

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
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Little Rock, Arkansas 72201-1094
(501) 682-5070
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**092.00.1-16. PRE-LICENSURE CRIMINAL BACKGROUND CHECK AND WAIVER
REQUEST
(Adopted 9/11/2019)**

28. Pre-licensure criminal background check:

A. Pursuant to Ark. Code Ann. §17-2-103, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from an occupational license and whether a waiver may be obtained.

B. The individual must obtain a 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 amount of 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 the 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, which will be reviewed during the formal application process.

29. Waiver Request:

A. If an individual has been convicted of an offense listed in Ark. Code Ann. §17-2-102(a), 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 waiver is made by:

(1) An affected applicant for an occupational license; or

(2) An individual holding an occupational 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 or certification of the applicant does not pose a threat to the health or safety of the public.

C. A request for waiver, if made by an applicant, must be in writing and accompany the completed application and fee.

D. The Board will respond with a decision, in writing, and will state the reason(s) for the decision.

E. An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture

DIVISION Veterinary Medical Examining Board

DIVISION DIRECTOR Cara Tharp

CONTACT PERSON Cara Tharp

ADDRESS 1 Natural Resources Dr., Little Rock, AR 72205

PHONE NO. 501-224-2836 **FAX NO.** 501-224-1100 **E-MAIL** cara.tharp@agriculture.arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Cara Tharp

PRESENTER E-MAIL cara.tharp@agriculture.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 Rule” below.
- D.** Submit two (2) copies of this 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 and Waiver Request (092.00.1-16.)
- 2. What is the subject of the proposed rule? Pursuant to Act 990 of the 92nd General Assembly (2019), the Rules of the Arkansas Veterinary Medical Examining Board are being amended to include a process for an individual to petition the Board for a determination about whether their criminal conviction disqualifies them from licensure and, if so, whether they can obtain a waiver from the Board.
- 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.

Please see attached summary.

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.”**

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

Ark. Code Ann. §17-2-104

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

Act 990 of 2019 mandates that the Board promulgate rules to establish a process for an individual to petition the Board for a determination about whether their criminal conviction disqualifies them from licensure and, if so, whether they can obtain a waiver from the Board.

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://arvetboard.statesolutions.us/public/>

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

Date: _____

Time: _____

Place: _____

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

March 14, 2020

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

Ten (10) days after filing.

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.

Please see attached notice.

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

Please see attached filing.

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.

None known at this time.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture

DIVISION Veterinary Medical Examining Board

PERSON COMPLETING THIS STATEMENT Cara Tharp

TELEPHONE NO. 501-224-2836 **FAX NO.** 501-224-1100 **EMAIL:** cara.tharp@agriculture.arkansas.gov

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

SHORT TITLE OF THIS RULE Pre-Licensure Criminal Background Check and Waiver Request

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X _____
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 X _____ 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 X _____ 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;
- (b) The reason for adoption of the more costly rule;
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

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? N/A

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule? N/A

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

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

\$ 0.00 _____

Next Fiscal Year

\$ 0.00 _____

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. N/A

Current Fiscal Year

\$ 0.00 _____

Next Fiscal Year

\$ 0.00 _____

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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 X

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.



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

Summary of Proposed Rule for Pre-Licensure Criminal Background Check and Waiver Request

Background:

The Board proposes a new rule in response to Act 990 of 2019, which mandates that the Board promulgate a rule to establish a process for an individual to petition the Board for a determination about whether their criminal conviction disqualifies them from licensure and, if so, whether they can obtain a waiver from the Board. The proposed new rule was approved by the Board on September 11, 2019.

Key Points:

The new rule:

- Establishes a petition process for a pre-licensure criminal background check
- Establishes a waiver process for individuals with criminal convictions
- Specifies that some criminal convictions are permanently disqualifying from licensure

Discussion:

The new rule allows an individual to petition the Board for a determination as to whether their criminal conviction disqualifies them from licensure. If the individual is disqualified from licensure based upon their criminal conviction, the new rule allows the individual to request a waiver from the Board, unless the conviction is one that Act 990 identifies as permanently disqualifying. The new rule aids in reducing barriers for individuals with criminal convictions who are trying to re-enter the workforce.