

Occupational Licensing Barriers to Reentry in Mississippi

A policy brief from James Robertson, Director of Criminal Justice Reform and Employability

Background

Mississippi imposes burdens on a number of professions, requiring a license to work. For many individuals, this is just a small hurdle on the way to their career. For low income individuals and those with a criminal conviction in their past, this can be the difference in finding meaningful work and returning to a life of crime.

The Institute for Justice conducted an extensive analysis of state occupational licensing laws and found that Mississippi requires a license for 55 low-income occupations, more than most other states. The sheer number of occupations requiring licenses limits possibilities for the disadvantaged seeking to reenter the workforce.¹

A study from Arizona State University finds that states with higher occupational licensing burdens have higher recidivism rates. These provisions can make it more difficult for those reentering the workforce to find a job, increasing the likelihood that they will return to crime.² Another report from the National Employment Law Project finds that over 30 other states have provisions that reduce licensing restrictions for individuals with a criminal conviction in their past. These include Texas, Arkansas, Oklahoma, and North Carolina. Mississippi currently has no such state licensing law that would increase opportunities for those reentering society.³

Mississippi licenses dozens of professions. Besides licensing for doctors and attorneys, the state licenses over 50 occupations with average salaries that fall

below the national average. These are natural fits for individuals reentering the workforce. While the Institute for Justice report examines the burden of these restrictions, no analysis has been undertaken to examine which licensing provisions disqualify individuals with a criminal conviction in their past. These are documented below.

Of the 43 professions examined, 40 include a restriction related to a criminal conviction in the applicant's past. Mississippi has a workforce shortage, and we have fewer people working than most other states, including our neighbors. Adopting a "Bootstraps" provision would put us on par with other states that are booming, and help us leapfrog ahead of others by improving our workforce and expanding our labor pool.

This model bill still allows boards to run background checks, but requires that they are conducted later in the process. It stipulates that only offenses directly related to the profession in question may disqualify an applicant. The bill also provides applicants an opportunity to present evidence of rehabilitation and mitigating factors, and the ability to appeal. Several of Mississippi's occupational licensing provisions already include some of these provisions. This bill standardizes the licensure process. Individual employers would still be able to make determinations about who they hire, this simply requires state boards to consider the nature of the offense and the individual to provide more opportunities for individuals to earn a job in their chosen field.

¹ "License to Work," The Institute for Justice, May 2012, <http://ij.org/report/license-to-work/>

² "Turning Shackles Into Bootstraps," Center for the Study of Economic Liberty at Arizona State University, November 2016, <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy->

[Report-2016-01-Turning-Shackles-into-Bootstraps.pdf](http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf)

³ "Unlicensed and Untapped," National Employment Law Project, April 2016, <http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>

Model Bill Proposal

Section 1:

- (1) Notwithstanding any other provision of law, the information listed in subsections (a), (b), (c), (d), (e), and (f) shall not be used, distributed, or disseminated by the State of Mississippi, its agents, or political subdivisions, in connection with an application for a license or certification. Offenses committed outside the state shall be classified as offenses committed within the state based on the maximum penalty that could have been imposed for such an act under the laws of such foreign jurisdiction.
 - (a) Non-conviction information, including information related to a deferred adjudication, non-adjudication, participation in a diversion program, an arrest not followed by a valid conviction, or infraction;
 - (b) Conviction which has been sealed, dismissed, expunged, or pardoned;
 - (c) Juvenile adjudication;
 - (d) Misdemeanor conviction for which no jail sentence can be imposed;
 - (e) Misdemeanor conviction older than three years, excluding any period of incarceration or custody;
 - (f) Felony conviction older than five years, excluding any period of incarceration or custody.

Section 2:

- (1) No person shall be disqualified from pursuing, practicing, or engaging in any occupation for which a license or certification is required, solely or in part because of a prior conviction, unless the conviction is directly related to the occupation for which the license is sought, as defined in Section 4 of this act.
- (2) The applicant who has been convicted of an offense which directly relates to the occupation for which a license is sought shall not be disqualified from the occupation if the applicant can show sufficient mitigation or rehabilitation and present fitness to perform the duties of the occupation for which the license is sought, as determined per Section 5 of this act.

Section 3:

- (1) Licensing applications shall not include an inquiry about an applicant's conviction history.
- (2) A licensing authority shall not inquire into or consider the conviction history of an applicant for licensing until after an applicant is found to be otherwise qualified for the license.
- (3) After an applicant is found to be otherwise qualified for the license, a licensing authority may inquire into and consider only the directly related conviction history of an applicant as determined pursuant to Section 4 of this act.

Section 4:

- (1) A licensing authority shall limit inquiries into an applicant's conviction history to only those convictions determined to be directly related to the occupation for which the license is sought and shall make this enumerated list available to the public and provide a copy to each licensing applicant. A licensing authority shall not inquire into or consider any conviction history beyond the scope of directly related convictions.
- (2) Within six months after this statute takes effect, each licensing authority shall establish a narrowly tailored list of directly related convictions by considering each of the following:
 - (a) The public policy of the state, as expressed in this act, to encourage the licensure of people with arrest and conviction records;
 - (b) Whether the elements of the offense are directly related to the specific duties and responsibilities of that occupation;
 - (c) Whether the occupation offers the opportunity for the same or a similar offense to occur;
 - (d) The relationship of the offense to the purposes of regulating the occupation for which the license is sought;
 - (e) The length of time since the offense occurred.

Section 5:

- (1) An applicant with a directly related conviction shall not be disqualified from the occupation for which a license is sought if the applicant can establish sufficient mitigation or rehabilitation and fitness to perform the duties of the occupation by providing either of the following:

- (a) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
- (b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to:
 - (i) Circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense;
 - (ii) Age of the person at the time the offense was committed;
 - (iii) The length of time since the offense occurred;
 - (iv) Evidence of work history, particularly any training or work experience related to the occupation in question;
 - (v) Letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

Section 6:

- (1) If a licensing authority intends to disqualify an applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following, prior to a final decision:
 - (a) Identify the directly related conviction item or items that form the basis for the potential disqualification and the rationale for occupational relatedness;
 - (b) Provide a copy of the conviction history report, if any, on which the licensing authority relies; and
 - (c) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide, which are described in Section 5 of this act.
- (2) After receiving the notice of potential disqualification, the applicant shall have thirty business days to respond by challenging the accuracy of the conviction history report, or submitting evidence of mitigation or rehabilitation, or both. The licensing authority shall make the final decision based on an individualized assessment of the information described in Section 5 of this act.
- (3) If a licensing authority disqualifies the applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following:
 - (a) The final disqualification, including a list of the directly related conviction item or items that form the basis for the disqualification and the rationale for occupation relatedness;
 - (b) The appeal process; and
 - (c) The earliest date the applicant may reapply for the license or certification, which shall be no longer than two years from the date of the initial application.

Section 7:

- (1) For a minimum of three years, licensing authorities shall retain application forms and other documents submitted by applicants, notices provided to applicants as required by Section 6 of this act, all other communications received from and provided to applicants, and conviction history reports of applicants.
- (2) Each licensing authority shall retain the number of applicants for each license and the number of applications requiring conviction history inquiries. In addition, each licensing authority shall retain the following information:
 - (a) The number of applicants with a record who received notice of potential disqualification;
 - (b) The number of applicants with a record who provided evidence of mitigation or rehabilitation;
 - (c) The number of applicants with a record who appealed the final disqualification; and
 - (d) The final disposition and demographic information of the applicants described in subsections (a), (b), and (c).

- (3) At least annually, each licensing authority shall make available to the public the information collected pursuant to subsection (2), while ensuring confidentiality of the individual applicants.

Section 8:

The provisions of these sections shall prevail over any other laws and rules, including but not limited to any specific laws and rules, which purport to govern the granting, denial, renewal, suspension, or revocation of a license. In deciding to grant, deny, revoke, suspend or renew a license, for a lack of good moral character or the like, the licensing authority may consider evidence of conviction of an offense but only in the same manner and to the same effect as provided for in the sections of this act. Nothing in these sections shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license.

Mississippi Occupational Licensing Restrictions	
	Architects: Applicant disqualified for any felony or crime of 'moral turpitude' or any misdemeanor involving fraud or misrepresentation. Any felony committed by licensee subject to a hearing for disciplinary action and possible suspension or revocation of license. Discretion is left up to the individual board as to how they shall interpret and apply this rule. 73-1-13, 73-1-29, Rule 4.3.1
	Landscape architects: Applicant must submit evidence of good moral character and integrity. Licensee convicted of any felony besides manslaughter subject to a hearing for disciplinary action and possible suspension or revocation of license. Any felony conviction for licensees, except manslaughter, results in 1 year suspension, 2 year probation, and \$1,000 fine. 73-2-7, 73-2-16, Rule 3.1
	Attorneys at law: submit evidence of good moral character. Felony convicts barred from admission, except for IRS violations and manslaughter. Any licensed attorney convicted of a felony other than manslaughter or IRS violation is automatically disbarred. 73-3-2, 73-3-41
	Auctioneers: Applicant must demonstrate good moral character and worthy of public trust, submit background material on application. Any felony conviction leads to disciplinary action and possible suspension or revocation of license. 73-4-17, 73-4-25
	Barbers, Barber instructors: Applicant must be of good moral and temperate habits. Any felony conviction could lead to suspension or revocation of license. 73-5-8, 73-5-11, 73-5-25 *Low-Income
	Chiropractors: Applicant must be of good moral character. License may be refused, suspended, or revoked for any felony conviction other than manslaughter or IRS violation. 73-6-13, 73-6-19
	Cosmetologists, cosmetology instructors, manicurists, estheticians, wig specialists: Any felony committed by applicant or licensee subject to a hearing for disciplinary action and possible suspension or revocation of license. 73-7-27 *Low-Income
	Dentists, dental hygienists: Applicant must be of good moral character, may be denied for any felony conviction. License may be suspended or revoked after hearing for any felony conviction. 73-9-23, 73-9-61
	Dietitians: License may be denied, suspended, or revoked for any felony conviction. 73-10-21, Rule 3.8.1(10)
	Funeral service and funeral directors: Applicants must submit evidence of good moral character. Upon a hearing, license may be withheld, suspended, or revoked for any felony conviction. License required to report any conviction for a felony or misdemeanor involving fraud, deception, or moral turpitude. 73-11-51, 73-11-57, Rule 2.10
	Engineers and Land surveyors: Applicants must be of good character and reputation. Dependence on any drug or alcohol, conviction of felony or misdemeanor can lead to hearing and withholding, suspension, or revocation of license. 73-13-23, 73-13-37, Rule 17.7
	Hearing aid dealers: Certificate may be suspended or revoked upon conviction of an offense involving moral turpitude. 73-14-35, Rule 6.8.1
	Nurses: License can be denied, suspended, or revoked upon conviction or a felony or a crime involving moral turpitude. Unprofessional conduct defined as a felony conviction within the last 5 years. 73-15-29. Administrative Code Part 2820, Rule 1.2
	Nursing Home Administrators: Applicant must be of good moral character, including evidence of a

criminal background check within the last 6 months. The board may reject, suspend, or revoke licenses upon conviction for a felony. 73-17-11, 73-17-15.
Optometrists: Applicants must be of good moral character. Licenses may be rejected, revoked, or suspended for any felony conviction, or a conviction for any crime involving moral turpitude or habitual intemperance involving any substance. 73-19-17, 73-19-23.
Pharmacists: Board may withhold, suspend, or revoke license for any felony conviction, commission of any act involving moral turpitude or gross immorality, or any violation of pharmacy or drug laws. 73-21-97.
<u>Orthotists and Prosthetists: None.</u>
Physical Therapists and Physical Therapist Assistants: Applicants must be of good moral character. Board may withhold, suspend, or revoke licenses for any felony conviction, or any crime which has a substantial relationship to the licensee's services. Good character is defined by absence of a felony conviction or misdemeanor involving moral turpitude. 73-23-47, 73-23-59, Rules Part 3103, 1.1.
Occupational Therapists: Applicants must be of good moral character. Any felony conviction or any crime involving dishonesty or fraud leads to a hearing for denial, suspension, or revocation of license. 73-24-19, 73-24-24.
Physicians: Applicant must be of good moral character, subject to background check. License can be withheld, suspended, or revoked for habitual use of drugs or alcohol, any controlled substance violation, or any conviction involving moral turpitude. Any person convicted of bribery, burglary, theft, arson, false pretense, perjury, forgery, embezzlement, or bigamy shall not practice medicine or dentistry. 73-25-3, 73-25-29, 99-19-35.
Physician Assistants: Applicant must be of good moral character, subject to criminal background check. 73-26-3.
Podiatrists: Applicant must be of good moral character, subject to criminal background check. License may be withheld, suspended, or revoked for habitual use of drugs or alcohol, any drug conviction, or any conviction involving moral turpitude. 73-27-5, 73-27-13.
Polygraph Examiners: Applicants cannot be convicted of a felony or misdemeanor involving moral turpitude. Board may withhold, suspend, or revoke licenses for commission of any crime involving moral turpitude. 73-29-13, 73-29-31.
<u>Counselors: Applicant must be of good moral character. License may be withheld, suspended, or revoked for any felony conviction. Applicants must undergo a background check, and are disqualified for any crime involving moral turpitude. Applicants are afforded a hearing where they may present mitigating factors and obtain a waiver from the board for license. 73-30-9, 73-30-21, Rules Part 2201, Rule 4.1</u>
Psychologists: Applicants must be of good moral character, subject to background check for crimes of moral turpitude. License may be suspended or revoked for conviction of any felony or crime of moral turpitude. 73-31-13, 73-31-21
<u>Public Accountants: Board may revoke, suspend, or take other action for any unprofessional conduct or other sufficient cause, subject to hearing. Board may impose disciplinary action if individual is convicted of a crime which directly relates to the practice of public accounting or the ability to practice public accounting. 73-33-11, Rule 6.17.10</u>
<u>Real Estate Appraisers: License may be denied, suspended, or revoked for final judgment (civil or criminal) on grounds of fraud, misrepresentation, or deceit, or conviction or any crime which is substantially related to professional duties. 73-34-35.</u>
Appraisal Management Company: Applicant must not have a felony conviction for a crime relating to the practice of appraisal, banking, mortgage, or the provision or financial services, or any crime involving fraud, misrepresentation or moral turpitude.
Real Estate Brokers: Board may deny, suspend, or revoke license for any felony conviction. 73-35-21.
<u>Foresters: None.</u>

Speech Pathologists and Audiologists: Applicants must be of good moral character. License may be denied, suspended, or revoked for any felony conviction. Any crime of moral turpitude is also eligible for disciplinary action. Board allows for submission of mitigating factors when determining whether to relicense an individual convicted of a crime. 73-38-9, 73-38-27, Rule 10.10.9 Rule 10.8.8
Veterinarians: After a hearing, license may be suspended or revoked for any felony conviction, any crime of moral turpitude, any crime involving unlawful sexual conduct, child abuse, the use or threatened use of a weapon, infliction of injury, indecent exposure, perjury, false reporting, criminal impersonation, forgery and any other crime involving dishonesty, larceny, alcohol or drugs. 73-39-77.
Athlete Agents: Applicants must indicate whether they have been convicted of any felony or crime of moral turpitude. The Secretary of State may refuse to issue a certificate if the individual has been convicted of a felony or crime of moral turpitude, but they must consider mitigating factors. A hearing and appeal process must be afforded. 73-42-9, 73-42-11, 73-42-13.
Social Workers and Marriage and Family Therapists: Licensees with any felony conviction are subject to disciplinary action. License may be withheld, suspended or revoked. Appeal process is available. Applicants can not have conviction for any crime involving moral turpitude. 73-53-17, 73-53-23, 73-53-25, Rule Part 1901 Rule 2.1.
Athletic Trainers: License may be suspended or revoked for any conviction involving moral turpitude, with a notice, hearing, and appeal provided. Licensees may also be disciplined for any unlawful possession of narcotics, regardless of conviction. 73-55-19, Rule 1.8.1. *Low-Income
Respiratory Care Practitioners: License may be withheld, suspended, or revoked for habitually intemperate use of alcohol or unlawful possession of narcotics. Licensee may be disciplined for any felony conviction, or misdemeanor involving dishonesty. 73-57-31, Rule 9.8.1.
<u>Residential Builders and Remodelers: None.</u>
Home Inspectors: Board may withhold, suspend, or revoke license for any felony conviction within 5 years. 73-60-31.
Tattoo/Body Piercing Artists: Applicants cannot have a conviction related to drugs, alcohol, fraud, sexual conduct, or dishonesty, but the board may consider completion of sentence as a waiver of the section. Rule 11.3.1.
Geologists: Applicants must be of good moral character and reputation. License may be revoked for crime of moral turpitude, but board must consider mitigating factors. 73-63-27, Rules Part 1101 Rule 9.1, 12.9.
Art Therapists: License may be withheld, suspended, or revoked for any crime involving moral turpitude, or use of alcohol or drugs that is dangerous to the licensee. Disciplinary actions may also be imposed for any unlawful possession or use of narcotics. 73-65-13, Rule 2.8.1.
Alarm Contracting Agents: Applicants cannot have any felony conviction. 73-69-7, 73-69 -9, 73-69 -11. *Low-Income
Interior Designers: Applicants cannot have any felony conviction involving moral turpitude, or any misdemeanor involving fraud, deceit, or misrepresentation. Board may suspend or revoke licenses for any felony conviction excepting manslaughter, subject to hearing and appeal. Board may discipline for any criminal violation. 73-73-9., 73-73-31, Rule 5.3
Preschool Teacher: None at state level, individual district policies vary. *Low Income
Well Driller: Applicant must be of good moral character. Rule III(A). *Low Income
Vegetation pesticide handler, Pest control applicator: None. *Low Income
Landscape Contractor: None. *Low Income
Teacher Assistants: None at state level, individual district policies vary. *Low Income
Truck Driver, Bus Driver: Numerous different sanctions for different offenses involving the operation of a commercial vehicle, including lifetime disqualification for some offenses. Rule 383.51 *Low Income
Child Care Worker: License may be withheld, suspended, or revoked for commission of any crime that could have a detrimental effect on children in the facility. 43-20-14. *Low Income

Emergency Medical Technician: License may be withheld, suspended, or revoked for commission of any crime related to profession or any felony. Rule 6.20.1. *Low Income
Contractors: Board may consider convictions for bid rigging or repair fraud. Application. *Low Income
Weighmasters: Applicant must be of good moral character. Application. *Low Income
Backflow Prevention Assembly Tester: None. *Low Income
Mobile Home Installer: Criminal history inquiry on application. *Low Income
Commercial Fishing: None. *Low Income
Gaming employee: Applicants can be denied for prior criminal conviction for crimes of moral turpitude, or any misdemeanors involving theft, drugs, or gambling. *Low Income

Crimes of Moral Turpitude, from the U.S. Department of State: http://www.cba.org/cba/cle/pdf/imm06_chang_app1.pdf

Category	Crimes involving moral turpitude	Crimes not involving moral turpitude
Crimes Against Property	<p>Fraud:</p> <ul style="list-style-type: none"> • Making false representation • Knowledge of such false representation by the perpetrator • Reliance on the false representation by the person defrauded • An intent to defraud • The actual act of committing fraud <p>Evil intent:</p> <ul style="list-style-type: none"> • Arson • Blackmail • Burglary • Embezzlement • Extortion • False pretenses • Forgery • Fraud • Larceny (grand or petty) • Malicious destruction of property 	<ul style="list-style-type: none"> • Damaging private property(where intent to damage not required) • Breaking and entering (requiring no specific or implicit intent to commit a crime involving moral turpitude) • Passing bad checks (where intent to defraud not required) • Possessing stolen property (if guilty knowledge is not essential) • Joy riding(where the intention to take permanently not required) • Juvenile delinquency • Trespassing

	<ul style="list-style-type: none"> • Knowingly Receiving stolen goods • Robbery • Theft (when it involves the intention of permanent taking) • Transporting stolen property (with guilty knowledge) 	
<p>Crimes Committed Against Governmental Authority</p>	<ul style="list-style-type: none"> • Bribery • Counterfeiting • Fraud against revenue or other government functions • Mail and wire fraud • Perjury • Harboring a fugitive from justice (with guilty knowledge) • Tax evasion (willful) 	<ul style="list-style-type: none"> • Black market violations • Breach of the peace • Carrying a concealed weapon • Desertion from the Armed Forces • Disorderly conduct • Drunk or reckless driving • Driving while license suspended or revoked • Drunkenness • Escape from prison • Failure to report for military induction • False statements (not amounting to perjury or involving fraud) • Firearm violations • Gambling violations • Immigration violations • Liquor violations • Loan sharking • Lottery violations • Minor traffic violations

		<ul style="list-style-type: none"> • Possessing burglar tools (without intent to commit burglary) • Smuggling and customs violations (where intent to commit fraud is absent) • Tax evasion (without intent to defraud) • Vagrancy
<p>Crimes Committed Against Person, Family Relationship, and Sexual Morality</p>	<ul style="list-style-type: none"> • Abandonment of a minor child (if willful and resulting in the destitution of the child) • Adultery (see INA 101** repealed by Public Law 97-116) • Assault (this crime is broken down into several categories, which involve moral turpitude): <ul style="list-style-type: none"> • Assault with intent to kill, commit rape, commit robbery or commit serious bodily harm • Assault with a dangerous or deadly weapon • Bigamy • Paternity fraud • Contributing to the delinquency of a minor (where sexual) • Gross indecency • Incest (if the result of an improper sexual relationship) • Kidnapping • Lewdness • Manslaughter: 	<ul style="list-style-type: none"> • Assault (simple) (any assault, which does not require an evil intent or depraved motive, although it may involve the use of a weapon, which is neither dangerous nor deadly) • Bastardy (the offense of begetting a bastard child) • Creating or maintaining a nuisance (where knowledge that premises were used for prostitution is not necessary) • Incest (when a result of a marital status prohibited by law) • Involuntary manslaughter (when killing is not the result of recklessness) • Libel • Failure to register as a sex offender^[14] • Mailing an obscene letter • Mann Act violations (where coercion is not present) • Riot

	<ul style="list-style-type: none"> • Voluntary • Involuntary (where the statute requires proof of recklessness, which is defined as the awareness and conscious disregard of a substantial and unjustified risk which constitutes a gross deviation from the standard that a reasonable person would observe in the situation. A conviction for the statutory offense of vehicular homicide or other involuntary manslaughter requires only a showing of negligence will not involve moral turpitude even if it appears the defendant in fact acted recklessly) • Mayhem • Murder • Pandering • Prostitution • Rape (including "Statutory rape" by virtue of the victim's age) 	<ul style="list-style-type: none"> • Suicide(attempted)
<p>Attempts, Aiding and Abetting, Accessories and Conspiracy</p>	<ul style="list-style-type: none"> • An attempt to commit a crime deemed to involve moral turpitude • Aiding and abetting in the commission of a crime deemed to involve moral turpitude • Being an accessory (before or after the fact) in the commission of a 	<p>N/A</p>

	<p>crime deemed to involve moral turpitude</p> <ul style="list-style-type: none">• Taking part in a conspiracy (or attempting to take part in a conspiracy) to commit a crime involving moral turpitude where the attempted crime would not itself constitute moral turpitude.	
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