

**HOUSE . . . . . No. 4154**

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The Commonwealth of Massachusetts

PRESENTED BY:

*David Henry Argosky LeBoeuf*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to relative to enhancing employment opportunities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/19/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>

**HOUSE . . . . . No. 4154**

By Mr. LeBoeuf of Worcester, a petition (accompanied by bill, House, No. 4154) of David Henry Argosky LeBoeuf and Vanna Howard for legislation to prohibit licensing authorities from barring individuals from professional or occupational licenses because of criminal records. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act to relative to enhancing employment opportunities.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 172 of chapter 6 of the General Laws, as appearing in the 2018  
2 Official Edition, is hereby amended by inserting, after the word “entity”, in line 27, the following  
3 words:- , subject to section 172N.

4 SECTION 2. Said chapter 6 is hereby amended by striking out section 172N, as so  
5 appearing, and inserting in place thereof the following 2 sections:-

6 Section 172N. (a) For the purposes of this section, “licensing authority” shall include any  
7 agency, examining board, credentialing board or other office or commission, including boards  
8 supervised by the commissioner of professional licensure, with the authority to impose  
9 occupational fees or licensing requirements on a profession.

10 (b) Notwithstanding any other provision of law, a licensing authority shall not  
11 automatically bar an individual from a professional or occupational license because of a criminal

12 record. A licensing authority shall provide individualized consideration of an individual's  
13 circumstances as described in subsections (d) and (e) to deny, diminish, suspend, revoke,  
14 withhold or otherwise limit a professional or occupational license.

15 (c) Notwithstanding any general or special law to the contrary, a licensing authority shall  
16 not consider, nor require an individual to disclose:

17 (1) a deferred adjudication, including but not limited to a continuance without a finding,  
18 participation in a diversion program or an arrest not followed by a conviction;

19 (2) a conviction for which no sentence of incarceration may be imposed;

20 (3) a conviction that has been sealed, annulled, dismissed, vacated, set aside, expunged or  
21 pardoned;

22 (4) a juvenile adjudication;

23 (5) a non-violent misdemeanor;

24 (6) a conviction that occurred more than 3 years prior to the date of the licensing  
25 authority's consideration or where the individual's incarceration ended more than 3 years before  
26 the date of the licensing authority's consideration, except for a conviction of:

27 (i) a crime punishable by imprisonment for a term exceeding 2 and a half years, or any  
28 act of juvenile delinquency involving the use or possession of a deadly weapon that would be  
29 punishable by imprisonment for such term if committed by an adult, that (A) has as an element  
30 involving the use, attempted use or threatened use of physical force or a deadly weapon against  
31 the person of another; (B) is burglary, extortion, arson or kidnapping; (C) involves the use of

32 explosives; or (D) resulted in death, bodily injury, or serious bodily injury with malice  
33 aforethought;

34 (ii) a felony related to a sex offense, a sex offense involving a child or a sexually violent  
35 offense as defined in section 178C; or

36 (iii) a felony related to criminal fraud pursuant to section 1 of chapter 267 or  
37 embezzlement pursuant to chapter 266.

38 (d)(1) A licensing authority may deny, diminish, suspend, revoke, withhold or otherwise  
39 limit a professional or occupational license only if the licensing authority determines, by clear  
40 and convincing evidence, that:

41 (i) First, an individual's non-excluded criminal record directly relates to the duties and  
42 responsibilities of the profession or occupation.

43 (ii) Second, if an individual's non-excluded criminal record is directly related to the  
44 duties and responsibilities of the profession or occupation, the licensing authority must then  
45 determine if the interest of the licensing authority in protecting the public, an individual or  
46 property from harm outweighs the individual's right to hold the professional or occupational  
47 license.

48 (iii) Third, if the licensing authority determines that the interest in protecting the public,  
49 an individual or property from harm outweighs the individual's right to hold the professional or  
50 occupational license, then the licensing authority shall determine if the applicant has failed to be  
51 rehabilitated.

52 (2) The licensing authority shall bear the burden of proof to establish evidence of clauses  
53 (i) to (iii), inclusive.

54 (e) If the applicant's criminal record is directly related to the performance, duties,  
55 responsibilities, practices or functions of the profession, the licensing authority shall consider the  
56 following factors, in a light most favorable to the applicant, to demonstrate evidence of  
57 rehabilitation:

58 (1) the age of the individual at the time of the offense;

59 (2) the length of time since the offense;

60 (3) the completion of a criminal sentence, not including financial obligations;

61 (4) a certificate of rehabilitation, restoration of rights or good conduct;

62 (5) completion of, or active participation in, rehabilitative drug or alcohol treatment or  
63 similar programs;

64 (6) testimonials and recommendations, including, but not limited to, progress reports  
65 from the individual's probation or parole officer;

66 (7) other evidence of rehabilitation;

67 (8) education and training;

68 (9) employment history;

69 (10) the individual's responsibilities, including civic and community engagement or  
70 family contributions;

71 (11) whether the individual will be bonded in the occupation; and

72 (12) other information that the individual submitted to the licensing authority including  
73 mitigating circumstances.

74 (f) The licensing authority shall make its decision using the criteria and process described  
75 in subsections (b) to (e), inclusive. The licensing authority shall issue and send a decision to the  
76 applicant on the petition not later than 60 days after the licensing authority receives the petition  
77 or, if a hearing is held, not later than 90 days after the licensing authority receives the petition.  
78 The decision shall be made in writing and include a copy of any criminal record report that the  
79 licensing authority reviewed. If the licensing

80 authority determines that an occupational or professional license should not be granted  
81 because of the criminal conviction of an applicant, the decision shall set forth the reasons for the  
82 determination which shall address each of the factors in subsection (e) that the licensing  
83 authority deemed relevant to the determination.

84 (g)(1) An individual with a criminal record may petition a licensing authority at any time,  
85 including before obtaining any required personal qualifications or applying for a license, for a  
86 decision as to whether the individual's criminal record is directly related to the profession and  
87 that criminal record would disqualify the individual from obtaining a professional or  
88 occupational license. The licensing authority may charge a fee to the petitioner to recoup costs  
89 related to the petition, not to exceed \$100 for each petition. If the petitioner's income is at or  
90 below 250 per cent of the federal poverty level used to determine indigency by the trial court of  
91 the commonwealth, the fee shall be waived.

92 (2) The petitioner shall include in the petition an authorization for the licensing authority  
93 to obtain the petitioner's criminal record.

94 (3) The licensing authority will make its decision using the criteria and process in  
95 subsections (b) to (e), inclusive.

96 (4) The licensing authority shall issue and send a decision on the petition to the petitioner  
97 not later than 60 days after the licensing authority receives the petition or, if a hearing is held, not  
98 later than 90 days after the licensing authority receives the petition. The decision shall be made  
99 in writing, include a copy of any criminal record report that the licensing authority reviewed and,  
100 if the licensing authority determines that an occupational license should not be granted because  
101 of the petitioner's criminal record, a description that details with specificity how the petitioner's  
102 criminal record is directly and specifically related to the performance, duties, responsibilities,  
103 practices or functions of the profession.

104 (5) A decision that the licensing authority should grant the application under certain  
105 conditions is binding on the licensing authority in any later ruling on the petitioner's professional  
106 or occupational license unless there is a change in the petitioner's criminal record that is directly  
107 related to the duties or responsibilities of the licensed occupation.

108 (6) If the licensing authority decides that the professional or occupational license should  
109 not be granted, the licensing authority may provide an alternative advisory opinion, in which the  
110 licensing authority may advise the petitioner of actions the petitioner may take to remedy the  
111 disqualification.

112 (7) If advised by the licensing authority of remedial actions, the petitioner may submit a  
113 revised petition reflecting completion of the remedial actions before a deadline set by the  
114 licensing authority in the alternative advisory decision.

115 (8) The petitioner may appeal the licensing authority's decision as provided in section  
116 176.

117 (9) The petitioner may submit a new petition to the licensing authority not sooner than 1  
118 year following a final judgment on the initial petition or upon obtaining the required personal  
119 qualifications.

120 (h)(1) An ambiguity in a professional or occupational regulation relating to a licensing  
121 authority's use of an individual's criminal record shall be resolved in the favor of the individual.

122 (2) Notwithstanding any general or special law to the contrary, a licensing authority shall  
123 not use vague terms in its consideration and decision making, including:

124 (i) good moral character;

125 (ii) moral turpitude; or

126 (iii) character and fitness.

127 (i) Nothing in this section shall be construed to change a licensing authority's ability to  
128 enforce other conditions of professional and occupational licenses, including the personal  
129 qualifications required to obtain recognition or compliance with other regulations.

130 (j)(1) Each licensing authority shall annually report to the division of professional  
131 licensure, or the department under which the licensing authority sits:



132 (i) the number of times that each licensing authority acted to deny, diminish, suspend,  
133 revoke, withhold or otherwise limit state recognition for a license because of an individual's  
134 criminal record;

135 (ii) the criminal convictions that were the subject of each licensing authority action  
136 described in clause (i);

137 (iii) the number of applicants petitioning each licensing authority pursuant to subsection  
138 (e);

139 (iv) the criminal convictions that were the subject of each approval or denial of a petition  
140 pursuant to subsection (e); and

141 (v) other relevant data as determined by the division of professional licensure or the  
142 department under which the licensing authority sits.

143 (2) The division of professional licensure or department governing the licensing body  
144 shall annually compile and publish a report on a searchable public website summarizing data  
145 reported in paragraph (1).

146 Section 172N ½. There shall be a commission on background record requirements for  
147 professional licensure consisting of 11 members: the commissioner of professional licensure or a  
148 designee, who shall serve as chair, the house and senate chairs of the joint committee on  
149 consumer protection and professional licensure, the executive director of the Massachusetts  
150 office of victim assistance or a designee, and 7 members to be appointed by the governor, 1 of  
151 whom shall be a representative of the Massachusetts AFL-CIO Council, Inc., 1 of whom shall be  
152 a representative of the Massachusetts Building Trades Council, 1 of whom shall be a

153 representative of the NAACP Boston Branch, 1 of whom shall be a representative of a registered  
154 Massachusetts affiliate of the National Urban League, Inc., 1 of whom shall be a representative  
155 of the YMCA's of Massachusetts, Inc., and 1 of whom shall be a representative of the Greater  
156 Boston Legal Services, Inc..

157           The commission shall advise the division of professional licensure and licensing  
158 authorities, as defined in section 172N, to provide recommendations for background record  
159 requirements for each professional and occupational license granted within the commonwealth.  
160 Background record requirements developed by the commission shall not be designed to eliminate  
161 certain licenses, nor to develop or recommend that the division of professional licensure create  
162 new licenses or additional requirements for licenses.

163           SECTION 4. Section 2 of chapter 112 of the General Laws, as appearing in the 2018  
164 Official Edition, is hereby amended by striking out, in line 5, the words "of good moral  
165 character" and inserting in place thereof the following words:- lacks a criminal record or history  
166 of disqualifying convictions that is directly related to the practice and duties of a physician  
167 pursuant to section 172N.

168           SECTION 5. Section 18 of said chapter 112, as so appearing, is hereby amended by  
169 striking out, in lines 1 and 2, the words "shall refuse to issue a certificate to a person, or".

170           SECTION 6. Said section 18 of said chapter 112, as so appearing, is hereby further  
171 amended by adding the following paragraph:- The board shall refuse to issue a certificate to a  
172 person who is intemperate in the use of alcoholic liquors or narcotic drugs or has a conviction by  
173 a court of competent jurisdiction of a crime which the board determines, pursuant to section  
174 172N, to be of such a nature as to render such person unfit to practice as a podiatry.

175 SECTION 7. Section 23B of said chapter 112, as so appearing, is hereby amended by  
176 striking out, in line 11, the words “is of good moral character” and inserting in place thereof the  
177 following words:- lacks a criminal record or history of disqualifying convictions directly related  
178 to the duties or practices of the occupation pursuant to section 172N.

179 SECTION 8. Section 23S of said chapter 112, as so appearing, is hereby amended by  
180 striking out, in lines 11 and 12, the words “is of good moral character” and inserting in place  
181 thereof the following words:- lacks a criminal record or history of disqualifying convictions  
182 directly related to the duties or practices the occupation pursuant to section 172N.

183 SECTION 9. Section 45 of said chapter 112, as so appearing, is hereby amended by  
184 striking out, in line 5, the words “of good moral character” and inserting in place thereof the  
185 following words:- lacking a criminal record or history of disqualifying convictions directly  
186 related to the duties or practices of dentistry pursuant to section 172N.

187 SECTION 10. Section 45A of said chapter 112, as so appearing, is hereby amended by  
188 striking out, in line 2, the words “of good moral character” and inserting in place thereof the  
189 following words:- lacking a criminal record or history of disqualifying convictions directly  
190 related to the duties or practices of a dentist with a limited registration to section 172N.

191 SECTION 11. Section 45B of said chapter 112, as so appearing, is hereby amended by  
192 striking out, in line 2, the words “of good moral character” and inserting in place thereof the  
193 following words:- lacking a criminal record or history of disqualifying convictions directly  
194 related to the duties or practices of a temporarily registered dentist pursuant to section 172N.

195 SECTION 12. Section 51 of said chapter 112, as so appearing, is hereby amended by  
196 striking out, in line 1, the words “of good moral character” and inserting in place thereof the

197 following words:- lacking a criminal record or history of disqualifying convictions directly  
198 related to the duties or practices of a dental hygienist pursuant to section 172N.

199 SECTION 13. Section 51½ of said chapter 112, as so appearing, is hereby amended by  
200 striking out, in line 3, the words “of good moral character” and inserting in place thereof the  
201 following words:- lacking a criminal record or history of disqualifying convictions directly  
202 related to the duties or practices of a dental assistant pursuant to section 172N.

203 SECTION 14. Section 55 of said chapter 112, as so appearing, is hereby amended by  
204 striking out, in lines 4 and 5, the words “of good moral character, and a” and inserting in place  
205 thereof the following words:- lacks a criminal record or history of disqualifying convictions  
206 directly related to the duties or practices of a veterinarian pursuant to section 172N and is a.

207 SECTION 15. Section 60B of said chapter 112, as so appearing, is hereby amended by  
208 striking out, in line 2, the words “of good moral character” and inserting in place thereof the  
209 following words:- who lacks a criminal record or history of disqualifying convictions directly  
210 related to the duties or practices of an architect pursuant to section 172N.

211 SECTION 16. Section 68 of said chapter 112, as so appearing, is hereby amended by  
212 striking out, in line 13 the words “of good moral character” and inserting in place thereof the  
213 following words:- lacks a criminal record or history of disqualifying convictions directly related  
214 to the duties or practices of an optometrist pursuant to section 172N.

215 SECTION 17. Section 73H of said chapter 112, as so appearing, is hereby amended by  
216 striking out, in line 8, the words “involving moral turpitude” and inserting in place thereof the  
217 following words:- related to the duties or practices of a dispensing optician pursuant to section  
218 172N.

219 SECTION 18. Section 74 of said chapter 112, as so appearing, hereby amended by  
220 striking out, in line 7 the words “he is of good moral character” and inserting in place thereof the  
221 following words:- the applicant lacks a criminal record or history of disqualifying convictions  
222 directly related to the duties or practices of a nurse pursuant to section 172N.

223 SECTION 19. Section 74A of said chapter 112, as so appearing, is hereby amended by  
224 striking out, in lines 5 and 6, the words “he is of good moral character and that he” and inserting  
225 in place thereof the following words:- the applicant lacks a criminal record or history of  
226 disqualifying convictions directly related to the duties or practices of a practical nurse pursuant  
227 to section 172N and.

228 SECTION 20. Section 76B of said chapter 112, as so appearing, is hereby amended by  
229 striking out, in lines 7, 20, 32, 47 and 61, the words “good moral character” and inserting in  
230 place thereof, in each instance, the following words:- lacking a criminal record or history of  
231 disqualifying convictions directly related to the duties or practices of a nurse pursuant to section  
232 172N.

233 SECTION 21. Section 84 of said chapter 112, as so appearing , is hereby amended by  
234 striking out, in line 35, the words “involving moral turpitude” and inserting in place thereof the  
235 following words:- that is related to the core functions of a funeral director pursuant to section  
236 172N

237 SECTION 22. Section 87A½ of said chapter 112, as so appearing, is hereby amended by  
238 striking out, in lines 43 and 44, the words “history of dishonest or felonious acts” and inserting in  
239 place thereof the following words:- criminal record or history of disqualifying convictions  
240 directly related to the duties or practices of a public accountant pursuant to section 172N.

241 SECTION 23. Section 87TT of said chapter 112, as so appearing, is hereby amended by  
242 striking out, in line 8, the words “good moral character” and inserting in place thereof, the  
243 following words:- a lack of criminal record or history of disqualifying convictions directly  
244 related to the duties or practices of real estate brokers and salesmen pursuant to section 172N.

245 SECTION 24. Said section 87TT of said chapter 112, as so appearing, is hereby further  
246 amended by striking out, in line 10, the words “good moral character” and inserting in place  
247 thereof the following words :- lack of a criminal record or history of disqualifying convictions  
248 pursuant to section 172N.

249 SECTION 25. The first paragraph of said section 87TT of said chapter 112, as so  
250 appearing, is hereby amended by striking out the last sentence.

251 SECTION 26. Section 87XX of said chapter 112, as so appearing, is hereby amended by  
252 inserting after the word “character”, in lines 20 and 22, in each instance, the following words:-  
253 pursuant to section 172N.

254 SECTION 27. Section 93 of said chapter 112, as so appearing, is hereby amended by  
255 striking out, in line 2, the words “involving moral turpitude” and inserting in place thereof the  
256 following words:- pursuant to section 172N.

257 SECTION 28. Section 101 of said chapter 112, as so appearing, is hereby amended by  
258 striking out, in lines 4 and 5, the words “of good moral character” and inserting in place thereof  
259 the following words:-lacks a criminal record or history of disqualifying convictions directly  
260 related to the duties or practices of a landscape architect pursuant to section 172N.

261 SECTION 29. Section 119 of said chapter 112, as so appearing, is hereby amended by  
262 striking out clause (a) and inserting in place thereof the following clause:- (a) lacks a criminal  
263 record or history of disqualifying convictions directly related to the duties or practices of a  
264 psychologist pursuant to section 172N;

265 SECTION 30. Section 136 of said chapter 112, as so appearing, is hereby amended by  
266 striking out, in line 12, the words “involving moral turpitude” and inserting in place thereof the  
267 following words:- directly related to the duties or practices of a social worker pursuant to section  
268 172N.

269 SECTION 31. Section 144 of said chapter 112, as so appearing, is hereby amended by  
270 striking out clause (1) and inserting in place thereof the following clause:- (1) lacks a criminal  
271 record or history of disqualifying convictions directly related to the duties or practices of a  
272 speech-language pathologist or audiologist pursuant to section 172N,.

273 SECTION 32. Section 144A of said chapter 112, as so appearing, is hereby amended by  
274 striking out clause (1) and inserting in place thereof the following clause:- (1) lack a criminal  
275 record or history of disqualifying convictions directly related to the duties or practices of an  
276 assistant to a speech-language pathologist or audiologist pursuant to section 172N,.

277 SECTION 33. Section 152 of said chapter 112, as so appearing, is hereby amended by  
278 striking out clause (b) and inserting in place thereof the following clause:- (b) lack a criminal  
279 record or history of disqualifying convictions directly related to the duties or practices of an  
280 acupuncturist pursuant to section 172N,.

281 SECTION 34. Section 169 of said chapter 112, as so appearing, is hereby amended by  
282 striking out, in line 2, the word “deny”.

283 SECTION 35. Said section 169 of said chapter 112, as so appearing, is hereby further  
284 amended by inserting after the second paragraph the following paragraph:- The board, pursuant  
285 to section 172N, may deny a license due to a finding of a conviction by a court of competent  
286 jurisdiction of a crime related to conduct which places into question the applicant's competence  
287 to provide mental health and human services, including gross misconduct in the practice of  
288 mental health and human services on a particular occasion or negligence on repeated occasions.

289 SECTION 36. Subsection (f) of section 197 of said chapter 112, as so appearing, is  
290 hereby amended by striking out clause (3) and inserting in place thereof the following clause:-  
291 (3) lack a criminal record or history of disqualifying convictions directly related to the duties or  
292 practices of hearing instrument specialists pursuant to section 172N;.

293 SECTION 37. Section 203 of said chapter 112, as so appearing, is hereby amended by  
294 striking out, in lines 10 and 11, the words "of good moral character" and inserting in place  
295 thereof the following words:- lacks a criminal record or history of disqualifying convictions  
296 directly related to the duties or practices of a dietitian/nutritionist pursuant to section 172N.

297 SECTION 38. The first paragraph of section 205 of said chapter 112, as so appearing, is  
298 hereby amended by striking out clause (d) and inserting in place thereof the following clause:-  
299 (d) a criminal record or

300 history of disqualifying convictions directly related to the duties or practices of dietitians  
301 and nutritionists pursuant to section 172N; or.

302 SECTION 39. Section 213 of said chapter 112, as so appearing, is hereby amended by  
303 striking out, in lines 7 and 8, the words "of good moral character" and inserting in place thereof



304 the following words:- lacks a criminal record or history of disqualifying convictions directly  
305 related to the duties or practices of a perfusionist pursuant to section 172N.

306 SECTION 40. Subsection (d) of section 222 of said chapter 112, as so appearing, is  
307 hereby amended by striking out clause (i) and inserting in place thereof the following clause:- (i)  
308 lack a criminal record or history of disqualifying convictions directly related to the duties or  
309 practices of a home inspector pursuant to section 172N;.

310 SECTION 41. Subsection (a) of section 229 of said chapter 112, as so appearing, is  
311 hereby amended by striking out clause (4) and inserting in place thereof the following clause:-  
312 (4) he shall lack a criminal record or history of disqualifying convictions directly related to the  
313 duties or practices of a massage therapist pursuant to section 172N;.

314 SECTION 42. Said section 229 of said chapter 112, as so appearing, is hereby amended  
315 by striking out, in line 19, the words “or a crime involving moral turpitude”.

316 SECTION 43. Section 231 of said chapter 112, as so appearing, is hereby amended by  
317 striking out clause (3) and inserting in place thereof the following clause:- (3) lacks a history of a  
318 criminal record or history of disqualifying convictions directly related to the duties or practices  
319 of a massage therapist pursuant to section 172N;.

320 SECTION 44. Section 253 of said chapter 112, as so appearing, is hereby amended by  
321 striking out, in line 7, the words “of good moral character” and inserting in place thereof the  
322 following words:- lacks a history of a criminal record or history of disqualifying convictions  
323 directly related to the duties or practices of a genetic counselor pursuant to section 172N.

324 SECTION 45. Section 260 of said chapter 112, as so appearing, is hereby amended by  
325 striking out, in line 8, the words “is of good moral character” and inserting in place thereof the  
326 following words:- lacks a history of a criminal record or history of disqualifying convictions  
327 directly related to the duties or practices of a community health worker pursuant to section 172N.

328 SECTION 46. Section 269 of said chapter 112, as so appearing, is hereby amended by  
329 striking out, in lines 7 and 8, the words “and of good moral character” and inserting in place  
330 thereof the following words:- , lacks a history of a criminal record or history of disqualifying  
331 convictions directly related to the duties or practices of a naturopathic doctor pursuant to section  
332 172N.