

SENATE No. 2451

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 relative to increasing opportunities for employment in professional licensure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>Norfolk and Middlesex</i>	
<i>Liz Miranda</i>	<i>Second Suffolk</i>	<i>3/28/2023</i>
<i>Estela A. Reyes</i>	<i>4th Essex</i>	<i>4/26/2023</i>

SENATE No. 2451

By Ms. Creem, a petition (accompanied by bill) (subject to Joint Rule 12) of Cynthia Stone Creem, Liz Miranda and Estela A. Reyes for legislation to further regulate professional and occupational licensing. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to increasing opportunities for employment in professional licensure.

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

circumstances as described in subsections (d) and (e) to deny, diminish, suspend, revoke, withhold or otherwise limit a professional or occupational license.

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

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

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

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

(4) a juvenile adjudication;

(5) a non-violent misdemeanor;

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

(i) a crime punishable by imprisonment for a term exceeding 2 and a half years, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that (A) has as an element involving the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (B) is burglary, extortion, arson or kidnapping; (C) involves the use of explosives; or (D) resulted in death, bodily injury, or serious bodily injury with malice aforethought;

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

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

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

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

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

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

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

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

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

(2) the length of time since the offense;

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

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

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

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

(7) other evidence of rehabilitation;

(8) education and training;

(9) employment history;

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

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

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

(f) The licensing authority shall make its decision using the criteria and process described in subsections (b) to (e), inclusive. The licensing authority shall issue and send a decision to the applicant on the petition not later than 60 days after the licensing authority receives the petition or, if a hearing is held, not later than 90 days after the licensing authority receives the petition. The decision shall be made in writing and include a copy of any criminal record report that the licensing authority reviewed. If the licensing authority determines that an occupational or professional license should not be granted because of the criminal conviction of an applicant, the decision shall set forth the reasons for the determination which shall address each of the factors in subsection (e) that the licensing authority deemed relevant to the determination.

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

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

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

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

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

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

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

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

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

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

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

(i) good moral character;

(ii) moral turpitude; or

(iii) character and fitness.

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

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

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

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

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

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

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

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

Section 172N ½. There shall be a commission on background record requirements for professional licensure consisting of 11 members: the commissioner of professional licensure or a designee, who shall serve as chair, the house and senate chairs of the joint committee on consumer protection and professional licensure, the executive director of the Massachusetts office of victim assistance or a designee, and 7 members to be appointed by the governor, 1 of whom shall be a representative of the Massachusetts AFL-CIO Council, Inc., 1 of whom shall be a representative of the Massachusetts Building Trades Council, 1 of whom shall be a representative of the NAACP Boston Branch, 1 of whom shall be a representative of a registered Massachusetts affiliate of the National Urban League, Inc., 1 of whom shall be a representative of the YMCA's of Massachusetts, Inc., and 1 of whom shall be a representative of the Greater Boston Legal Services, Inc.

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

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

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

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

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

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

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

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

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

194 SECTION 12. Section 51 of said chapter 112, as so appearing, is hereby amended by
195 striking out, in line 1, the words “of good moral character” and inserting in place thereof the
196 following words:- lacking a criminal record or history of disqualifying convictions directly
197 related to the duties or practices of a dental hygienist pursuant to section 172N.

198 SECTION 13. Section 51½ of said chapter 112, as so appearing, is hereby amended by
199 striking out, in line 3, the words “of good moral character” and inserting in place thereof the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

282 SECTION 35. Said section 169 of said chapter 112, as so appearing, is hereby further
283 amended by inserting after the second paragraph the following paragraph:- The board, pursuant
284 to section 172N, may deny a license due to a finding of a conviction by a court of competent
285 jurisdiction of a crime related to conduct which places into question the applicant’s competence

to provide mental health and human services, including gross misconduct in the practice of mental health and human services on a particular occasion or negligence on repeated occasions.

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

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

SECTION 38. The first paragraph of section 205 of said chapter 112, as so appearing, is hereby amended by striking out clause (d) and inserting in place thereof the following clause:-
(d) a criminal record or history of disqualifying convictions directly related to the duties or practices of dietitians and nutritionists pursuant to section 172N; or.

SECTION 39. Section 213 of said chapter 112, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words “of good moral character” and inserting in place thereof the following words:- lacks a criminal record or history of disqualifying convictions directly related to the duties or practices of a perfusionist pursuant to section 172N.

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

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

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

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

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

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

326 SECTION 46. Section 269 of said chapter 112, as so appearing, is hereby amended by
327 striking out, in lines 7 and 8, the words “and of good moral character” and inserting in place
328 thereof the following words:- , lacks a history of a criminal record or history of disqualifying

329 convictions directly related to the duties or practices of a naturopathic doctor pursuant to section
330 172N.

331 SECTION 47. Subsection 9 of section 4 of chapter 151B of the General Laws, as so
332 appearing, is hereby amended by inserting the following paragraphs after the last sentence:-

333 (a) An employer shall not deny employment to an individual because the person was
334 convicted of one or more criminal offenses, or by reason of a finding of lack of good moral
335 character or suitability, when such finding is based upon the fact that the applicant was convicted
336 of one or more criminal offenses, unless:

337 (i) the nature of criminal conduct for which the person was convicted has a direct bearing
338 on and affects such person's fitness or ability to perform one or more of primary duties or
339 responsibilities necessarily related to the employment sought; or

340 (ii) hiring or continued employment of the person would involve an unreasonable risk to
341 property or to the safety or welfare of a specific individual or the general public.

342 (b) In making this determination, the employer shall undertake an individualized
343 assessment of the applicant and shall consider the following factors:

344 (i) the type of work to be performed and the nature of the primary duties or
345 responsibilities necessarily related to the employment sought;

346 (ii) whether the offense or offenses were recently committed, and whether the amount of
347 time that has elapsed since the occurrence of the offense or offenses significantly diminishes the
348 relevance of the offense or offenses;

349 (iii) the age of the person at the time of the occurrence of the criminal offense or offenses,
350 including whether youth or lack of maturity related to the person's age at the time of the offense
351 is a mitigating circumstance;

352 (iv) the seriousness of the offense or offenses;

353 (v) any evidence that the person performed the same type of work after the offense or
354 offenses with no known incidents of criminal conduct;

355 (vi) any evidence regarding the person's rehabilitation, including but not limited to civic
356 and community contributions, efforts at self-improvement, sobriety, education or training, and
357 good conduct; and

358 (c) An employer shall, at the time of denial of employment, provide the applicant or
359 employee with a written statement that sets forth specific reasons for the denial.