify them.

■ **Texas:** On June 10, Governor Greg Abbott (R) signed [HB 1342](#) after it unanimously passed the House and Senate. The sweeping reform eliminates as a ground for license disqualification any conviction that does not “directly relate” to the duties and responsibilities of the licensed occupation. The law clarifies that, when assessing what “directly relates” to an occupation, each licensing authority must examine the correlation between the elements of the conviction and the specific duties and responsibilities of the profession. The law expands the list of mitigating factors a licensing authority must consider, adding the applicant's compliance with any conditions of supervised release. The law also instructs a licensing authority to send the applicant a written explanation of an intended denial and allow the applicant at least 30 days to respond before issuing a final, written

notice of disqualification. The law additionally instructs the state auditor to work with licensing authorities to publish a “best practices” guide online for applicants with records.

■ **Utah:** On March 25, Governor Gary Herbert (R) signed **HB 90**, a limited law that permits an applicant to apply to the Division of Occupational and Professional Licensing for written determination of whether the applicant's conviction history makes them ineligible for their desired license. The Division of Occupational and Professional Licensing "shall provide a written determination" within 30 days of receiving an application for determination. The law passed unanimously in the House and near unanimously in the Senate, 21-1. Reforms of this type do nothing to reduce barriers to licensure facing people with records, merely reducing surprise denials. Without limiting the broad discretion to deny applicants for any reason, licensing boards will continue to err on the side of denying applicants with records whose licensure poses no risk to public safety.

## **NELP Resources**

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For more background on this issue, including a list of state licensing reforms enacted between 2016 and 2018, check out NELP's toolkit, "[Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions](#)" (November 2018) and report "[Unlicensed & Untapped: Removing Barriers To State Occupational Licenses For People With Records](#)" (April 2016).

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