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MEMORANDUM

To: JCARR Subcommittee on Occupational Licensure
From: Office of Revisor of Statutes
Date: December 16, 2020
Subject: Summary of K.S.A. 74-120

K.S.A. 74-120 prohibits agencies that regulate licensure, certification, or registration of individuals (licensing agencies) from having blanket disqualification of individuals with any civil or criminal record. In 2018, this statute was amended substantially by S. Sub. for S. Sub for HB 2386, which started as SB 421 in the Senate Committee on Federal and State Affairs.

Subsection (b)(1) requires licensing agencies to list the specific civil and criminal records that would disqualify an applicant. Licensing agencies may only list such records that are “directly related to protecting the general welfare and the duties and responsibilities” of such agencies and arrests not resulting in conviction are prohibited from disqualifying an applicant.

In paragraph (2), an individual who has a disqualifying civil or criminal record, other than a felony or class A misdemeanor, shall not be disqualified for such record if more than five years have passed since the person satisfied their sentence without any further convictions.

Paragraph (3) authorizes an agency to adopt regulations related to advisory opinions. This process allows an individual with a civil or criminal record to ask the licensing agency for an “informal, written advisory opinion” whether the person’s record would disqualify them from licensure.

Subsection (c) lists the licensing agencies that are excluded from the provisions of this statute, including the agencies that regulate law enforcement, medical professionals, the attorney general’s office, the department of insurance, municipalities, and “any profession that has an educational requirement for licensure that requires a degree beyond a bachelor’s degree.”

Subsection (b)(4) requires all licensing bodies, except those listed in subsection (c) to adopt rules and regulations to implement this section in their own agencies. This includes a requirement that these licensing bodies amend their current requirements related to disqualifying records and create a process to request an advisory opinion in rules and regulations.

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Since passage of the amendments to this statute in 2018, many agencies have adopted rules and regulations to comply with its requirements. As examples of the advisory opinion language allowed in paragraph (3), I am attaching to this document regulations adopted by the Board of Cosmetology on December 10, 2018 (K.A.R. 69-1-10) and the Board of Technical Professions on May 14, 2019 (K.A.R. 66-7-4).

Agency 69

Kansas Board of Cosmetology

Article 1.—Licensing and Qualifications Of Cosmetologists

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69-1-10. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Conviction of any felony may disqualify an applicant from receiving a license.

(b) Civil records that may disqualify an applicant from receiving a license shall be any records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of any practice act under the jurisdiction of the board or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

- (1) The details of the individual's civil or criminal record, including a copy of court records or the settlement agreement;
- (2) an explanation of the circumstances that resulted in the civil or criminal record; and
- (3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and 74-2702a; implementing K.S.A. 65-1908, 74-120, and 74-5806; effective Feb. 15, 2019.)

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Agency 66

State Board of Technical Professions

Article 7.—Applications

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66-7-4. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Conviction of any felony may disqualify an applicant from receiving a license.

(b) Civil records that may disqualify an applicant from receiving a license shall be the records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the technical professions act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of the court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and K.S.A. 74-7013; implementing K.S.A. 74-120 and K.S.A. 74-7026; effective Aug. 16, 2019.)

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