

ARKANSAS REGISTER



Proposed Rule Cover Sheet

Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department Arkansas Department of Health
Agency or Division Name Div. of Health Related Boards & Commissions
Other Subdivision or Department, If Applicable Arkansas State Board of Dental Examiners
Previous Agency Name, If Applicable _____
Contact Person Meredith Rogers
Contact E-mail meredith.rogers@arkansas.gov
Contact Phone 501-682-2085

Name of Rule XXIII: Pre-Licensure Criminal Background Check
Newspaper Name Arkansas Democrat-Gazette
Date of Publishing June 26-28, 2022
Final Date for Public Comment July 26, 2022
Location and Time of Public Meeting There were no comments.



Arkansas Department of Health

Arkansas State Board of Dental Examiners
101 E. Capitol Ave., Suite 111 • Little Rock, Arkansas 72201 • (501) 682-2085 • Fax: (501) 682-3543 • asbde@Arkansas.gov

Governor Asa Hutchinson

José Romero, MD, Secretary of Health

Meredith Rogers, Executive Director

PROPOSED AMENDMENT TO THE ARKANSAS STATE BOARD OF DENTAL EXAMINERS

PURPOSE

The Arkansas Department of Health is seeking Governor Hutchinson's review of proposed amendments to the Board of Dental Examiners Rule promulgated by the Board.

BACKGROUND

Pursuant to ACA 17-82-208 the Board has authority to promulgate rules necessary to carry out the functions of the Board. Legislation was enacted in the previous session that affected the Board's administrative functions and amendment to the rules would be required. The Board and legal counsel prepared the attached amendment as a result of this legislation. The Board approved these proposed amendments at their September 10, 2021 meeting.

KEY POINTS

The proposed amendment contains the following changes:

- Removes the reference to "permanently disqualifying offenses" as required by Act 748.
- Removes from the rule the form entitled "Pre-Licensure Criminal Background Check Petition". This document is merely a form, and the Board would like to be able to make changes as necessary without going through the rule promulgation process.

DISCUSSION

The rule change uses model language prepared by the Attorney General's office to comply with legislative changes that affect multiple boards.

RECOMMENDATION

We recommend that the proposed amendment to the Board's rules be approved as proposed by the Board.

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

HOUSE BILL 1796

4
5 By: Representative Cozart
6 By: Senator Hill

For An Act To Be Entitled

8
9 AN ACT TO AMEND OCCUPATIONAL CRIMINAL BACKGROUND
10 CHECKS; AND FOR OTHER PURPOSES.

Subtitle

11
12
13 TO AMEND OCCUPATIONAL CRIMINAL
14 BACKGROUND CHECKS.
15
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code § 17-3-102(b)(1), concerning licensing
21 restrictions based on criminal records, is amended to read as follows:

22 (b)(1) If an individual has been convicted of a crime listed in
23 subsection (a) or subsection (e) of this section, a licensing entity may
24 waive disqualification or revocation of a license based on the conviction if
25 a request for a waiver is made by:

26 (A) An affected applicant for a license; or

27 (B) The individual holding a license subject to

28 revocation.
29

30 SECTION 2. Arkansas Code § 17-3-102(e), concerning licensing
31 restrictions based on criminal records, is amended to read as follows:

32 (e) Due to the serious nature of the offenses, the following shall
33 result in ~~permanent~~ disqualification for licensure, regardless of the date of
34 conviction or the date on which probation or incarceration ends unless a
35 waiver is granted under subsection (b) of this section:

36 (1) Capital murder as prohibited in § 5-10-101;



- 1 (2) Murder in the first degree as prohibited in § 5-10-102 and
- 2 murder in the second degree as prohibited in § 5-10-103;
- 3 (3) Kidnapping as prohibited in § 5-11-102;
- 4 (4) Aggravated assault upon a law enforcement officer or an
- 5 employee of a correctional facility as prohibited in § 5-13-211, if a Class Y
- 6 felony;
- 7 (5) Rape as prohibited in § 5-14-103;
- 8 (6) Sexual extortion as prohibited in § 5-14-113;
- 9 (7) Sexual assault in the first degree as prohibited in § 5-14-
- 10 124 and sexual assault in the second degree as prohibited in § 5-14-125;
- 11 (8) Incest as prohibited in § 5-26-202;
- 12 (9) Endangering the welfare of an incompetent person in the
- 13 first degree as prohibited in § 5-27-201;
- 14 (10) Endangering the welfare of a minor in the first degree as
- 15 prohibited in § 5-27-205;
- 16 (11) Adult abuse that constitutes a felony as prohibited in § 5-
- 17 28-103; and
- 18 (12) Arson as prohibited in § 5-38-301.

19

20 SECTION 3. Arkansas Code § 17-3-102(g), concerning licensing

21 restrictions based on criminal records, is amended to read as follows:

22 (g) The ~~permanent~~ disqualification for an offense listed in subsection

23 (a) or subsection (e) of this section does not apply to an individual who

24 holds a valid license on July 24, 2019.

25

26

27 APPROVED: 4/19/21

28

29

30

31

32

33

34

35

36

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Division of Health Related Boards & Commissions/Arkansas State Board of Dental Examiners
DIVISION DIRECTOR Matt Gilmore/Meredith Rogers
CONTACT PERSON Meredith Rogers
ADDRESS 101 E. Capitol Avenue, Suite 111, Little Rock, AR 72201
PHONE NO. (501) 682-2085 **FAX NO.** (501) 682-3543 **E-MAIL** meredith.rogers@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Meredith Rogers
PRESENTER E-MAIL meredith.rogers@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Pre-Licensure Criminal Background Check

2. What is the subject of the proposed rule? Background Check

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Act 748 of 2021 requires this revision.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

The proposed amendment removes the reference to "permanently disqualifying offenses". It also removes the form entitled "pre-licensure criminal background check petition" so that the Board can make changes as necessary without going through the rule promulgation process.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Arkansas Code Annotated Section 17-82-208

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose of this proposed rule is to maintain compliance with Act 748 of 2021 concerning the pre-licensure criminal background check of dentists and hygienists.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://www.healthy.arkansas.gov/programs-services/topics/arkansas-state-board-of-dental-examiners>

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: 01/14/2022

Time: 9:00 am

Place: 101 E. Capitol Avenue (Cox Conference Room - basement), Little Rock, AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

01/14/2022

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

02/01/2022

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Arkansas State Dental Association (Billy Tarpley, Executive Director)

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health

DIVISION Division of Health Related Boards & Commissions/Arkansas State Board of Dental Examiners

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE NO. (501) 682-2085 FAX NO. (501) 682-3543 EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Pre-Licensure Criminal Background Check

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

a) How the additional benefits of the more costly rule justify its additional cost;

n/a

b) The reason for adoption of the more costly rule;

n/a

c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

n/a

d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

n/a

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

Total \$ 0.00

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

Total \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

Total \$ 0.00

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

n/a

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

n/a

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Article XXIII: PRE-LICENSURE CRIMINAL BACKGROUND CHECK

- A. Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.
- B. The individual must obtain the pre-licensure criminal background check petition form from the Board.
- C. The Board will respond with a decision in writing to a completed petition within a reasonable time.
- D. The Board's response will state the reason(s) for the decision.
- E. All decisions of the Board in response to the petition will be determined by information provided by the individual.
- F. Any decision made by the Board in response to a pre-licensure criminal background check petition is not subject to appeal.
- G. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

Waiver Request

- A. If an individual has been convicted of an offense listed in A.C.A. §17-2-102(a) or (e), ~~except those permanently disqualifying offenses found in subsection (e)~~, the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
 - 1. An affected application for a license; or
 - 2. An individual holding a license subject to revocation.
- B. The Board may grant a waiver upon consideration of the following, without limitation:
 - 1. The age at which the offense was committed;
 - 2. The circumstances surrounding the offense;
 - 3. The length of time since the offense was committed;
 - 4. Subsequent work history since the offense was committed;
 - 5. Employment references since the offense was committed;
 - 6. Character references since the offense was committed;
 - 7. Relevance of the offense to the occupational license; and
 - 8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
- C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.
- D. The Board will respond with a decision in writing and will state the reasons for the decision.

Approved 5-9-2020.

Article XXIII: PRE-LICENSURE CRIMINAL BACKGROUND CHECK

- A. Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.
- B. The individual must obtain the pre-licensure criminal background check petition form from the Board.
- C. The Board will respond with a decision in writing to a completed petition within a reasonable time.
- D. The Board's response will state the reason(s) for the decision.
- E. All decisions of the Board in response to the petition will be determined by information provided by the individual.
- F. Any decision made by the Board in response to a pre-licensure criminal background check petition is not subject to appeal.
- G. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

Waiver Request

- A. If an individual has been convicted of an offense listed in A.C.A. §17-2-102(a) or (e), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
 - 1. An affected application for a license; or
 - 2. An individual holding a license subject to revocation.
- B. The Board may grant a waiver upon consideration of the following, without limitation:
 - 1. The age at which the offense was committed;
 - 2. The circumstances surrounding the offense;
 - 3. The length of time since the offense was committed;
 - 4. Subsequent work history since the offense was committed;
 - 5. Employment references since the offense was committed;
 - 6. Character references since the offense was committed;
 - 7. Relevance of the offense to the occupational license; and
 - 8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
- C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.
- D. The Board will respond with a decision in writing and will state the reasons for the decision.