

STATE OF NEW YORK

4893

2023-2024 Regular Sessions

IN ASSEMBLY

February 24, 2023

Introduced by M. of A. FORREST, SIMON, LEVENBERG -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to requiring public agencies to establish preliminary license application procedures to determine whether an applicant for a license would be ineligible for such license based on criminal history

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "prelimi-
2 nary license application navigation (PLAN) act".

3 § 2. The correction law is amended by adding a new section 756 to read
4 as follows:

5 § 756. Preliminary license application navigation. 1. Definitions.
6 For the purposes of this section, the following terms shall have the
7 following meanings:

8 (a) "Applicant" means any individual intending to submit or who has
9 submitted a preliminary license application under this section.

10 (b) "Criminal history" means a record of all convictions and pending
11 charges that a public agency is allowed to consider pursuant to subdivi-
12 sion sixteen of section two hundred ninety-six of the executive law and
13 any other governing law.

14 2. This section shall apply to all public agencies that consider an
15 applicant's criminal history as part of a license application or clear-
16 ance process. Nothing in this section shall expand a public agency's
17 ability to collect, either from an individual or third parties, informa-
18 tion about an applicant's criminal history that the public agency was
19 not authorized to collect as part of the license application process
20 that existed prior to the effective date of this section.

21 3. A public agency authorized to issue a license shall clearly,
22 conspicuously, and in plain terms post on its website information

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 detailing how the public agency considers an applicant's criminal histo-
2 ry when an applicant seeks a license. Such information shall include:

3 (a) the public agency's process for considering an applicant's crimi-
4 nal history, including a list and a review of the governing statutes and
5 regulations and any other law, guidance, or practice that is part of the
6 public agency's criminal history review;

7 (b) a list of criminal history that will never be considered with
8 regard to licensure;

9 (c) a list of which, if any, criminal history will be considered in an
10 individualized determination about whether the public agency will confer
11 the license;

12 (d) the process for making a determination and the information that
13 will be considered;

14 (e) a list of which criminal history, if any, will operate as a bar to
15 licensure;

16 (f) a list of the types of information about an applicant that the
17 public agency is prohibited from considering and that the public agency
18 will not consider, including information that the public agency is
19 prohibited from considering in accordance with subdivision sixteen of
20 section two hundred ninety-six of the executive law; and

21 (g) the factors the public agency is required to consider pursuant to
22 this article.

23 4. Any individual may submit to the relevant public agency a prelimi-
24 nary license application for a determination as to whether the individ-
25 ual's criminal history renders the individual ineligible to receive a
26 license or licenses that the individual specifies.

27 5. (a) A preliminary license application may be submitted at any time,
28 including prior to obtaining or paying for required education or paying
29 any fee for licensure or training.

30 (b) Public agencies shall create a form for the preliminary license
31 application and provide clear, step-by-step instructions on their
32 websites concerning the preliminary license application process begin-
33 ning from preparing the preliminary license application through determi-
34 nation of whether an individual's criminal history renders the individ-
35 ual ineligible to receive a license. All forms published by public
36 agencies shall be consistent with the requirements set forth in execu-
37 tive order number twenty-six of two thousand eleven.

38 (c) Public agencies may charge a fee not to exceed twenty-five dollars
39 for each preliminary license application filed pursuant to this section.
40 Public agencies shall allow applicants to submit an affidavit of finan-
41 cial hardship to allow the applicant to file a preliminary license
42 application without paying a fee and shall not refuse to accept for
43 filing the preliminary license application of any applicant who has
44 signed such an affidavit.

45 (d) A preliminary license application shall consist of:

46 (i) The preliminary license application form created by the public
47 agency;

48 (ii) Any additional information the applicant submits, including but
49 not limited to, information about the applicant's current circumstances,
50 the amount of time that has passed since the individual's most recent
51 offense or alleged offense; other evidence of rehabilitation or proof of
52 positive change; reference letters, employment history, employment aspi-
53 ration, and any conditions fulfilled since any previous preliminary
54 license application submitted by the applicant; and

55 (iii) The application fee or completed affidavit of financial hard-
56 ship.

1 (e) At any time following a final determination of the public agency,
2 an applicant may submit a new preliminary license application based on
3 the applicant's changed circumstances or the passage of time.

4 6. Upon receipt of a preliminary license application under subdivision
5 four of this section, the applicable public agency shall undertake the
6 process set forth in subdivision seven of this section to determine
7 whether the applicant's criminal history renders the applicant ineligi-
8 ble to receive the applicable license from that public agency.

9 7. (a) Upon receipt of a preliminary license application, a public
10 agency shall review such application for completeness and notify the
11 applicant within five business days if the application is complete or
12 which components of the application are missing.

13 (b) Where a public agency considers particular criminal history
14 reports in determining whether to grant an application for a license,
15 the public agency shall request all such criminal history reports within
16 five business days following receipt of a preliminary license applica-
17 tion.

18 (c) The public agency shall notify the applicant both when the public
19 agency requests any third party criminal history report and when such
20 report is received by the public agency.

21 (d) In reviewing a preliminary license application to determine wheth-
22 er an applicant's criminal history renders them ineligible for licen-
23 sure, the public agency shall be bound by the same rules, regulations,
24 and statutes, including this article, that bind the public agency's
25 review of a license application.

26 (e) If a public agency determines, in response to the preliminary
27 license application, that it will deem an applicant to be ineligible for
28 licensure due solely or in part to criminal history, the public agency
29 shall notify the applicant of its intent to deem the applicant ineligi-
30 ble in writing, specify any additional information the applicant may
31 provide that could result in the applicant's eligibility, include copies
32 of any criminal history the public agency obtained or reviewed during
33 the application process, and allow the applicant fourteen days from the
34 date on the notice to provide additional information that may result in
35 a finding that the applicant is eligible for licensure, though any
36 extensions requested by the applicant shall be granted by the public
37 agency.

38 (f) The public agency shall issue its determination in writing within
39 ten business days after receiving a preliminary license application and
40 any necessary criminal history report. Any days given to the applicant
41 to provide additional information responsive to a notice of intent shall
42 be excluded from the ten business days.

43 (g) The determination by the public agency shall include findings of
44 fact and conclusions of law.

45 (h) The determination by the public agency shall be in writing and
46 shall include an analysis of the applicant's criminal history, consider-
47 ing the factors under sections seven hundred fifty-two and seven hundred
48 fifty-three of this article and any other factors the public agency
49 considers when deciding whether to grant or deny a license.

50 (i) If the public agency determines that the applicant is ineligible
51 for licensure due solely or in part to criminal history, the public
52 agency shall advise the applicant in its determination of any recom-
53 mended actions the applicant may take to remedy ineligibility for a
54 license based on criminal history. Such actions shall be deemed recom-
55 mended actions and shall not be deemed to be additional requirements for
56 issuance of a license. Any determination that an applicant is ineligible

1 for licensure due solely or in part to criminal history shall be non-
2 binding.

3 (j) The public agency's determination shall include copies of any
4 criminal history the public agency obtained or reviewed during the
5 application process.

6 (k) A public agency's determination that the applicant's criminal
7 history does not render the applicant ineligible to receive a license
8 shall be binding if the applicant applies for licensure and fulfills all
9 other requirements for the license and the applicant has no additional
10 criminal history between the preliminary license application determi-
11 nation and the license application determination.

12 (l) Where a hearing process exists for denial of an application for a
13 license, any applicant whose preliminary license application is denied
14 may request a hearing within sixty days of such denial. Hearings shall
15 proceed under the same statutes, rules, and regulations applicable to
16 hearings a public agency offers following denial of an application for a
17 license, provided, however, that the administrative judge shall also
18 consider whether the public agency abided by subdivisions six and seven
19 of this section and whether consistent with those subdivisions an appli-
20 cant's preliminary license application may be granted.

21 8. The determination of a public agency following a hearing, if avail-
22 able, is a final agency determination. An applicant may seek judicial
23 appeal of the determination in accordance with article seventy-eight of
24 the civil practice law and rules.

25 9. No person, entity, or public agency shall require any person to
26 submit a preliminary license application or grant or deny any person any
27 opportunity, good, service, or compensation based on a person's decision
28 to submit or decline to submit a preliminary license application.

29 10. Public agencies shall keep all information submitted, collected,
30 or created in the course of a preliminary license application confiden-
31 tial between the public agency and the applicant or any authorized agent
32 or representative of the applicant, but may fulfill reporting obli-
33 gations under this section and, pursuant to article six of the public
34 officers law, release anonymized or redacted information to the public
35 or the applicant's unredacted file in response to a request made by the
36 applicant or any authorized agent or representative of the applicant.
37 Upon the applicant's request at any time, the public agency shall
38 provide the applicant a copy of their preliminary application file with-
39 out charge to the applicant. The file shall include any documents the
40 applicant submitted as part of the preliminary application, any docu-
41 ments or information the public agency used in considering the prelimi-
42 nary application, any decisions the public agency made regarding the
43 preliminary application, and any correspondence between the applicant
44 and the public agency and the public agency and any third party regard-
45 ing the preliminary application. Upon the applicant's request via phone,
46 mail, email or facsimile, the public agency shall destroy the prelimi-
47 nary application materials submitted by the applicant or collected or
48 received by the public agency except for the public agency's record of
49 determination.

50 11. Public agencies may promulgate rules and regulations and other
51 guidance regarding their practices for preliminary license applications.

52 12. Each public agency shall compile and publish annually a report on
53 a searchable public website which includes the following information
54 regarding preliminary license applications:

55 (a) The number of applications filed each month during the reporting
56 year;

1 (b) The number of applications that received a notice of intent to
2 deny by the public agency during the reporting year;

3 (c) The number of determinations confirming eligibility for licensure;

4 (d) The number of determinations confirming ineligibility for licen-
5 sure;

6 (e) The number of preliminary license application hearings requested
7 and the outcome of those hearings;

8 (f) The number of requests for judicial review of preliminary license
9 application determinations filed and the outcome of those appeals;

10 (g) Anonymous descriptions of each criminal history, that includes the
11 statutory section or sections of the penal law or other law, that has
12 resulted in denial of licensure during the reporting year;

13 (h) Anonymous descriptions of each criminal history, that includes the
14 statutory section or sections of the penal law or other law, that has
15 resulted in denial of a preliminary license application during the
16 reporting year; and

17 (i) Any other information deemed relevant by the public agency.

18 § 3. Subdivision 2 of section 755 of the correction law, as added by
19 chapter 931 of the laws of 1976, is amended to read as follows:

20 2. In relation to actions by private employers, private entities or
21 private persons, the provisions of this article shall be enforceable by
22 the division of human rights pursuant to the powers and procedures set
23 forth in article fifteen of the executive law, and, concurrently, by the
24 New York city commission on human rights.

25 § 4. This act shall take effect immediately.