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Texas Occupations Code Chapter 53 – Effects, Consequences and Realities

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Texas Occupations Code Chapter 53 – Effects, Consequences and Realities.

Written by Jon Porter¹

Texas Occupations Code Chapter 53 (“Chapter 53”) purports to provide a framework to most Texas licensing and certification bodies on how to deal with an applicant or a licensee² who possesses a criminal record. The goal of this paper is to discuss the language in the statute, the public policy rationales, the directive of some of Texas’ political leadership, and some issues with the statute and its use.

There are hundreds of licenses, certifications and permits available to Texans.³ These are governed by forty-nine (49) different licensing bodies. Each licensing body possesses their own statutory requirements and regulations on how each deal with licensees with criminal histories. It is impossible for this paper to detail every law and rule that could apply depending on the license and/or agency in question, so the reader must fully research particular laws and rules when confronting a specific fact scenario either for their agency or their client. With that said, Chapter 53 creates the controlling statute for issuance of the vast majority of licenses. Even with licenses that are not directly controlled by Chapter 53, this law often informs and guides the limits, directives, and rules of such agencies.

For decades, Texas government, laws and policies served to punish those convicted of criminal acts. Intentionally or not, the collateral consequences of a conviction often reverberated beyond the criminal sentence, limiting opportunities for employment and personal and economic growth for the individual. These consequences touched a significant portion of the state’s population, as ten and half percent (10 ½%) of Texans had a felony conviction as of 2010.⁴

¹ Thanks to Trevor Theilen, Joseph Marcee, Tim Weitz and Patty Bissar for reviewing the article and providing feedback.

² For sake of the readers, we will only refer to licensees, but know this is interchangeable with applicants as well. If there are distinctions, they will be noted in the body of the paper.

³ Similarly, we will be using the term license, but that is interchangeable with permits, certifications and other authorizations issued by the State to permit one the privilege to practice in a particular trade, profession, or industry.

⁴ <https://www.pbs.org/newshour/nation/felony-conviction-rates-are-up-nationwide-these-states-are-reconsidering-how-they-classify->

For various reasons - economics, social justice, the correction of past policy decisions, Texas leaders pronounced the need to give individuals who completed their sentences better opportunities at obtaining a license. In the 2019 Session, the Texas Legislature revisited Chapter 53, seeking to lessen its severity. To that end, the Legislature clarified that: “It is the intent of the legislature to enhance opportunities for a person to obtain gainful employment after the person has: been convicted of an offense; and discharged the sentence for the offense. *This chapter shall be liberally construed to carry out the intent of the legislature.*”⁵ (Emphasis Added). On October 8, 2019, Governor Greg Abbott sent a letter to all agency heads directing them to reform occupational licensing rules to “...remove barriers to licenses for people with criminal records where appropriate...”⁶ The Governor directed agencies to remove “...blanket exclusions for people with criminal records...” and to remove arrests not resulting in conviction, and more critically, the placement of deferred adjudication for the purposes of determining a licensee’s fitness for a licensed occupation.⁷ With such directives in mind, one would assume a licensee who receives a criminal conviction would generally be able to obtain or retain licensure. Such an assumption would be in error.

The Legislature’s clarification of its licensee-supporting intent regarding the application of Chapter 53 did not revoke or supersede any license-specific or agency-specific eligibility restrictions or license denial or revocation powers. While many such laws or rules have been modified or repealed, others remain still. Moreover, the governor’s policies and directives to license agencies do not carry the force of law, as the Texas Constitution limits his power to appointment of most agency’s leaders, but not day-to-day control over their operations. Therefore, the agencies of the State of Texas have considerable discretion to determine when to enforce Chapter 53 and direct their own rules to interpret Chapter 53.

crimes#:~:text=In%202010%2C%20Texas%20was%20tied%20with%20Louisiana%20for,reform%20on%20the%20front%20burner%20in%20some%20states. These numbers have likely only increased.

⁵ Texas Occupations Code §53.003

⁶<https://static.texastribune.org/media/files/e6764b8b39599daaef25659070c3f572/Abbott%20Oct.%208%20letter%20to%20agencies.pdf>

⁷ *Id.*

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