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Lockdown To Liberty

Idahoans with criminal convictions face multiple barriers when attempting to enter one of the 288 licensed occupations in the state of Idaho. The Occupational Licensing and Certification Laws Committee has been drafting legislation to address some of these barriers. The drafted bills up for discussion today are excellent ways to ensure that licensure requirements treat this segment of Idaho's population fairly. Two changes to the draft legislation could further cement this goal.

Changes To Draft Legislation

1. Ensure that all "good moral character" and "moral turpitude" statutes are addressed in the draft legislation. Currently, not all occupations are addressed, but they need to be for the legislation to achieve what is intended.
2. Ensure that applicants with withheld judgments are not targeted for denial.

- 1. Ensure that all "good moral character" and "moral turpitude" statutes are addressed in the draft legislation.**

The proposed bill to eliminate the ability to deny licenses to applicants based on unclear "good moral character" and "moral turpitude" requirements is a great step toward elimination of two arbitrary licensing barriers imposed on Idahoans. But a few occupations have been forgotten during the formation of this bill. Several occupations were left out in their entirety from this draft legislation, even though they contain these morality requirements:

- a. Gambling vendors, Title 67, Chapter 77
- b. Liquor-related licenses, Title 23, Chapter 9
- c. Outfitters and guides, Title 36, Chapter 21

There are also several instances where, in one subsection of a statute regulating licensing of a specific occupation, the board's ability to deny an applicant based on these morality requirements has been removed. However, morality requirements have not been removed from another subsection of the same statute, where they remain as a requirement for licensure. Because applicants can still be denied a license if they do not meet licensure requirements, and morality remains as one of those requirements, applicants arrive at the same end result that this committee is trying to prevent: Applicants can still be denied a



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license due to unclear morality requirements. The licensure requirement to be “of good moral character” still remains for:

- d. Artificial inseminators, Title 25, Chapter 8
- e. Barber instructors and apprentices, Title 54, Chapter 58
- f. Counselors, Title 54, Chapter 34
- g. Peace officers, Title 19, Chapter 51
- h. Independent review organizations, Title 41, Chapter 59
- i. Attorneys, Title 3, Chapter 1
- j. Liquefied petroleum gas dealers, Title 54, Chapter 53
- k. Massage therapists, Title 54, Chapter 40
- l. Morticians, Title 54, Chapter 11
- m. Nursing home administrators, Title 54, Chapter 16, who currently have to be “of good moral character” to sit for their examination
- n. Optometrists, Title 54, Chapter 15
- o. Pharmacists, Title 54, Chapter 17
- p. Physical therapists, Title 54, Chapter 22
- q. Podiatrists, Title 54, Chapter 6
- r. Psychologists, Title 54, Chapter 23
- s. Appraisal management company owners, Title 54, Chapter 41
- t. Residential care facility administrators, Title 54, Chapter 42, who currently have to be “of good moral character” to sit for their examination
- u. Shorthand reporters, Title 54, Chapter 31
- v. Social workers, Title 54, Chapter 32
- w. Hearing aid dealers and fitters and sign language interpreters, Title 54, Chapter 29
- x. Veterinarians, Title 54, Chapter 21, who currently have to submit signed affidavits to the board that they are of “good moral character”
- y. Water and wastewater professionals, Title 54, Chapter 24
- z. Weighmasters, Title 71, Chapter 4
- aa. Public works contractors, Title 54, Chapter 19

All of these occupations need to be included in the draft legislation, and all of their subsections that mention these morality requirements need to be addressed for the bill to achieve what is intended.

2. Ensure that applicants with withheld judgments are not targeted for denial.

A withheld judgement is a special type of court judgement. If an individual receives a withheld judgement, then they are not convicted of a crime. Withholding a judgement allows a judge to put



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individuals on probation without formally convicting them of a crime. Thus, the judge deems that the individual is not a threat to public safety. Instead of locking them up, the judge has them serve probation.

Once the individual complies with the terms of their probation, they can petition the court to have their case dismissed. The individual never receives a conviction. But the record of their withheld judgement is still documented and searchable by licensing boards.

And some licensing boards will search for that record. In fact, the below occupations have licensing boards that can actually deny an applicant with a withheld judgement a license. Overall, 66 different occupations allow denial:

- a. A bail agent
- b. 20 different occupations that fall under the category of “beauty professionals,” ranging from barbers to nail technicians to glamour photographers
- c. A chiropractor
- d. 42 different occupations related to horse racing, ranging from blacksmiths to concession employees to custodians
- e. A liquefied petroleum gas dealer
- f. A nursing home administrator

To correct this oversight, the committee can write into their current proposal a direction to boards to remove any administrative rules that allow denial based on a withheld judgement by adding a new subsection (subsection three) to 67-9411 “Evaluation of Criminal Convictions”:

(3) A licensing authority shall not deny a license, certificate, registration, permit, or other authorization to practice a profession or occupation to an applicant on the basis of a withheld judgement.

Additionally, mentions of denial based on a withheld judgement should be removed from state statute. Currently, there are two statutes that mention denial based on a withheld judgement:

- a. Title 54, Chapter 7, relating to chiropractors, states that a license can be suspended or revoked if an applicant “has been convicted, found guilty, received a withheld judgment or suspended sentence in this or any other state of a felony or a crime involving moral turpitude.”
- b. Title 54, Chapter 53, relating to liquefied petroleum gas dealers, states that applicants must never have “been convicted, found guilty, or received a withheld judgment for any felony.”



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Making these two changes to the draft legislation will ensure that all occupations are properly addressed when removing the barrier of morality requirements, and that individuals who have received a withheld judgement are not targeted for licensure denial.

LOCKDOWN TO LIBERTY

How to help Idahoans trying to
rebuild their lives



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By Lindsay Atkinson

INTRODUCTION

Serving time for a crime is meant to be an opportunity for rehabilitation, not an endless condemnation. Yet, rehabilitated offenders face numerous, counterproductive government obstacles in their path to find meaningful work and rebuild their lives.

From the instant a judge pounds her gavel to when a prisoner changes out of his inmate jumpsuit for the last time, that prisoner faces a system that is built on one end truth: Unless he is given a life sentence, he will eventually be getting out.

Getting out is his hope. But Idaho law currently sets up a bleak “out” for many Idahoans with criminal records, especially related to the chance of pursuing their desired occupations.

Released prisoners should not be shackled to their past through all of their future pursuits. Yet Idaho has hundreds of shackles, all imposed through the language of law.

The state has 288 licensed occupations, governed by 28 licensing authorities. As indicated in state statute and administrative rules, of these 288 occupations...

...221 have licensing boards that consider an applicant’s past felony convictions as a factor in licensing.

...102 have licensing boards that can deny an applicant for a lesser conviction.

...89 require applicants to have “good moral character.”

...117 have licensing boards that can deny an applicant due to conviction of a crime involving moral turpitude.

Most Idaho licensing boards have the language of law set up to justify a denial of a license to an applicant with a criminal conviction. But, in real-life application, Idaho’s occupational licensing boards vary wildly on how they treat these applicants.

***Never be a prisoner of your past.
It was a lesson, not a life sentence.***

- Unknown



Of Idaho's 288 state-licensed occupations...

...59% have licensing boards that will unconditionally deny licensure to applicants with criminal convictions. (This total covers all boards that deny licenses if an applicant has one or more of the following: A felony record; has committed a misdemeanor; lacks undefined "good moral character;" or has committed a crime involving moral turpitude.)

...27% have licensing boards that consider an applicant's criminal history as a factor in whether to award a license; however, they offer a process whereby an applicant can prove they have been rehabilitated since their crime. (This total also includes boards that specifically ask applicants to disclose criminal history on their applications, but have no indication in their administrative rules regarding how that information is used.)

...14% have licensing boards that do not consider criminal history at all in their licensing decisions.

Thus, Idahoans with past convictions are put between a rock and a hard place, should they attempt to enter their desired occupations. Approximately 21 percent of Idahoans have a criminal conviction. Even with a large population of Idaho having a criminal history, a system remains whereby more than half of Idaho's occupational licenses are unconditionally denied to those who have a conviction, no matter what the crime was, whether it's related to the field in question, or whether the offender has sincerely rehabilitated.

Idaho lawmakers have it in their hands to remove occupational obstacles for this population during the 2020 session.

The Idaho Freedom Foundation has catalogued the Gem State's 288 licensed occupations, and we have identified each job where an applicant's criminal history can unfairly put a license—and thus, an entire occupation—out of reach.

Please visit IdahoFreedom.org/LockdowntoLiberty to read the full report.



THE PROBLEM

Here's the problem with Idaho's current occupational licensing system: Idaho law makes it incredibly difficult to enter into your occupation of choice if you have a criminal record, too often for arbitrary reasons.

Approximately one in four occupations are licensed in the US. About 21 percent of Idahoans have a criminal record. So when licensing boards deny occupational licenses—whether automatically or upon consideration—to people with criminal records, a large swath of people feel the effect.

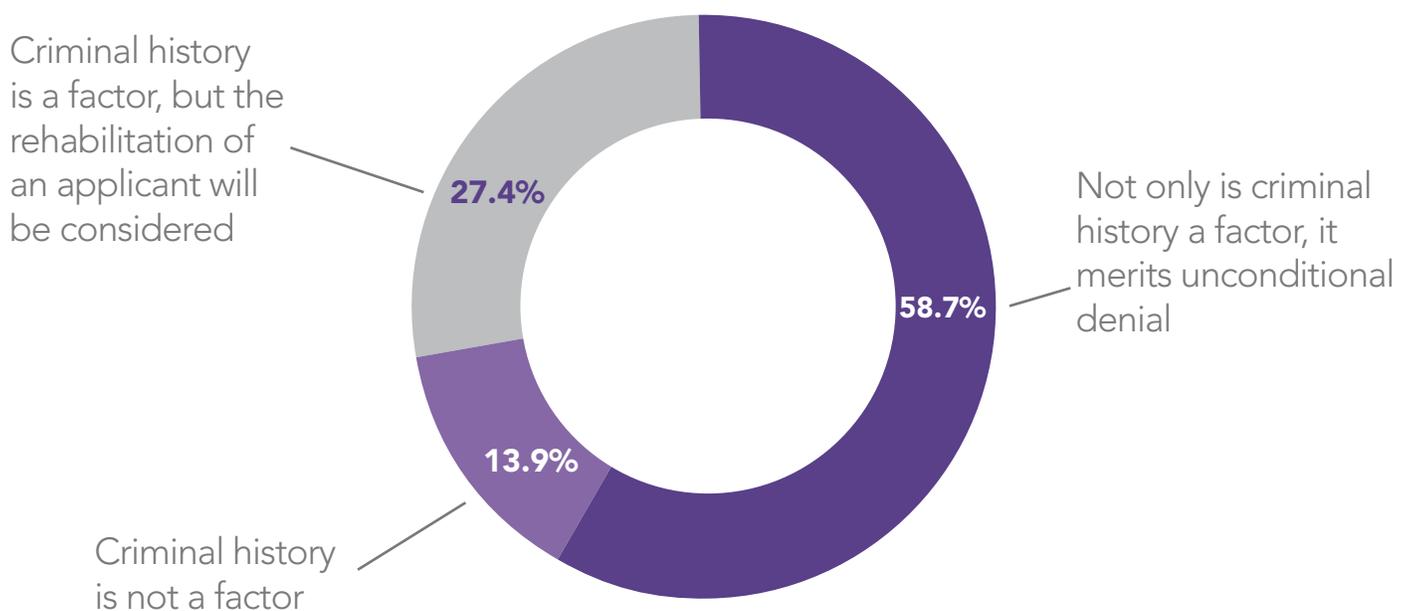
Of Idaho's 288 licensed occupations...

...169 have licensing boards that will unconditionally deny licensure to applicants with criminal convictions. (This total covers all boards that deny licenses if an applicant has one or more of the following: A felony record; has committed a misdemeanor; lacks undefined "good moral character;" or has committed a crime involving moral turpitude.)

...79 have licensing boards that consider an applicant's criminal history as a factor in whether to award a license; however, they offer a process whereby an applicant can prove they have been rehabilitated since their crime. (This total also includes boards that specifically ask applicants to disclose criminal history on their applications, but have no indication in their administrative rules regarding how that information is used.)

...40 have licensing boards that do not consider criminal history at all in their licensing decisions.

ARE CRIMINAL CONVICTIONS A FACTOR FOR LICENSURE?



THE REGULATORS

Of Idaho's 288 licensed occupations, the Bureau of Occupational Licenses oversees 30 boards that together regulate approximately 30 percent of the state's licensed occupations. However, there are 27 other regulatory agencies that have authority over the other 70 percent of licensed occupations.

Licensing agency	Percentage of occupational licenses issued under the agency's authority
Idaho Bureau of Occupational Licenses	29.9
Idaho State Police	21.5
Idaho State Department of Agriculture	6.6
Idaho Department of Insurance	5.6
Idaho Division of Building Safety	5.6
Idaho Department of Finance	4.2
Idaho Department of Health and Welfare	4.2
Idaho State Department of Education	3.5
Idaho State Board of Pharmacy	2.8
Idaho Board of Medicine	2.4
Idaho Department of Fish and Game	1.7
Idaho Transportation Department	1.7
Idaho Board of Nursing	1.4
Idaho Board of Dentistry	1.0
Idaho Board of Veterinary Medicine	1.0
Idaho Outfitters and Guides Licensing Board	1.0
Idaho Department of Water Resources	1.0
Idaho Real Estate Commission	0.7
Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors	0.7
Idaho Secretary of State	0.7
Idaho State Board of Accountancy	0.3
Idaho State Lottery Commission	0.3
Idaho Hop Growers Commission	0.3
Idaho State Bar	0.3
Idaho Board of Scaling Practices	0.3
Idaho Mint Commission	0.3
Idaho Department of Labor	0.3
Office of the Attorney General	0.3

BARRIERS TO ENTRY

Multiple barriers perpetuate the ability for so many occupational licensing boards to unconditionally deny applicants with criminal convictions.



Licensing requirements often stipulate that an applicant be of “good moral character.” Even though there is no clear definition of this term, it can be used to exclude people with criminal records from entire industries.



Licensing requirements also include language allowing licensing boards to broadly deny applicants that have committed crimes involving “moral turpitude.” Even though there is no clear definition of the term “moral turpitude,” this is a second phrase that can be used to exclude people with criminal records from getting the license needed for their chosen occupation.



There are numerous licenses that require applicants to submit to a criminal history check. This relates to the first and second barriers. When a licensing authority knows the criminal record of an applicant, it can use that record to justify the view that the applicant is not of good character, or has committed some crime related to moral turpitude.



Licensing requirements often include language that allows licensing boards to deny an applicant with any past felony conviction. Blanket denials ignore the potential for rehabilitation and assume all felony crimes are equally related to the occupation.



Requirements can also include language that allows licensing boards to broadly dismiss applicants based on one or more misdemeanor convictions.



Some Idaho licensing boards require applicants to already hold one general occupational license before applying for a specialized one. This can create a problem for applicants when the specialized license they are seeking does not consider their criminal history, but the general license they must first acquire does. One example is how an applicant seeking a license to be a life settlement broker (an occupation that does not consider criminal history) has to first be a licensed insurance producer (which does consider criminal history).



Different licensing boards employ different philosophies regarding applicants’ criminal histories. For some boards, there’s no forgiveness. For instance, most all dental occupations have unconditional denials of applicants with any type of felony record.



The last barrier is imposed by inconsistencies between state statute and administrative rules. There are several instances where state statute says boards consider the rehabilitation of an applicant since they committed their crime, but the board has set up no such procedure to consider rehabilitation.



POLICY SOLUTIONS

No one holds that all types of criminal backgrounds are free game for every occupation—a convicted sex offender does not belong at a daycare. But determinations are rarely so cut-and-dry in current law: As IFF’s full report demonstrates, Idaho occupational licenses currently have broad denial based on convictions (such as for “any felony conviction,” “a misdemeanor involving dishonesty,” a lack of “good moral character,” “a crime involving moral turpitude,” among other restrictions), and criminal history requirements vary arbitrarily from board to board.

The following five policy recommendations would help ensure Idaho licensing boards do not treat applicants with criminal records arbitrarily.

- 1** All “good moral character” and “moral turpitude” requirements could be deleted from state law and administrative rules.
- 2** A law could be written to require boards to disclose the specific crimes for which an applicant could be denied, for each license that they issue. This will ensure that applicants can only be denied a license due to convictions of crimes directly related to the occupation.
- 3** State lawmakers could require all boards to set up proof of rehabilitation procedures, whereby applicants with criminal convictions can prove they have been rehabilitated since their crime.
- 4** The Legislature could implement a sunrise and sunset provision for every occupational license in the state.
- 5** Whenever relevant, throughout this year and the future, legislators could merge or repeal occupational licenses, or boards, due to inactivity or lack of relevance.

Each of us is more than the worst thing we've ever done.

- Bryan Stevenson,
author of "Just Mercy"

The Idaho Freedom Foundation has catalogued the Gem State's 288 licensed occupations, and we have identified each job where an applicant's criminal history can unfairly put a license—and thus, an entire occupation—out of reach.

Find the full report at:
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