

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB709

Hearing Date: Thursday February 03, 2022
Committee On: Government, Military and Veterans Affairs
Introducer: McCollister
One Liner: Change requirements relating to preliminary applications under the Occupational Board Reform Act

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 7 Senators Blood, Brewer, Halloran, Hansen, M., Hunt, McCollister, Sanders
Nay:
Absent:
Present Not Voting: 1 Senator Lowe

Oral Testimony:

Proponents:

Senator John McCollister
Alana Alexander
Andrew Ward
Michael O'Hara
Spike Eickholt
Jasmine Harris
Laura Ebke

Representing:

Introducer
Self
Institute for Justice
Self
ACLU of Nebraska
RISE
Platte Institute

Opponents:

Kelly Lammers
Greg Lemon
Don Arp Jr.
Ken Allen

Representing:

Nebraska Department of Banking and Finance
Nebraska Real Estate Commission
Crime Commission
Barber Board

Neutral:

Hobert Rupe

Representing:

Nebraska Liquor Control Commission

Summary of purpose and/or changes:

This bill would amend the Occupational Board Reform Act to provide specific factors that should be considered by occupational boards when reviewing a preliminary application for an occupational license, governmental certification, or other state-issued occupational credential.

Under LB 709, in order to be disqualifying, a felony conviction would have to be directly related to the nature of the occupational field and be something that would make credentialing that applicant a "direct and substantial risk to public safety[.]" Beginning January 1, 2024, the bill would also implement a new standard relating to disqualification relating to a

past felony conviction requiring that a disqualifying felony conviction be expressly listed as disqualifying in the statute.

In order to make an adverse decision on a preliminary application, an executive director or other employee of an occupational board would have to follow a process that would include providing opportunity for an informal meeting with the applicant, and issuing a written preliminary determination within sixty days of application to the board for the board's ratification.

This bill would also forbid occupational boards from requiring disclosure of (1) cases where the applicant received deferred adjudication, diversion, or some final disposition other than a conviction, (2) cases where the conviction was for an offense with no possible jail time authorized by statute, (3) sealed, annulled, dismissed, expunged, or pardoned convictions, (4) juvenile adjudications, (5) nonviolent misdemeanors, (6) a conviction older than three years and for which no sentence of incarceration was imposed, (7) a conviction for which any term of incarceration was completed more than three years prior, except if that conviction is for one of the following types of offenses: sex crimes, fraud, 1st or 2nd degree assault, robbery, child abuse, arson, theft, kidnapping, manslaughter, or murder.

Finally, LB 709 would require that occupational boards waive the preliminary application fee for persons whose income at the time of application is at or below 300 percent of the federal poverty level.

Explanation of amendments:

AM 1936 to LB 709

The committee voted to adopt AM 1936 on a 7-0-1-0 vote

Voting Aye: Senators Blood, Brewer, Halloran, M. Hansen, Hunt, McCollister, Sanders

Voting Nay: None

Not Voting: Senator Lowe

Absent: None

AM 1936 makes substantive changes to LB 709 and incorporates provisions from two other bills, Senator Briese's LB 263 and Senator McCollister's LB 1153.

1. Senator Briese's LB 263 would create a framework for issuance of Nebraska occupational licenses and occupational certifications based on credentials and work experience from other states. As revised by the committee amendment, these provisions would not apply to the State Electrical Board. The amendment also includes specific language accounting for an applicant for a license in Nebraska who is coming from a state that does not use an occupational license, government certification, or a military occupational specialty to regulate their specific occupation. An applicant must have worked in their previous state for two years, and must hold a private certification in the state. The revised version of the bill also provides for deference to federal regulatory requirements. As amended, the provisions of LB 263 would not apply to occupations regulated by the Supreme Court, the State Electrical Board, the Nebraska Commission on Law Enforcement and Criminal Justice, a credential issued pursuant to the Public Accountancy Act, a viatical settlement broker pursuant to the Viatical Settlements Act, an insurance consultant pursuant to sections 44-2606 to 44-2635, an insurance provider pursuant to the Insurance Producers Licensing Act, a managing general agent pursuant to the Managing General Agents Act, a utilization review agent pursuant to the Utilization Review Act, a surplus lines producer pursuant to the Surplus Lines Insurance Act, a reinsurance intermediary-broker or reinsurance intermediary-manager pursuant to the Reinsurance Intermediary Act, or a public adjuster pursuant to the Public Adjusters Licensing Act.

Testifiers on LB 263:

Proponents:

Senator Tom Briese, Legislative District 41

Laura Ebke, Platte Institute

Opponents:

Dexter Schrodt, Nebraska Medical Association

Kent Rogert, American Massage Therapy Association - Nebraska Chapter; American Council of Engineering Companies of Nebraska; American Institute of Architects, Nebraska Chapter; Nebraska Hospital Association; Nebraska Veterinary Medical Association; Nebraska Society of Certified Public Accountants; Nebraska Academy of Nutrition and Dietetics

Craig Thelen, Nebraska State Electrical Division

Jon Nebel, IBEW Local 22

Greg Lemon, Nebraska Real Estate Commission

Connie Burleigh, Nebraska Realtors Association

Neutral:

None

Written Testimony:

Proponents:

None

Opponents:

Matt Schaefer, Nebraska Dental Association

Joseph Kohout, Professional Engineers Commission

Neutral:

None

2. Senator McCollister's LB 1153 as originally introduced would add two members to the State Electrical Board, changing it from seven to nine members. One new member would be a journeyman electrician, and the other would be an electrical contractor or master electrician, each of which would be selected by the governor from a list of affiliated electricians or contractors recommended by a nonprofit labor organization for electrical workers. As revised in the committee amendment, the Board would remain at seven members, with the current at-large position going to a second journeyman electrician, and with the electrical contractor or master electrician spot being filled by someone affiliated with a labor union. The bill would require that one of the two journeyman be affiliated with a labor union. The revised language would also ensure none of these changes will remove any board member and that they will take effect at the expiration of current membership terms.

Testifiers on LB 1153:

Proponents:

Senator John McCollister, Legislative District 20

Jon Nebel, IBEW 22

Chris Callihan, IBEW Local 265

Opponents:

None

Neutral:

None

3. Senator McCollister's LB 709 would be revised by the committee amendment in a number of ways. It clarifies that federal law shall take precedence over the Occupational Board Reform Act. An individual with a criminal conviction applying for an occupational license would be able to submit appropriate information about the individual's current circumstances, mitigating factors, evidence of rehabilitation and other relevant information as outlined. It would require a board list disqualifying felony offenses in statutes governing the occupation, and a board would only be able to deny a license if an individual's offense is in this list of disqualifying offenses, and the individual has not adequately rehabilitated from their offense to perform the occupation. An individual would not be required to disclose and a board could not base a determination under this section on the following: a deferred adjudication, participation in diversion, an arrest not followed by a conviction, a conviction which no sentence of incarceration is authorized, a sealed annulled dismissed expunged or pardoned conviction, a juvenile adjudication, a nonviolent misdemeanor, a conviction older than three years where the individual was not incarcerated, a

conviction where an individual's incarceration ended more than three years before the date of application for a felony related to a sexual act, fraud, assault, robbery, child abuse, arson, theft, kidnapping, manslaughter, or murder. An individual would be able to appeal a determination of the occupational board. The committee amendment changes to LB 709 also outline a process for an individual to have an informal meeting to defend their character and would allow the use of character witnesses. The would also create the opportunity for an individual to have a preliminary licensure application fee waived based upon the individual's income. To obtain such a waiver, the individual would be required to provide documentation supporting their income level. If their income is at or below three hundred percent of the federal poverty level, the board would be required to waive the preliminary application fee.

Tom Brewer, Chairperson