

PROPOSED CONCEPTUAL AMENDMENT TO ASSEMBLY BILL 264

BACKGROUND

Assembly Bill 264 authorizes an applicant to seek judicial review of a final denial of an occupational license based on one's criminal legal system touchpoint or, more broadly, based on "moral character." As drafted, upon notification of a final denial by a licensing agency, an applicant may seek judicial review in a district court. A licensing agency must establish the applicant poses a direct, substantial, and unmitigable risk based on the profession's responsibilities. If a denial is upheld, a court must issue specific findings of fact and conclusions of law in support of the denial. If the denial is overturned, a licensing agency must issue the applicant that license.

INTENT OF AMENDMENT

The amendment provisions below seek to clarify to whom this bill applies; modifies the burden of proof a licensing board or agency must meet to uphold the denial in court; allows associated circumstances to be considered outside of the specifications within the original bill; clarifies judicial review occurs after a licensing board's or agency's final denial of an occupational license; modifies who will issue the recommendations if a denial is upheld; and ensures that an arrest alone cannot be considered in an applicant's application.

PROPOSED AMENDMENTS

1. Limits the applicability of this bill to occupational licenses specified under NRS Title 54.
2. Replaces the existing contents of Section 1(1) with the following: If a licensing agency denies an application for the issuance of a license based on moral character or criminal history of the applicant, the licensing agency shall provide to the applicant written notice within 10 days after the agency issues a final decision in the matter. The notice must set forth the basis for the decision of the licensing agency and advise the applicant if additional internal remedies for challenging such a decision exist alongside any relevant timelines for pursuing such remedies.
3. Replaces the existing contents of Section 1(2) with the following: An applicant who receives a final notice provided pursuant to subsection 1 may, within 30 days after receipt of the notice, file a petition in the district court seeking review of the final decision of the licensing agency.
4. Replaces the existing contents of Section 1(3) with the following: "At the hearing, the licensing agency has the burden of proof of establishing by a preponderance of the evidence that the issuance to the applicant of the license for which the applicant applied would pose a direct, substantial and unmitigable risk to public health or safety based on the duties and responsibilities of the profession or occupation in which the applicant wishes to engage. At the hearing, the licensing agency may present all relevant factors in concluding how it made such a determination. A court may not uphold such a denial based solely upon incidents of arrest."
5. Replaces the existing contents of Section 1(4) with the following: "If the court determines that the licensing agency has met the burden of proof required by subsection 3, the court shall issue an order affirming the decision of the licensing agency. The order must contain specific findings of fact and conclusions of law supporting the decision of the court. The court shall also have the discretion to order the licensing agency to meet with the applicant to confer about any necessary steps that must be undertaken for the individual to overcome a licensure denial based on the moral character or criminal history of the applicant."
6. In Section 1(6), defines "applicant" to be a person seeking a license, certification, registration, permit or other authorization that grants a person the authority to engage in a profession or occupation.