



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

**HB2968**

by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

225 ILCS 20/9A-1 new  
225 ILCS 20/19

from Ch. 111, par. 6369

Amends the Clinical Social Work and Social Work Practice Act. Provides that the Department of Financial and Professional Regulation and the Social Work Examining and Disciplinary Board shall not request, inquire into, or consider certain criminal history records in connection with an application for licensure. Provides that a period of 5 years after a conviction of any felony or of a misdemeanor directly related to the practice of the profession, or 3 years since release from confinement, is prima facie evidence of rehabilitation. Requires the Department to consider certain mitigating factors and evidence of rehabilitation for applicants for licensure. Requires the Department, upon denial of a license, to provide the applicants certain information concerning the denial. Requires the Department to issue an annual report on certain information concerning granting or denial of license applications. Provides that the Department may refuse to issue or renew a license or may suspend, revoke, or place on probation or take other action on a license for certain criminal history for current licensees. Effective July 1, 2018.

LRB100 10388 SMS 20585 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Clinical Social Work and Social Work  
5 Practice Act is amended by changing Section 19 and by adding  
6 Section 9A-1 as follows:

7 (225 ILCS 20/9A-1 new)

8 Sec. 9A-1. Applicant conviction.

9 (a) The Department and the Board shall not request  
10 information about, inquire into, or consider the following  
11 criminal history records in connection with an application for  
12 licensure:

13 (1) juvenile adjudications of delinquent minors as  
14 defined in Section 5-105 of the Juvenile Court Act of 1987,  
15 subject to the restrictions set forth in 5-130 of that Act;

16 (2) law enforcement, court, and conviction records of  
17 an individual who was 17 years old at the time of the  
18 offense and before January 1, 2014, unless the offense  
19 required automatic transfer to adult court;

20 (3) records of arrests not followed by a conviction;

21 (4) convictions overturned by a higher court; or

22 (5) arrests that have been expunged.

23 (b) Except as provided in Section 2105-165 of the

1 Department of Professional Regulation Law of the Civil  
2 Administrative Code of Illinois, a period of 5 years after  
3 conviction of a felony or of a misdemeanor directly related to  
4 the practice of the profession, or a period of 3 years since  
5 release from confinement, whichever is later, without any  
6 subsequent conviction shall be prima facie evidence of  
7 sufficient rehabilitation for the purpose of issuing a license  
8 under this Act.

9 (c) Except as provided in subsection (b) of this Section  
10 and Section 2105-165 of the Department of Professional  
11 Regulation Law of the Civil Administrative Code of Illinois,  
12 when determining whether to grant a license to an applicant  
13 with a prior conviction of a felony or of a misdemeanor  
14 directly related to the practice of the profession, the  
15 Department shall consider evidence of rehabilitation and  
16 mitigating factors contained in the applicant's record,  
17 including the following:

18 (1) the lack of direct relation of the offense for  
19 which the applicant was previously convicted to the duties,  
20 functions, and responsibilities of the position for which a  
21 license is sought;

22 (2) the amount of time that has elapsed since the  
23 offense occurred;

24 (3) if the applicant was previously licensed or  
25 employed in this State or other states or jurisdictions,  
26 then the lack of prior misconduct arising from or related

1 to the licensed position or position of employment;

2 (4) the age of the person at the time of the criminal  
3 offense;

4 (5) successful completion of sentence and, for  
5 applicants serving a term of parole or probation, a  
6 progress report provided by the applicant's probation or  
7 parole officer that documents the applicant's compliance  
8 with conditions of supervision;

9 (6) evidence of the applicant's present fitness and  
10 professional character;

11 (7) evidence of rehabilitation or rehabilitative  
12 effort during or after incarceration, or during or after a  
13 term of supervision, including, but not limited to, a  
14 certificate of good conduct under Section 5-5.5-25 of the  
15 Unified Code of Corrections or certificate of relief from  
16 disabilities under Section 5-5.5-10 of the Unified Code of  
17 Corrections; and

18 (8) any other mitigating factors that contribute to the  
19 person's potential and current ability to perform the job  
20 duties.

21 (d) It is the affirmative obligation of the Department to  
22 demonstrate that a prior conviction would impair the ability of  
23 the applicant to engage in the practice requiring a license. If  
24 the Department refuses to grant a license to an applicant, then  
25 the Department shall notify the applicant of the denial in  
26 writing with the following included in the notice of denial:

1           (1) a statement about the decision to refuse to issue a  
2           license;

3           (2) a list of the convictions that formed the sole or  
4           partial basis for the refusal to issue a license;

5           (3) a list of the mitigating evidence presented by the  
6           applicant;

7           (4) reasons for refusing to issue a license specific to  
8           the evidence presented in mitigation of conviction items  
9           that formed the partial or sole basis for the Department's  
10          decision; and

11          (5) a summary of the appeal process or the earliest the  
12          applicant may reapply for a license, whichever is  
13          applicable.

14          (e) The Department shall issue an annual report indicating  
15          the following:

16               (1) the number of applicants for a license under this  
17               Act within the previous calendar year;

18               (2) the number of applicants for a license under this  
19               Act within the previous calendar year who had any criminal  
20               conviction;

21               (3) the number of applicants for a license under this  
22               Act in the previous calendar year who were granted a  
23               license;

24               (4) the number of applicants with a criminal conviction  
25               who were granted a license under this Act within the  
26               previous calendar year;

1           (5) the number of applicants for a license under this  
2           Act within the previous calendar year who were denied a  
3           license;

4           (6) the number of applicants with a criminal conviction  
5           who were denied a license under this Act in the previous  
6           calendar year in part or in full because of the prior  
7           conviction;

8           (7) the number of probationary licenses without  
9           monitoring issued under this Act in the previous calendar  
10           year to applicants with convictions;

11           (8) the number of probationary licenses with  
12           monitoring issued under this Act in the previous calendar  
13           year to applicants with convictions; and

14           (9) summary demographic information including race,  
15           gender, age, and education for applicants described in  
16           paragraphs 1 through 8.

17           (225 ILCS 20/19) (from Ch. 111, par. 6369)

18           (Section scheduled to be repealed on January 1, 2018)

19           Sec. 19. Grounds for disciplinary action.

20           (1) The Department may refuse to issue, refuse to renew,  
21           suspend, or revoke any license, or may place on probation,  
22           censure, reprimand, or take other disciplinary or  
23           non-disciplinary action deemed appropriate by the Department,  
24           including the imposition of fines not to exceed \$10,000 for  
25           each violation, with regard to any license issued under the

1 provisions of this Act for any one or a combination of the  
2 following reasons:

3 (a) material misstatements of fact in furnishing  
4 information to the Department or to any other State agency  
5 or in furnishing information to any insurance company with  
6 respect to a claim on behalf of a licensee or a patient;

7 (b) violations or negligent or intentional disregard  
8 of this Act, or any of the rules promulgated hereunder;

9 (c) for licensees, conviction of or entry of a plea of  
10 guilty or nolo contendere to any crime that is a felony  
11 under the laws of the United States or any state or  
12 territory thereof or that is a misdemeanor, of which an  
13 essential element is dishonesty, or any crime that is  
14 directly related to the practice of the clinical social  
15 work or social work professions;

16 (d) making any misrepresentation for the purpose of  
17 obtaining licenses, or violating any provision of this Act  
18 or any of the rules promulgated hereunder;

19 (e) professional incompetence;

20 (f) malpractice;

21 (g) aiding or assisting another person in violating any  
22 provision of this Act or any rules;

23 (h) failing to provide information within 30 days in  
24 response to a written request made by the Department;

25 (i) engaging in dishonorable, unethical or  
26 unprofessional conduct of a character likely to deceive,

1 defraud or harm the public as defined by the rules of the  
2 Department, or violating the rules of professional conduct  
3 adopted by the Board and published by the Department;

4 (j) habitual or excessive use or addiction to alcohol,  
5 narcotics, stimulants, or any other chemical agent or drug  
6 that results in a clinical social worker's or social  
7 worker's inability to practice with reasonable judgment,  
8 skill, or safety;

9 (k) discipline by another jurisdiction, if at least one  
10 of the grounds for the discipline is the same or  
11 substantially equivalent to those set forth in this  
12 Section;

13 (l) directly or indirectly giving to or receiving from  
14 any person, firm, corporation, partnership, or association  
15 any fee, commission, rebate or other form of compensation  
16 for any professional service not actually rendered.  
17 Nothing in this paragraph (l) affects any bona fide  
18 independent contractor or employment arrangements among  
19 health care professionals, health facilities, health care  
20 providers, or other entities, except as otherwise  
21 prohibited by law. Any employment arrangements may include  
22 provisions for compensation, health insurance, pension, or  
23 other employment benefits for the provision of services  
24 within the scope of the licensee's practice under this Act.  
25 Nothing in this paragraph (l) shall be construed to require  
26 an employment arrangement to receive professional fees for



1 services rendered;

2 (m) a finding by the Board that the licensee, after  
3 having the license placed on probationary status, has  
4 violated the terms of probation;

5 (n) abandonment, without cause, of a client;

6 (o) wilfully filing false reports relating to a  
7 licensee's practice, including but not limited to false  
8 records filed with Federal or State agencies or  
9 departments;

10 (p) wilfully failing to report an instance of suspected  
11 child abuse or neglect as required by the Abused and  
12 Neglected Child Reporting Act;

13 (q) being named as a perpetrator in an indicated report  
14 by the Department of Children and Family Services under the  
15 Abused and Neglected Child Reporting Act, and upon proof by  
16 clear and convincing evidence that the licensee has caused  
17 a child to be or failed to take reasonable steps to prevent  
18 a child from being an abused child or neglected child as  
19 defined in the Abused and Neglected Child Reporting Act;

20 (r) physical illness, mental illness, or any other  
21 impairment or disability, including, but not limited to,  
22 deterioration through the aging process, or loss of motor  
23 skills that results in the inability to practice the  
24 profession with reasonable judgment, skill or safety;

25 (s) solicitation of professional services by using  
26 false or misleading advertising; or

1           (t) violation of the Health Care Worker Self-Referral  
2           Act.

3           (2) (Blank).

4           (3) The determination by a court that a licensee is subject  
5           to involuntary admission or judicial admission as provided in  
6           the Mental Health and Developmental Disabilities Code, will  
7           result in an automatic suspension of his license. Such  
8           suspension will end upon a finding by a court that the licensee  
9           is no longer subject to involuntary admission or judicial  
10          admission and issues an order so finding and discharging the  
11          patient, and upon the recommendation of the Board to the  
12          Secretary that the licensee be allowed to resume professional  
13          practice.

14          (4) The Department may refuse to issue or renew or may  
15          suspend the license of a person who (i) fails to file a return,  
16          pay the tax, penalty, or interest shown in a filed return, or  
17          pay any final assessment of tax, penalty, or interest, as  
18          required by any tax Act administered by the Department of  
19          Revenue, until the requirements of the tax Act are satisfied or  
20          (ii) has failed to pay any court-ordered child support as  
21          determined by a court order or by referral from the Department  
22          of Healthcare and Family Services.

23          (5) In enforcing this Section, the Board upon a showing of  
24          a possible violation may compel a person licensed to practice  
25          under this Act, or who has applied for licensure or  
26          certification pursuant to this Act, to submit to a mental or

1 physical examination, or both, as required by and at the  
2 expense of the Department. The examining physicians shall be  
3 those specifically designated by the Board. The Board or the  
4 Department may order the examining physician to present  
5 testimony concerning this mental or physical examination of the  
6 licensee or applicant. No information shall be excluded by  
7 reason of any common law or statutory privilege relating to  
8 communications between the licensee or applicant and the  
9 examining physician. The person to be examined may have, at his  
10 or her own expense, another physician of his or her choice  
11 present during all aspects of the examination. Failure of any  
12 person to submit to a mental or physical examination, when  
13 directed, shall be grounds for suspension of a license until  
14 the person submits to the examination if the Board finds, after  
15 notice and hearing, that the refusal to submit to the  
16 examination was without reasonable cause.

17 If the Board finds a person unable to practice because of  
18 the reasons set forth in this Section, the Board may require  
19 that person to submit to care, counseling, or treatment by  
20 physicians approved or designated by the Board, as a condition,  
21 term, or restriction for continued, reinstated, or renewed  
22 licensure to practice; or, in lieu of care, counseling or  
23 treatment, the Board may recommend to the Department to file a  
24 complaint to immediately suspend, revoke or otherwise  
25 discipline the license of the person. Any person whose license  
26 was granted, continued, reinstated, renewed, disciplined or

1 supervised subject to such terms, conditions or restrictions,  
2 and who fails to comply with such terms, conditions, or  
3 restrictions, shall be referred to the Secretary for a  
4 determination as to whether the person shall have his or her  
5 license suspended immediately, pending a hearing by the Board.

6 In instances in which the Secretary immediately suspends a  
7 person's license under this Section, a hearing on that person's  
8 license must be convened by the Board within 30 days after the  
9 suspension and completed without appreciable delay. The Board  
10 shall have the authority to review the subject person's record  
11 of treatment and counseling regarding the impairment, to the  
12 extent permitted by applicable federal statutes and  
13 regulations safeguarding the confidentiality of medical  
14 records.

15 A person licensed under this Act and affected under this  
16 Section shall be afforded an opportunity to demonstrate to the  
17 Board that he or she can resume practice in compliance with  
18 acceptable and prevailing standards under the provisions of his  
19 or her license.

20 (Source: P.A. 98-756, eff. 7-16-14.)

21 Section 99. Effective date. This Act takes effect July 1,  
22 2018.