

## PROPOSED RULE AMENDMENT

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*For the purposes of promulgating rules pursuant to Act 748 of the 2021 Regular Session of the General Assembly*

#### 4.6 Pre-Licensure Criminal Background Check and Waiver Request

(a)(1) Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

(2) The individual must obtain the pre-licensure criminal background check petition form from the Commission.

(3) The Commission will respond with a decision in writing to a completed petition within thirty (30) days of receipt.

(4) The Commission's response will state the reason(s) for the decision.

(5) All decisions of the Commission in response to the petition will be determined by the information provided by the individual.

(6) Any decision made by the Commission in response to a pre-licensure criminal background check petition is not subject to appeal.

(7) The Commission will retain a copy of the petition and response and it will be reviewed during the formal application process.

(b)(1) If an individual has been convicted of an offense listed in A.C.A. §17-3-102(a) or (e), ~~except those permanently disqualifying offenses found in subsection (e)~~, the Commission may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:

- (i) An affected applicant for a license; or
- (ii) An individual holding a license subject to revocation.

(2) The Commission may grant a waiver upon consideration of the following, without limitation:

- (i) The age at which the offense was committed;
- (ii) The circumstances surrounding the offense;
- (iii) The length of time since the offense was committed;
- (iv) Subsequent work history since the offense was committed;
- (v) Employment references since the offense was committed;
- (vi) Character references since the offense was committed;
- (viii) Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.

(c) A request for a waiver, if made by an applicant for original licensure as a broker or salesperson, must be in writing and accompany the completed application and fees.

(d) The Commission will respond with a decision in writing and will state the reasons for the decision.

(e) An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*

**RECEIVED**

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BUREAU OF  
LEGISLATIVE RESEARCH

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1796

5 By: Representative Cozart  
6 By: Senator Hill  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND OCCUPATIONAL CRIMINAL BACKGROUND  
10 CHECKS; AND FOR OTHER PURPOSES.  
11

### Subtitle

12 TO AMEND OCCUPATIONAL CRIMINAL  
13 BACKGROUND CHECKS.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code § 17-3-102(b)(1), concerning licensing  
21 restrictions based on criminal records, is amended to read as follows:

22 (b)(1) If an individual has been convicted of a crime listed in  
23 subsection (a) or subsection (e) of this section, a licensing entity may  
24 waive disqualification or revocation of a license based on the conviction if  
25 a request for a waiver is made by:

26 (A) An affected applicant for a license; or

27 (B) The individual holding a license subject to  
28 revocation.  
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30 SECTION 2. Arkansas Code § 17-3-102(e), concerning licensing  
31 restrictions based on criminal records, is amended to read as follows:

32 (e) Due to the serious nature of the offenses, the following shall  
33 result in ~~permanent~~ disqualification for licensure, regardless of the date of  
34 conviction or the date on which probation or incarceration ends unless a  
35 waiver is granted under subsection (b) of this section:

36 (1) Capital murder as prohibited in § 5-10-101;



- 1 (2) Murder in the first degree as prohibited in § 5-10-102 and
- 2 murder in the second degree as prohibited in § 5-10-103;
- 3 (3) Kidnapping as prohibited in § 5-11-102;
- 4 (4) Aggravated assault upon a law enforcement officer or an
- 5 employee of a correctional facility as prohibited in § 5-13-211, if a Class Y
- 6 felony;
- 7 (5) Rape as prohibited in § 5-14-103;
- 8 (6) Sexual extortion as prohibited in § 5-14-113;
- 9 (7) Sexual assault in the first degree as prohibited in § 5-14-
- 10 124 and sexual assault in the second degree as prohibited in § 5-14-125;
- 11 (8) Incest as prohibited in § 5-26-202;
- 12 (9) Endangering the welfare of an incompetent person in the
- 13 first degree as prohibited in § 5-27-201;
- 14 (10) Endangering the welfare of a minor in the first degree as
- 15 prohibited in § 5-27-205;
- 16 (11) Adult abuse that constitutes a felony as prohibited in § 5-
- 17 28-103; and
- 18 (12) Arson as prohibited in § 5-38-301.

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20 SECTION 3. Arkansas Code § 17-3-102(g), concerning licensing

21 restrictions based on criminal records, is amended to read as follows:

22 (g) The ~~permanent~~ disqualification for an offense listed in subsection

23 (a) or subsection (e) of this section does not apply to an individual who

24 holds a valid license on July 24, 2019.

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27 **APPROVED: 4/19/21**

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