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:

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

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

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

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

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

2. This section shall apply to all public agencies that consider an applicant's criminal history as part of a license application or clearance process. Nothing in this section shall expand a public agency's ability to collect, either from an individual or third parties, information about an applicant's criminal history that the public agency was not authorized to collect as part of the license application process that existed prior to the effective date of this section.

3. A public agency authorized to issue a license shall clearly, 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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detailing how the public agency considers an applicant's criminal history when an applicant seeks a license. Such information shall include:

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

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

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

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

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

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

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

4. Any individual may submit to the relevant public agency a preliminary license application for a determination as to whether the individual's criminal history renders the individual ineligible to receive a license or licenses that the individual specifies.

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

(b) Public agencies shall create a form for the preliminary license application and provide clear, step-by-step instructions on their websites concerning the preliminary license application process beginning from preparing the preliminary license application through determination of whether an individual's criminal history renders the individual ineligible to receive a license. All forms published by public agencies shall be consistent with the requirements set forth in executive order number twenty-six of two thousand eleven.

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

(d) A preliminary license application shall consist of:

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

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

(iii) The application fee or completed affidavit of financial hardship.

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

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

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

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

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

(d) In reviewing a preliminary license application to determine whether an applicant's criminal history renders them ineligible for licensure, the public agency shall be bound by the same rules, regulations, and statutes, including this article, that bind the public agency's review of a license application.

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

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

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

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

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

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

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

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

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

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

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

10. Public agencies shall keep all information submitted, collected, or created in the course of a preliminary license application confidential between the public agency and the applicant or any authorized agent or representative of the applicant, but may fulfill reporting obligations under this section and, pursuant to article six of the public officers law, release anonymized or redacted information to the public or the applicant's unredacted file in response to a request made by the applicant or any authorized agent or representative of the applicant. Upon the applicant's request at any time, the public agency shall provide the applicant a copy of their preliminary application file without charge to the applicant. The file shall include any documents the applicant submitted as part of the preliminary application, any documents or information the public agency used in considering the preliminary application, any decisions the public agency made regarding the preliminary application, and any correspondence between the applicant and the public agency and the public agency and any third party regarding the preliminary application. Upon the applicant's request via phone, mail, email or facsimile, the public agency shall destroy the preliminary application materials submitted by the applicant or collected or received by the public agency except for the public agency's record of determination.

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

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

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

(b) The number of applications that received a notice of intent to deny by the public agency during the reporting year;
(c) The number of determinations confirming eligibility for licensure;
(d) The number of determinations confirming ineligibility for licensure;
(e) The number of preliminary license application hearings requested and the outcome of those hearings;
(f) The number of requests for judicial review of preliminary license application determinations filed and the outcome of those appeals;
(g) Anonymous descriptions of each criminal history, that includes the statutory section or sections of the penal law or other law, that has resulted in denial of licensure during the reporting year;
(h) Anonymous descriptions of each criminal history, that includes the statutory section or sections of the penal law or other law, that has resulted in denial of a preliminary license application during the reporting year; and
(i) Any other information deemed relevant by the public agency.

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

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

§ 4. This act shall take effect immediately.