

OVERVIEW OF OCCUPATIONAL LICENSING PRE-APPLICATION ELIGIBILITY DETERMINATION LAWS

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A growing number of states have created statutory mechanisms that allow an individual with a criminal record to petition a licensing body for a pre-application determination on whether the individual's specific criminal history will be disqualifying. These mechanisms are designed to ensure that would-be licensees are able to invest the time and resources necessary to pursue licensure without fear that they may ultimately be rejected solely because of their criminal history.

These mechanisms generally allow petitions to be filed at any time, including prior to meeting applicable education, training, and/or experiential requirements. A petitioner whose conviction is deemed disqualifying may be required to wait a number of years before filing a new petition. Preliminary determinations are not necessarily binding and may be reversed under certain circumstances like conviction for a new offense.

27 states have enacted such authority in recent years: AR, AZ, CT, DE, IA, ID, IN, KS, LA, MO, MN, MS, NC, NE, NH, NV, OH, OK, PA, TN, TX, UT, VT, WA, WI, WV & WY

Example state models:

RSA 332-G:14 (New Hampshire)

- I. The right of an individual to pursue an occupation is a fundamental right.*
- II. An individual with a criminal record may petition a board or commission at any time, including before obtaining any required education or training, for a determination of whether the individual's criminal record will disqualify the individual from obtaining state recognition.*
- III. The individual shall include in the petition the individual's criminal record or authorize the board or commission to obtain the individual's criminal record.*
- IV. The individual may include additional information about the individual's current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.*
- V. The board or commission is authorized to determine whether the individual's criminal record disqualifies the individual from obtaining state recognition.*

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VII. The board or commission shall issue its determination within 90 days after the board or commission receives the petition. The determination shall be in writing and include the criminal record, findings of fact, and conclusions of law.

VIII. If the board or commission determines the state's interest is superior to the individual's right, the board or commission may advise the individual of actions the individual may take to remedy the disqualification. The individual may submit a revised petition reflecting the completion of the remedies at any time after 90 days following the board's or commission's judgment.

IX. The individual may appeal the determination in paragraph VII as provided for in RSA 541-A.

X. The individual may submit a new petition to the board or commission at any time after 2 years following a final judgment on the initial petition.

XI. The board or commission may rescind its determination at any time if the individual is convicted of an additional offense that the board or commission determines meets the elements in paragraph VI.

XII. The board or commission may charge a fee to recoup its costs not to exceed \$100 for each petition.

ORC Ann. 9.78 (Ohio)

(B) An individual who has been convicted of any criminal offense may request, at any time, that a licensing authority determine whether the individual's criminal conviction disqualifies the individual from obtaining a license issued or conferred by the licensing authority. An individual making such a request shall include details of the individual's criminal conviction and any payment required by the licensing authority. A licensing authority may charge a fee of not more than twenty-five dollars for each request made under this section, to reimburse the costs it incurs in making the determination.

Not later than thirty days after receiving a request under this section, the licensing authority shall inform the individual whether, based on the criminal record information submitted, the individual is disqualified from receiving or holding the license about which the individual inquired. A licensing authority is not bound by a determination made under this section, if, on further investigation, the licensing authority determines that the individual's criminal convictions differ from the information presented in the determination request.

Iowa Code § 272C.15

5. An applicant may petition the relevant licensing board, agency, or department, in a form prescribed by the board, agency, or department, for a determination as to whether the applicant's criminal record will prevent the applicant from receiving a license. The board, agency, or department shall issue such a determination at the next regularly scheduled meeting of the board, agency, or department or within thirty days of receiving the petition, whichever is later. The board, agency, or department shall hold a closed session while determining whether an applicant's criminal record will prevent the applicant from receiving a license and while determining whether to deny an applicant's application on the basis of an applicant's criminal conviction. A board, agency, or department may charge a fee to recoup the costs of such a determination, provided that such fee shall not exceed twenty-five dollars.

N.C. Gen. Stat. § 93B-8.1

(b6) Notwithstanding any other provisions in the law, an individual with a criminal history may petition a board at any time, including before an individual starts or completes any mandatory education or training requirements, for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a license. This petition shall include a criminal history record report obtained by the individual from a reporting service designated by the board, the cost of which shall be borne by the applicant. Criminal history records relating to a predetermination petition shall not be considered public records under Chapter 132 of the General Statutes. A board may predetermine that the petitioner's criminal history is likely grounds for denial of a license only after the board has applied the requirements of subsection (b) of this section. Each board shall delegate authority for such a predetermination to its Executive Director or their equivalent, or a committee of the board, so that the predeterminations can be made in a timely manner. No board member having served on a predetermination committee for an individual shall be required to recuse in any later determinations or hearings involving the same applicant. The board shall inform the individual of the board's determination within 45 days of receiving the petition from the individual. The board may charge a fee to recoup its costs not to exceed forty-five dollars (\$45.00) for each petition. If the board determines an applicant would likely be denied licensure based on their criminal history, the board shall notify the individual in writing of the following:

(1) The grounds and reasons for the predetermination.

(2) That the petitioner has the right to complete any requirements for licensure and apply to the board and have their application considered by the board under its application process.

(3) That further evidence of rehabilitation will be considered upon application.

(b7) A predetermination made under this section that a petitioner's criminal history would likely prevent them from licensure is not a final agency decision and shall not entitle the individual to any right to judicial review under Article 4 of Chapter 150B of the General Statutes.

(b8) A predetermination made under subsection (b6) of this section that a petitioner is eligible for a license shall be binding if the petitioner applies for licensure and fulfills all other requirements for the occupational license and the applicant's submitted criminal history was correct and remains unchanged at the time of application for a license.

Citations to all state authorities (approximate – specific provisions may appear in adjacent code sections)	
Arizona	Ariz. Rev. Stat. § 41-1093.04
Arkansas	Ark. Code Ann. § 17-3-102; § 17-3-103.
Connecticut	Conn. Gen. Stat. § 20-195o
Delaware	29 Del. Code § 8735
Idaho	Idaho Code § 67–9411
Indiana	Ind. Code § 25-1-1.1-6
Iowa	Iowa Code § 272C.15; HF2627 (2020);
Kansas	K.S.A. § 74-120
Louisiana	La. R.S. § 37:33
Minnesota	Minn. Stat. § 214.035
Mississippi	Miss. Code Ann. § 73-77-7
Missouri	Mo. Rev. Stat. § 324.012
Nebraska	Nebraska Revised Statute 84-947
New Hampshire	N.H. Rev. Stat. Ann. § 332-G; ST § 332-G:13
Nevada	N. R. S. 622.08
North Carolina	N.C. Gen. Stat. § 93B-8.1
Ohio	ORC Ann. 9.78
Oklahoma	Okla. Stat. Ann. tit. 59, § 4000.1
Pennsylvania	63 Pa.C.S. § 3113 et seq.
Tennessee	Tenn. Code Ann. § 62-76-104
Texas	Tex. Occupations Code Ann. §§ 53.021 to .023
Utah	Utah Code Ann. § 58-1-501 Utah Code Ann. § 58-1-401 Utah Code Ann. § 58-1-310

Vermont	<u>Vt. Stat. Ann. tit. 3, § 129a</u> <u>3 V.S.A. § 123</u> <u>Vt. Stat. Ann. tit. 13, §§ 8010, 8011</u>
Washington	Wash. Rev. Code § 9.96A.020
West Virginia	W. Va. Code § 30-1-24
Wisconsin	Wis. Stat. § 111.335
Wyoming	Wyo. Stat. § 33-1-304