

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 16

Introduced by Briese, 41.

Read first time January 05, 2023

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to occupational licenses; to amend sections
2 81-2103 and 81-2120, Reissue Revised Statutes of Nebraska, and
3 sections 84-933, 84-934, 84-940, and 84-947, Revised Statutes
4 Cumulative Supplement, 2022; to change requirements for membership
5 of the State Electrical Board; to provide powers and duties for the
6 State Electrical Board; to define a term; to provide for federal
7 preemption; to provide for applicability of provisions; to require
8 occupational boards to make a determination regarding an applicant
9 with a criminal conviction; to require occupational boards to issue
10 an occupational license or government certification based on
11 occupational licensure, government certification, private
12 certification, or work experience in another state or in the United
13 States Military; to provide for jurisprudential examinations and
14 appeals from denial of a license; to change provisions relating to
15 preliminary applications by individuals with a criminal conviction;
16 to harmonize provisions; and to repeal the original sections.
17 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2103, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-2103 (1) There is hereby established an independent agency to be
4 known as the State Electrical Division which shall be under the
5 administrative and operative control of the executive director of such
6 division. The division shall include a seven-member State Electrical
7 Board appointed by the Governor with the consent of the Legislature. All
8 members of the board shall be residents of the State of Nebraska. The
9 board shall direct the efforts of the executive director and set the
10 policy of the division. Two ~~One~~ of such members shall be a journeyman
11 electricians, one of which shall be appointed in accordance with
12 subsection (2) of this section electrician, one shall be an electrical
13 contractor or master electrician who shall be appointed in accordance
14 with subsection (3) of this section, one shall be a certified electrical
15 inspector, one shall be a licensed professional electrical engineer, one
16 shall be a representative of a public power district or rural electric
17 cooperative in the state, one shall be a representative of the municipal
18 electric systems in the state, and, except as provided in subsection (2)
19 of this section, one shall be a member of any of such groups. The members
20 of the board shall be appointed for staggered terms of five years. Any
21 vacancy occurring in the membership of the board shall be filled by the
22 Governor for the unexpired term. Each member of the board shall serve
23 until a his or her successor is appointed and qualified. The executive
24 director shall be the executive secretary of the board and shall be
25 responsible for all books, records, and transcripts of proceedings of the
26 board.

27 (2) At the expiration of the term of the member serving as the
28 member of any such groups on the effective date of this act, such member
29 shall be one of the two journeyman electrician members, shall be
30 affiliated with a nonprofit labor organization for electrical workers
31 holding a certificate of exemption under 501(c)(5) of the Internal

1 Revenue Code, and shall be selected from a list of journeyman
2 electricians recommended by such organization.

3 (3) At the expiration of the term of the electrical contractor or
4 master electrician member serving on the effective date of this act, the
5 electrical contractor or master electrician member shall be affiliated
6 with a nonprofit labor organization for electrical workers holding a
7 certificate of exemption under 501(c)(5) of the Internal Revenue Code and
8 shall be selected from a list of electrical contractors or master
9 electricians recommended by such organization.

10 Sec. 2. Section 81-2120, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 81-2120 (1) To the extent that any other state which provides for
13 the licensing of electricians provides for similar action, the board may
14 grant licenses, without examination, of the same grade and class to an
15 electrician who has been licensed by such other state for at least one
16 year, upon payment by the applicant of the required fee, and upon the
17 board being furnished with proof that the qualifications of the applicant
18 are equal to the qualifications of holders of similar licenses in
19 Nebraska.

20 (2)(a) Subject to subdivision (b) of this subsection, the board
21 shall issue a license to an individual upon application if:

22 (i)(A) The applicant holds (I) a credential in another state that
23 has a reciprocal credentialing agreement with the State of Nebraska for
24 such credential as determined by the board, (II) a military occupational
25 specialty in the United States Military as defined in section 5 of this
26 act, or (III) a license with a prerequisite of apprentice registration
27 and successful completion of an apprenticeship training program
28 registered by the United States Department of Labor; and

29 (B) Such credential, military occupational specialty, or license is
30 for an occupation with a similar scope of practice, as determined by the
31 board;

1 (ii) The applicant has held the credential, military occupational
2 specialty, or license for at least one year;

3 (iii) To obtain such credential, military occupational specialty, or
4 license, the applicant was required to pass an examination or meet
5 education, training, or experience standards;

6 (iv) The applicant does not have a disqualifying criminal record as
7 determined by the State Electrical Board;

8 (v) No board in any state or in the United States Military nor any
9 apprenticeship training program has revoked the applicant's credential,
10 military occupational specialty, or license because of negligence or
11 intentional misconduct related to the applicant's work in the occupation;

12 (vi) The applicant did not surrender a credential, military
13 occupational specialty, or license because of negligence or intentional
14 misconduct related to the applicant's work in the occupation in any
15 state, in the United States Military, or in an apprenticeship training
16 program;

17 (vii) The applicant does not have a complaint, allegation, or
18 investigation pending before a board in any state or in the United States
19 Military or an apprenticeship training program that relates to
20 unprofessional conduct or an alleged crime. If such a complaint,
21 allegation, or investigation is pending, the State Electrical Board shall
22 not issue or deny a license to the applicant until the complaint,
23 allegation, or investigation is resolved or the applicant otherwise meets
24 the criteria for a license to the satisfaction of the board; and

25 (viii) The applicant has paid all applicable fees required for
26 issuance of the license in this state.

27 (b) Prior to issuance of a license under this subsection, the board
28 may require an applicant to pass a jurisprudential examination specific
29 to relevant state statutes and administrative rules and regulations that
30 regulate the occupation if a license in this state requires a person to
31 pass such an examination.

1 (c)(i) Except as otherwise provided in subdivision (ii) of this
2 subdivision, the board shall approve or deny a license under this
3 subsection in writing within sixty days after receiving a complete
4 application under this subsection or within five business days after the
5 next meeting of the board that is held after receiving a complete
6 application under this subsection, whichever is sooner.

7 (ii) The board may delay the approval or denial of a license under
8 this subsection past the deadline prescribed in subdivision (i) of this
9 subdivision if the approval or denial is delayed because of the
10 requirement to complete a criminal background check or a disciplinary
11 history review, but the board shall approve or deny such license in
12 writing within five business days after receiving the results of the
13 background check and the disciplinary history review or within five
14 business days after the next meeting of the board after receiving such
15 results, whichever is sooner. The board shall document in writing each
16 case in which approval or denial of an application is not provided within
17 sixty days after receipt of the complete application.

18 (d) The board shall recognize and provide credit toward requirements
19 for a license for completion of any portion of an apprenticeship training
20 program registered by the United States Department of Labor for a license
21 that has a prerequisite of apprentice registration.

22 (e) An applicant may appeal the denial of a license under this
23 subsection. The appeal shall be in accordance with the Administrative
24 Procedure Act.

25 (f) A license issued pursuant to this subsection is valid only in
26 this state and does not make the individual eligible to work in another
27 state or in the United States Military under an interstate compact or
28 reciprocity agreement unless otherwise provided by law.

29 Sec. 3. Section 84-933, Revised Statutes Cumulative Supplement,
30 2022, is amended to read:

31 84-933 Sections 84-933 to 84-948 and sections 5 to 9 of this act

1 shall be known and may be cited as the Occupational Board Reform Act.

2 Sec. 4. Section 84-934, Revised Statutes Cumulative Supplement,
3 2022, is amended to read:

4 84-934 For purposes of the Occupational Board Reform Act, the
5 definitions in sections 84-935 to 84-944 and section 5 of this act apply.

6 Sec. 5. United States Military means any active duty or reserve
7 duty component of the armed forces of the United States, any state of the
8 United States, or any territory of the United States.

9 Sec. 6. To the extent that an occupational board or lawful
10 occupation is also governed by federal law, federal law shall take
11 precedence over the Occupational Board Reform Act. The act shall not be
12 construed to preempt federal law governing lawful occupations in this
13 state.

14 Sec. 7. Section 84-947 and sections 8 and 9 of this act do not
15 apply to an occupation regulated by the Supreme Court, the Department of
16 Banking and Finance, the Board of Engineers and Architects, the State
17 Electrical Board, the State Real Estate Commission, or the Nebraska
18 Commission on Law Enforcement and Criminal Justice or a credential issued
19 for a certified public accountant pursuant to the Public Accountancy Act,
20 a viatical settlement broker pursuant to the Viatical Settlements Act, an
21 insurance consultant pursuant to sections 44-2606 to 44-2635, an
22 insurance producer pursuant to the Insurance Producers Licensing Act, a
23 managing general agent pursuant to the Managing General Agents Act, a
24 utilization review agent pursuant to the Utilization Review Act, a
25 surplus lines producer pursuant to the Surplus Lines Insurance Act, a
26 reinsurance intermediary-broker or reinsurance intermediary-manager
27 pursuant to the Reinsurance Intermediary Act, or a public adjuster
28 pursuant to the Public Adjusters Licensing Act.

29 Sec. 8. (1) An individual who has a criminal conviction may submit
30 to the appropriate occupational board an application for an occupational
31 license, government certification, or state recognition of the

1 individual's personal qualifications and may include with the application
2 additional information about the individual's current circumstances,
3 mitigating factors, and other evidence of rehabilitation, including:

4 (a) The age of the individual when the individual committed the
5 offense;

6 (b) The time elapsed since the offense;

7 (c) The circumstances and nature of the offense;

8 (d) The completion of the criminal sentence;

9 (e) The completion of, or active participation in, rehabilitative
10 drug or alcohol treatment;

11 (f) Testimonials and recommendations, which may include a progress
12 report from the individual's probation or parole officer;

13 (g) Other evidence of rehabilitation;

14 (h) Education and training;

15 (i) Employment history;

16 (j) Employment aspirations;

17 (k) Family responsibilities at the time of application;

18 (l) Whether the individual is required to be bonded in the
19 occupation; and

20 (m) Other information the individual submits to the appropriate
21 occupational board.

22 (2) Upon receipt of the application pursuant to subsection (1) of
23 this section and any applicable fees, the appropriate occupational board
24 shall make a determination of whether the individual's criminal
25 conviction disqualifies the individual from obtaining such occupational
26 license, government certification, or state recognition of the
27 individual's personal qualifications from that occupational board. In
28 making such determination, an individual's criminal history disqualifies
29 the individual from obtaining an occupational license, government
30 certification, or state recognition of the individual's personal
31 qualifications only if:

1 (a) The individual's conviction directly and specifically relates to
2 the duties and responsibilities of the occupation;

3 (b) The individual obtaining such license, certification, or state
4 recognition would pose a direct and substantial risk to public safety
5 because the individual has not been rehabilitated, as evidenced by
6 information described in subsection (1) of this section, to safely
7 perform the duties and responsibilities of the occupation; and

8 (c) Beginning January 1, 2025, the individual has a felony
9 conviction expressly listed as a disqualifying offense in the statutes
10 governing the occupation.

11 (3) An individual shall not be required to disclose nor shall
12 consideration be given in a determination under this section to the
13 following:

14 (a) A deferred adjudication, participation in a diversion program,
15 or an arrest not followed by a conviction;

16 (b) A conviction of an offense for which no sentence of
17 incarceration is statutorily authorized;

18 (c) A conviction that has been sealed, annulled, dismissed,
19 expunged, or pardoned;

20 (d) A juvenile adjudication;

21 (e) A nonviolent misdemeanor;

22 (f) A conviction older than three years for which the individual was
23 not incarcerated; or

24 (g) A conviction for which the individual's incarceration ended more
25 than three years before the date of the application except for a
26 conviction of a felony related to:

27 (i) Murder as provided in sections 28-303, 28-304, and 28-306;

28 (ii) Manslaughter as provided in section 28-305;

29 (iii) Assault in the first or second degree as provided in sections
30 28-308 and 28-309;

31 (iv) Kidnapping as provided in section 28-313;

1 (v) A sexual act subject to criminal penalties as provided in
2 sections 28-317 to 28-322.05;

3 (vi) Robbery as provided in section 28-324;

4 (vii) Arson as provided in sections 28-502, 28-503, and 28-504;

5 (viii) Fraud subject to criminal penalties as provided in sections
6 28-505, 28-631, 28-638, 28-639, 28-640, and 28-935;

7 (ix) Theft as provided in section 28-511; or

8 (x) Child abuse as provided in section 28-707.

9 (4) The individual may appeal the determination of the occupational
10 board. The appeal shall be in accordance with the Administrative
11 Procedure Act.

12 Sec. 9. (1) Subject to subsection (2) of this section and except as
13 otherwise provided in section 7 of this act or an occupational licensing
14 compact:

15 (a) An occupational board shall issue an occupational license or
16 government certification to an individual upon application if:

17 (i) The applicant holds a credential in another state or a military
18 occupational specialty in the United States Military for an occupation
19 with a similar scope of practice, as determined by the occupational
20 board;

21 (ii) The applicant has held the credential or military occupational
22 specialty for at least one year;

23 (iii) To obtain such credential or specialty, the applicant was
24 required to pass an examination or meet education, training, or
25 experience standards;

26 (iv) The applicant does not have a disqualifying criminal record as
27 determined by the occupational board;

28 (v) No board in any state or in the United States Military has
29 revoked the applicant's credential or military occupational specialty
30 because of negligence or intentional misconduct related to the
31 applicant's work in the occupation;

1 (vi) The applicant did not surrender a credential or military
2 occupational specialty because of negligence or intentional misconduct
3 related to the applicant's work in the occupation in any state or in the
4 United States Military;

5 (vii) The applicant does not have a complaint, allegation, or
6 investigation pending before a board in any state or in the United States
7 Military that relates to unprofessional conduct or an alleged crime. If
8 such a complaint, allegation, or investigation is pending, the
9 occupational board shall not issue or deny an occupational license or
10 government certification to the applicant until the complaint,
11 allegation, or investigation is resolved or the applicant otherwise meets
12 the criteria for an occupational license or government certification to
13 the satisfaction of the occupational board; and

14 (viii) The applicant has paid all applicable fees required for
15 issuance of the occupational license or government certification in this
16 state;

17 (b) If an applicant has work experience for an occupation in a state
18 or in the United States Military that does not use a credential similar
19 to an occupational license, a government certification, or a military
20 occupational specialty to regulate an occupation with a similar scope of
21 practice to an occupation for which this state requires an occupational
22 license or government certification to regulate such occupation, as
23 determined by the occupational board, the occupational board shall issue
24 an occupational license or government certification to an individual upon
25 application based on work experience in another state or in the United
26 States Military if:

27 (i) The applicant worked for at least three years in the occupation;

28 (ii) No board in any state or in the United States Military has
29 revoked the applicant's credential or military occupational specialty
30 because of negligence or intentional misconduct related to the
31 applicant's work in the occupation;

1 (iii) The applicant did not surrender a credential or military
2 occupational specialty because of negligence or intentional misconduct
3 related to the applicant's work in the occupation in any state or in the
4 United States Military;

5 (iv) The applicant does not have a complaint, allegation, or
6 investigation pending before a board in any state or in the United States
7 Military that relates to unprofessional conduct or an alleged crime. If
8 such a complaint, allegation, or investigation is pending, the
9 occupational board shall not issue or deny an occupational license or
10 government certification to the applicant until the complaint,
11 allegation, or investigation is resolved or the applicant otherwise meets
12 the criteria for an occupational license or government certification to
13 the satisfaction of the occupational board; and

14 (v) The applicant has paid all applicable fees required for issuance
15 of the occupational license or government certification in this state;
16 and

17 (c) If an applicant holds a private certification and has work
18 experience for an occupation in a state or in the United States Military
19 that does not use an occupational license, a government certification, or
20 a military occupational specialty to regulate an occupation with a
21 similar scope of practice to an occupation for which this state requires
22 an occupational license or government certification to regulate such
23 occupation, as determined by the occupational board, the occupational
24 board shall issue an occupational license or government certification to
25 an individual upon application based on such certification and work
26 experience in another state or in the United States Military if:

27 (i) The applicant worked for at least two years in the occupation;

28 (ii) The applicant holds a private certification in the occupation;

29 (iii) The provider of such certification holds the applicant in good
30 standing;

31 (iv) No board in any state or in the United States Military nor any

1 other entity has revoked the applicant's credential, military
2 occupational specialty, or private certification because of negligence or
3 intentional misconduct related to the applicant's work in the occupation;

4 (v) The applicant did not surrender a credential, military
5 occupational specialty, or private certification because of negligence or
6 intentional misconduct related to the applicant's work in the occupation
7 in any state or in the United States Military;

8 (vi) The applicant does not have a complaint, allegation, or
9 investigation pending before a board in any state or in the United States
10 Military or another entity that relates to unprofessional conduct or an
11 alleged crime. If such a complaint, allegation, or investigation is
12 pending, the occupational board shall not issue or deny an occupational
13 license or government certification to the applicant until the complaint,
14 allegation, or investigation is resolved or the applicant otherwise meets
15 the criteria for an occupational license or government certification to
16 the satisfaction of the occupational board; and

17 (vii) The applicant has paid all applicable fees required for
18 issuance of the occupational license or government certification in this
19 state.

20 (2) Prior to issuance of an occupational license or government
21 certification under subsection (1) of this section, an occupational board
22 may require an applicant to pass a jurisprudential examination specific
23 to relevant state statutes and administrative rules and regulations that
24 regulate the occupation if an occupational license or government
25 certification in this state requires a person to pass such an
26 examination.

27 (3)(a) Except as otherwise provided in subdivision (b) of this
28 subsection, an occupational board shall approve or deny an occupational
29 license or government certification in writing within sixty days after
30 receiving a complete application under subsection (1) of this section or
31 within five business days after the next meeting of the occupational

1 board that is held after receiving a complete application under
2 subsection (1) of this section, whichever is sooner.

3 (b) An occupational board may delay the approval or denial of an
4 occupational license or government certification past the deadline
5 prescribed in subdivision (a) of this subsection if the approval or
6 denial is delayed because of the requirement to complete a criminal
7 background check or a disciplinary history review, but such board shall
8 approve or deny an occupational license or government certification in
9 writing within five business days after receiving the results of the
10 background check and the disciplinary history review or within five
11 business days after the next meeting of the occupational board after
12 receiving such results, whichever is sooner. Each occupational board
13 shall document in writing each case in which approval or denial of an
14 application is not provided within sixty days after receipt of the
15 complete application.

16 (4) An applicant may appeal the denial of an occupational license or
17 government certification under this section. The appeal shall be in
18 accordance with the Administrative Procedure Act.

19 (5)(a) An occupational license or government certification issued
20 pursuant to this section is valid only in this state and does not make
21 the individual eligible to work in another state or in the United States
22 Military under an interstate compact or reciprocity agreement unless
23 otherwise provided by law.

24 (b) Nothing in this section shall be construed to prevent this state
25 from entering into a licensing compact or reciprocity agreement with
26 another state, foreign province, or foreign country.

27 (c) Nothing in this section shall be construed to prevent this state
28 from recognizing an occupational credential issued by a private
29 certification organization, foreign province, foreign country,
30 international organization, or other entity.

31 (d) Nothing in this section shall be construed to require a private

1 certification organization to grant or deny private certification to any
2 individual.

3 (e) This section provides a method of obtaining an occupational
4 license or government certification in addition to and not in conflict
5 with other methods under other provisions of law.

6 (f) Nothing in this section shall be construed to require an
7 occupational board to issue an occupational credential in a manner that
8 violates federal law.

9 Sec. 10. Section 84-940, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

11 84-940 (1) Occupational regulation means a statute, rule,
12 regulation, practice, policy, or other state law requiring an individual
13 to possess certain personal qualifications or to comply with registration
14 requirements to use an occupational title or work in a lawful occupation.

15 (2) Occupational regulation includes any government certification,
16 registration, and occupational license except as otherwise provided in
17 the Occupational Board Reform Act.

18 (3) Occupational regulation does not include (a) business licensure,
19 facility licensure, building permit requirements, or zoning and land-use
20 regulation except to the extent that the same state laws that require a
21 business license, a facility license, a building permit, or zoning and
22 land-use regulation also regulate an individual's personal qualifications
23 to perform a lawful occupation, ~~or~~ (b) an occupational license
24 administered by the Supreme Court, or (c) an occupational credential
25 regulated by the Nebraska Commission on Law Enforcement and Criminal
26 Justice.

27 Sec. 11. Section 84-947, Revised Statutes Cumulative Supplement,
28 2022, is amended to read:

29 84-947 (1) The fundamental right of an individual to pursue an
30 occupation includes the right of an individual with a criminal history to
31 obtain an occupational license, government certification, or state

1 recognition of the individual's personal qualifications.

2 (2)(a) An individual who has a criminal conviction may submit to the
3 appropriate occupational board a preliminary application for an
4 occupational license, government certification, or state recognition of
5 the individual's personal qualifications for a determination as to
6 whether the individual's criminal conviction would disqualify the
7 individual from obtaining the occupational license, government
8 certification, or state recognition of the individual's personal
9 qualifications from that occupational board. The preliminary application
10 may be submitted at any time, including prior to obtaining required
11 education or paying any fee, other than the fee for the preliminary
12 application under subsection (9) ~~(7)~~ of this section.

13 (b) The individual may include with the preliminary application
14 additional information about the individual's current circumstances,
15 mitigating factors, and other evidence of rehabilitation, including:
16 ~~including the time since the offense, completion of the criminal~~
17 ~~sentence, other evidence of rehabilitation, testimonials, employment~~
18 ~~history, and employment aspirations.~~

19 (i) The age of the individual when the individual committed the
20 offense;

21 (ii) The time elapsed since the offense;

22 (iii) The circumstances and nature of the offense;

23 (iv) The completion of the criminal sentence;

24 (v) The completion of, or active participation in, rehabilitative
25 drug or alcohol treatment;

26 (vi) Testimonials and recommendations, which may include a progress
27 report from the individual's probation or parole officer;

28 (vii) Other evidence of rehabilitation;

29 (viii) Education and training;

30 (ix) Employment history;

31 (x) Employment aspirations;

1 (xi) Family responsibilities at the time of the application;
2 (xii) Whether the individual is required to be bonded in the
3 occupation; and

4 (xiii) Other information the individual submits to the board.

5 (3) Upon receipt of a preliminary application under subsection (2)
6 of this section and a fee if required under subsection (9) (7) of this
7 section, the appropriate occupational board shall make a determination of
8 whether the individual's criminal conviction would disqualify the
9 individual from obtaining an occupational license, government
10 certification, or state recognition of the individual's personal
11 qualifications from that occupational board in accordance with subsection
12 (4) of this section. In making such determination, an individual's
13 criminal history disqualifies the individual from obtaining an
14 occupational license, government certification, or state recognition of
15 the individual's personal qualifications only if: -

16 (a) The individual's conviction directly and specifically relates to
17 the duties and responsibilities of the occupation;

18 (b) The individual obtaining such license, certification, or state
19 recognition would pose a direct and substantial risk to public safety
20 because the individual has not been rehabilitated, as evidenced by
21 information described in subdivision (2)(b) of this section, to safely
22 perform the duties and responsibilities of the occupation; and

23 (c) Beginning January 1, 2025, the individual has a felony
24 conviction expressly listed as a disqualifying offense in the statutes
25 governing the occupation.

26 (4) In determining whether an individual's criminal history is
27 disqualifying under subsection (3) of this section, the occupational
28 board shall only make an adverse determination after:

29 (a) The executive director or employee designee of the occupational
30 board issues a preliminary adverse determination after completing the
31 following actions:

1 (i) Providing an opportunity for an informal meeting with the
2 individual, which shall be held in-person, by remote video, or by
3 teleconference within sixty days after receiving an application for
4 consideration. The individual shall be allowed to include character
5 witnesses at such informal meeting. The executive director or employee
6 designee shall not make an adverse determination based on an individual's
7 decision not to attend an informal meeting or not to include character
8 witnesses; and

9 (ii) Issuing and submitting a written preliminary determination to
10 the appropriate occupational board for consideration and ratification
11 within sixty days after receiving the preliminary application for
12 consideration or after the informal meeting, whichever is later. A
13 preliminary adverse decision shall not become final without consideration
14 and ratification by the appropriate occupational board; and

15 (b) The occupational board ratifies the preliminary adverse
16 determination and issues a final adverse determination in writing within
17 ninety days after the issuance of the preliminary adverse determination.

18 (5) (4) The determination of the occupational board shall issue its
19 determination in writing within ninety days after receiving a preliminary
20 application under subsection (2) of this section. The determination shall
21 include findings of fact and conclusions of law, including clear and
22 convincing evidence for any adverse determination made by the
23 occupational board. If the occupational board determines that the
24 individual's criminal conviction would disqualify the individual, the
25 occupational board may advise the individual of any action the individual
26 may take to remedy the disqualification. If the occupational board finds
27 that the individual has been convicted of a subsequent criminal
28 conviction, the occupational board may rescind a determination upon
29 finding that the subsequent criminal conviction would be disqualifying
30 under subsection (3) of this section.

31 (6) An individual shall not be required to disclose nor shall

1 consideration be given in a determination under this section to the
2 following:

3 (a) A deferred adjudication, participation in a diversion program,
4 or an arrest not followed by a conviction;

5 (b) A conviction of an offense for which no sentence of
6 incarceration is statutorily authorized;

7 (c) A conviction that has been sealed, annulled, dismissed,
8 expunged, or pardoned;

9 (d) A juvenile adjudication;

10 (e) A nonviolent misdemeanor;

11 (f) A conviction older than three years for which the individual was
12 not incarcerated; or

13 (g) A conviction for which the individual's incarceration ended more
14 than three years before the date of the application except for a
15 conviction of a felony related to:

16 (i) Murder as provided in sections 28-303, 28-304, and 28-306;

17 (ii) Manslaughter as provided in section 28-305;

18 (iii) Assault in the first or second degree as provided in sections
19 28-308 and 28-309;

20 (iv) Kidnapping as provided in section 28-313;

21 (v) A sexual act subject to criminal penalties as provided in
22 sections 28-317 to 28-322.05;

23 (vi) Robbery as provided in section 28-324;

24 (vii) Arson as provided in sections 28-502, 28-503, and 28-504;

25 (viii) Fraud subject to criminal penalties as provided in sections
26 28-505, 28-631, 28-638, 28-639, 28-640, and 28-935;

27 (ix) Theft as provided in section 28-511; or

28 (x) Child abuse as provided in section 28-707.

29 (7) ~~(5)~~ The individual may appeal the determination of the
30 occupational board. The appeal shall be in accordance with the
31 Administrative Procedure Act.

1 (8) ~~(6)~~ An individual shall not file another preliminary application
2 under this section with the same occupational board within two years
3 after the final decision on the previous preliminary application, except
4 that if the individual has taken action to remedy the disqualification as
5 advised by the occupational board, the individual may file another
6 preliminary application under this section with the same occupational
7 board at any time after six months following ~~after~~ the final decision on
8 the previous preliminary application.

9 (9) ~~(7)~~ An occupational board may charge a fee not to exceed one
10 hundred dollars for each preliminary application filed pursuant to this
11 section. The fee is intended to offset the administrative costs incurred
12 under this section. If an individual's income at the time of the
13 preliminary application is at or below three hundred percent of the
14 federal poverty level, such individual may submit with the preliminary
15 application a request for a waiver of the fee along with supporting
16 documentation to show such individual's income. If the occupational board
17 determines that the individual's income is at or below three hundred
18 percent of the federal poverty level, the occupational board shall waive
19 the fee.

20 Sec. 12. Original sections 81-2103 and 81-2120, Reissue Revised
21 Statutes of Nebraska, and sections 84-933, 84-934, 84-940, and 84-947,
22 Revised Statutes Cumulative Supplement, 2022, are repealed.