

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Notice of Intended Action

**Proposing rule making related to waivers and licensure
and providing an opportunity for public comment**

The Professional Licensing and Regulation Bureau hereby proposes to amend Chapter 5, “Waivers and Variances from Rules,” Chapter 13, “Public Records and Fair Information Practices,” and Chapter 14, “Military Service, Veteran Reciprocity, and Spouses of Active Duty Service Members,” and to adopt a new Chapter 15, “Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 546.3 and 546.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 304; 2020 Iowa Acts, House File 2389; and 2020 Iowa Acts, House File 2627.

Purpose and Summary

The proposed amendments implement changes required by 2019 Iowa Acts, Senate File 304; 2020 Iowa Acts, House File 2389; and 2020 Iowa Acts, House File 2627. These amendments include:

- Removal of the term “variance” when it is used to mean a waiver, as required by 2020 Iowa Acts, House File 2389, section 10, which amended Iowa Code section 17A.9A;
- Removal of references in Chapter 14 to the College Student Aid Commission and Iowa Code chapter 261, pursuant to 2020 Iowa Acts, Senate File 304, and to the term “spouse” as a result of 2020 Iowa Acts, House File 2627, section 24, which struck Iowa Code section 272C.4(13);
- Addition of a new rule 193—14.4(272C) to set forth the procedures for licensure by verification for applicants who are licensed in other jurisdictions, as set forth in 2020 Iowa Acts, House File 2627;
- Addition of a new rule 193—14.7(272C) to set forth the procedures for licensure by verification for applicants who have relevant work experience in jurisdictions that do not have license requirements, as set forth in 2020 Iowa Acts, House File 2627; and
- Addition of a new Chapter 15 regarding the use of criminal convictions in eligibility determinations and initial licensure decisions, as set forth in 2020 Iowa Acts, House File 2627.

Fiscal Impact

This rule making has minimal fiscal impact to the State of Iowa. It is unknown how many individuals would seek an eligibility determination because of a criminal conviction prior to applying. For each eligibility determination, the Bureau will collect a \$25 fee to recover the associated costs, as set forth in 2020 Iowa Acts, House File 2627.

Jobs Impact

After analysis and review of this rule making, there is a potential positive impact on jobs as individuals who may have been ineligible for licensure may become eligible for licensure as a result of this rule making.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Bureau for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Bureau no later than 4:30 p.m. on February 18, 2021. Comments should be directed to:

Lori SchraderBachar
Professional Licensing and Regulation Bureau
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Email: lori.schraderbachar@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 18, 2021
10 to 11 a.m.

Bureau Offices
200 East Grand Avenue, Suite 350
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Bureau and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **193—Chapter 5**, title, as follows:

WAIVERS AND VARIANCES FROM RULES

ITEM 2. Amend rule 193—5.1(17A,546) as follows:

193—5.1(17A,546) Definitions. For purposes of this chapter, “a waiver ~~or variance~~” means action by a board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~ “Board” includes every board and commission in the professional licensing and regulation bureau of the banking division of the department of commerce.

ITEM 3. Amend rule 193—5.4(17A,546) as follows:

193—5.4(17A,546) Criteria for waiver or variance. In response to a petition completed pursuant to rule 193—5.6(17A,546), a board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend subrule 5.11(1) as follows:

5.11(1) The board chair, or vice chair, if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

ITEM 5. Amend rule 193—5.13(17A,546) as follows:

193—5.13(17A,546) Summary reports Submission of waiver information. ~~Semiannually~~ Within 60 days of granting or denying a waiver, each board shall ~~prepare a summary report identifying~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report submission shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

ITEM 6. Amend subrule 13.8(4) as follows:

13.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services; and the centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code ~~chapter~~ chapters 252J, sections 261.126 and 261.127 and chapter 272D.

ITEM 7. Amend **193—Chapter 13**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 22, and 252J ~~and 261.~~

ITEM 8. Amend **193—Chapter 14**, title, as follows:

MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE MEMBERS ALTERNATIVE PATHS TO LICENSURE

ITEM 9. Rescind the definition of “Spouse” in rule **193—14.1(272C)**.

ITEM 10. Amend rule 193—14.3(272C) as follows:

193—14.3(272C) Veteran and spouse of active duty service member reciprocity.

14.3(1) A veteran ~~or spouse~~ with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran ~~or spouse~~ must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran ~~or spouse~~ under this subrule shall be given priority and shall be expedited.

14.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide

such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) or spouse of an active duty service member of the military forces of the United States.

14.3(3) to 14.3(7) No change.

ITEM 11. Adopt the following new rule 193—14.4(272C):

193—14.4(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

14.4(1) Eligibility. A person may seek licensure by verification if the person is licensed in at least one other jurisdiction that has a scope of practice substantially similar to that of Iowa, and either:

- a. The person establishes residency in the state of Iowa; or
- b. The person is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station to a military installation located in the state of Iowa.

14.4(2) Board application. The applicant must submit the following:

- a. A completed application for licensure by verification.
- b. Payment of the application fee.
- c. Completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check, if required for initial licensure by the board.
- d. A verification form completed by the licensing authority in the jurisdiction that issued the applicant's license, verifying that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the licensing authority to the board.
- e. Proof of residency in the state of Iowa or proof of military member's official permanent change of station. Proof of residency includes:
 - (1) Residential mortgage, lease, or rental agreement;
 - (2) Utility bill;
 - (3) Bank statement;
 - (4) Paycheck or pay stub;
 - (5) Property tax statement;
 - (6) A federal or state government document; or
 - (7) Any other board-approved document that reliably confirms Iowa residency.
- f. A copy of the complete criminal record, if the applicant has a criminal history.
- g. A copy of relevant disciplinary documents, if another jurisdiction has taken disciplinary action against the applicant.
- h. Copies of relevant laws setting forth the scope of practice in the other state.

14.4(3) Applicants with prior discipline. If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person who has had a license revoked, or who has voluntarily surrendered a license, in another jurisdiction is ineligible for licensure by verification.

14.4(4) Applicants with pending licensing complaints or investigations. If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

14.4(5) Compact privileges. A person who has a privilege to practice in Iowa by virtue of an interstate licensure compact is ineligible for licensure by verification. Licenses issued pursuant to this rule do not grant privileges to practice in any other jurisdiction pursuant to any interstate licensure compact.

14.4(6) Determination by board. The board shall make the determination of whether to issue a license under this rule based on information supplied by the applicant in the application and on such

additional information as the board may acquire, including information or verification from other jurisdictions.

ITEM 12. Reserve rules **193—14.5** and **193—14.6**.

ITEM 13. Adopt the following **new** rule 193—14.7(272C):

193—14.7(272C) Applicants with work experience in jurisdictions without licensure requirements.

14.7(1) Work experience. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a professional license to practice in the profession may be considered to have met any educational and training requirements if the person has at least three years of work experience with a scope of practice substantially similar to that of the profession for which a license in Iowa is sought. The three years of work experience must be within the four years preceding the date of application for initial licensure. The applicant must satisfy all other requirements, including passing any required examinations, to receive a license.

14.7(2) Required documentation. An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements shall carry the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of Iowa residency, which may include:

- (1) Residential mortgage, lease, or rental agreement;
- (2) Utility bill;
- (3) Bank statement;
- (4) Paycheck or pay stub;
- (5) Property tax statement;
- (6) A document issued by the federal or state government; or
- (7) Any other board-approved document that reliably confirms Iowa residency.

b. Proof of three or more years of work experience within the four years preceding the application for licensure, which may include:

- (1) A letter from the applicant's prior employer documenting the dates of employment;
- (2) Paychecks or pay stubs;
- (3) If self-employed, business documents filed with the secretary of state; or
- (4) Any other board-approved evidence of sufficient work experience.

c. Proof that the work experience was in a practice with a scope of practice substantially similar to that for the license sought in Iowa, which must include:

- (1) A written statement by the applicant detailing the scope of practice; and
- (2) Business or marketing materials detailing the services provided.

ITEM 14. Adopt the following **new** 193—Chapter 15:

CHAPTER 15

USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL LICENSING DECISIONS

193—15.1(272C) Definitions. For the purposes of these rules, the following definitions shall apply:

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“*Conviction*” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“*Disqualifying offense*” means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

“License” means any license or registration issued by a board.

193—15.2(272C) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to rule 193—15.3(272C), the applicant’s convictions will be reviewed when the board receives a completed license application.

15.2(1) An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

15.2(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

15.2(3) An applicant must submit as a part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

15.2(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

15.2(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

15.2(6) Any application fees paid will not be refunded if the license is denied.

193—15.3(272C) Eligibility determination.

15.3(1) An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

15.3(2) To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:

- a. A completed petition for eligibility determination form;
- b. The complete criminal record for each of the petitioner’s convictions;
- c. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should find the petitioner rehabilitated;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. Payment of a nonrefundable fee of \$25.

193—15.4(272C) Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board’s written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board’s rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board’s written decision will become a final order.

15.4(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

15.4(2) The contested case hearing shall be closed to the public and the board’s review of a proposed decision shall occur in closed session.

15.4(3) The office of the attorney general shall represent the board’s initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant’s convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

15.4(4) A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested

case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

193—15.5(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement Iowa Code chapter 272C.