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HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 171

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE ESTABLISHMENT OF
CERTIFICATES OF REHABILITATION.

1 WHEREAS, ex-offenders' successful integration back into society includes finding and maintaining employment
2 to satisfy their families and their personal wellbeing; and

3 WHEREAS, increased recidivism rates, increased unemployment, and partially increased criminal rates have
4 stemmed from the lack of employment that is offered to those with criminal backgrounds; and

5 WHEREAS, stigmas of those with criminal background has blocked many from finding employment, leading
6 many to revert back to criminal activity to provide for themselves and their families; and

7 WHEREAS, the Department of Correction will be given authority to begin distributing these certificates to
8 qualified individuals; and

9 WHEREAS, the Department of Correction will have the authority to investigate the individual and procure any
10 public document that would be important in the decision; and

11 WHEREAS, states have implicated Certificates of Good Conduct and Rehabilitation for ex-offenders to address
12 issues stemming from lack of employment; and

13 WHEREAS, states that have implicated certificates have found them successful in increasing the chances of ex-
14 offenders of finding employment; and

15 WHEREAS, providing ex-offenders Certificate of Rehabilitation will address many issues that ex-offenders face
16 when integrating back into society.

17 NOW, THEREFORE:

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

19 Section 1. Amend Part II, Title 11 of the Delaware Code by making deletions as shown by strike through and
20 insertions as shown by underline as follows:

21 Chapter 46. CERTIFICATES OF REHABILITATION

22 § 4601 Definitions and Construction.

23 For the purposes of this Chapter the following rule of construction applies:

(a) A plea or a verdict of guilty upon which sentence or the execution of sentence has been suspended or upon which a sentence of probation, conditional discharge, or unconditional discharge has been imposed shall be deemed to be a conviction.

(b) As used in this chapter:

(1) "Eligible offender" shall mean a person who has been convicted of one or more than one crime or offense and has not been sentenced to a term of incarceration in a facility under the jurisdiction of the Delaware Department of Corrections.

(2) "Eligible serious offender" shall mean a person who has a conviction of a felony in Delaware and was committed to a term of incarceration in a facility under the jurisdiction of the Delaware Department of Corrections correctional services, or a person who has been convicted of a crime or offense in any other jurisdiction and is a resident of this state.

(3) "Revocable sentence" means a suspended sentence or a sentence upon which execution was suspended, or a sentence of probation or of conditional discharge.

(4) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(5) "Private employer" means any person, company, corporation, labor organization, or association which employs ten or more persons.

(6) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.

(7) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions, or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this chapter, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(8) "Employment" means any occupation, vocation, or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this chapter, include membership in any law enforcement agency.

§ 4602 Certificate of Rehabilitation.

(a) A certificate of rehabilitation may be granted as provided in this chapter to remove any bar to employment, housing, or licenses automatically imposed by law by reason of a conviction of the crime or of the offense specified therein.

Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.

(b) Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of rehabilitation shall not cause automatic forfeiture of any license, permit, employment, or franchise, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate.

(c) A certificate of rehabilitation shall not prevent any judicial, administrative, licensing or other body, board, or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue, or refuse to renew any license, permit, or other authority or privilege in accordance to the provisions set out in § 4604 of this chapter.

§ 4603 Applicability of certificates.

(a) The provisions of this chapter shall apply to any application by any person who has previously been convicted of one or more criminal offenses, in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, except where a mandatory forfeiture, disability, or bar to employment is imposed by law, and has not been removed by a gubernatorial pardon or certificate of rehabilitation.

§ 4604 Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.

(a) No application for any license or employment, to which the provisions of this chapter are applicable, shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or

(2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

§ 4605 Factors to be considered concerning a previous criminal conviction; presumption.

(a) In making a determination pursuant to §4604 of this chapter, the public agency or private employer shall consider the following factors:

(1) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(2) The specific duties and responsibilities necessarily related to the license or employment sought.

(3) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on fitness or ability to perform one or more such duties or responsibilities.

(4) The time which has elapsed since the occurrence of the criminal offense or offenses.

(5) The age of the person at the time of occurrence of the criminal offense or offenses.

(6) The seriousness of the offense or offenses.

(7) Any information produced by the person, or produced on the behalf of the person, in regard to his rehabilitation and good conduct.

(8) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

(b) In making a determination pursuant to §4604 of this chapter, the public agency or private employer shall also give consideration to a certificate of rehabilitation issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

§ 4606 Written statement upon denial of license or employment.

(a) At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

§ 4607 Certificates of Rehabilitation issued by the Department of Correction.

(a) The Department of Correction shall have the power to issue a certificate of rehabilitation to:

(1) any serious offender who has been committed to an institution under jurisdiction of the Department of Correction. Such certificate may be issued by the Department of Correction at the time the offender is released from such institution under the Board of Parole's supervision or otherwise or at any time thereafter;

(2) any eligible offender or serious offender who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction.

(b) Where the Department of Correction has issued a certificate of rehabilitation, the Department may at any time issue a new certificate enlarging the relief previously granted.

(c) The Department of Correction shall not issue any certificate of rehabilitation pursuant to subsections (1) or (2), unless the Department is satisfied that:

113 (1) The person to whom it is to be granted is an eligible offender or serious offender, as defined in
114 §4601(b)(1) or (2);

115 (2) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender or
116 serious offender; and

117 (3) The relief to be granted by the certificate is consistent with the public interest.

118 (d) Any certificate of rehabilitation issued by the Department of Correction to an eligible offender or serious
119 offender who at time of the issuance of the certificate is under the Board of Parole's supervision, shall be deemed to be a
120 temporary certificate until such time as the eligible offender or serious offender is discharged from the Board of Parole's
121 supervision, and, while temporary, such certificate may be revoked by the Department of Correction for violation of the
122 conditions of parole or release. Revocation shall be upon notice to the parolee, who shall be accorded an opportunity to
123 explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate
124 upon expiration or termination of the Board's jurisdiction over the offender.

125 (e) In granting or revoking a certificate of rehabilitation, the action of the Department of Corrections shall be by
126 unanimous vote of the members authorized to grant or revoke parole.

127 (f) For the purpose of determining whether such certificate shall be issued, the Board may conduct an investigation
128 of the applicant.

129 (g) Any applicant whose application for a certificate of rehabilitation has been denied shall have the right to appeal
130 to the issuing body if applicant initiates appeal within 30 days of written receipt of initial decision.

131 § 4608 Effect of revocation; use of revoked certificate.

132 (a) Where a certificate of rehabilitation is deemed to be temporary and such certificate is revoked, disabilities and
133 forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the certificate was issued
134 receives written notice of such revocation. Any such person shall upon receipt of such notice surrender the certificate to the
135 issuing court or board.

136 (b) A person who knowingly uses, or attempts to use, a revoked certificate of rehabilitation in order to obtain or to
137 exercise any right or privilege that the person would not be entitled to obtain or to exercise without a valid certificate shall
138 lose the ability to obtain a certificate of rehabilitation in the future.

139 § 4609 Forms and filing.

140 (a) All applications, certificates, and orders of revocation necessary for the purposes of this chapter shall be upon
141 forms prescribed pursuant to agreement among the Commissioner of the Department of Correction, the Chairman of the

142 Board of Parole, and the State Court Administrator. Such forms relating to certificates of rehabilitation shall be distributed
143 by the Delaware State Courts and the Delaware Department of Probation and Parole.

144 (b) Any department issuing or revoking any certificate pursuant to this chapter shall immediately file a copy of the
145 certificate, or of the order of revocation, with the state identification and intelligence system.

146 § 4610 Certificate not to be deemed to be a pardon.

147 (a) Nothing contained in this chapter shall be deemed to alter or limit or affect the manner of applying for pardons
148 to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.

149 § 4611 Report.

150 (a) All licensing authorities must report to the General Assembly annually, beginning one year from the effective
151 date of this act, the number of licensure applicants who presented certificates of rehabilitation, the number of licenses
152 awarded to applicants with conviction histories, the number of licenses awarded to applicants with certificates of
153 rehabilitation, the number of applicants with criminal histories denied licenses, and the number of applicants with
154 certificates of rehabilitation denied licenses.

155 (b) The Department of Corrections issuing certificates of rehabilitation must report to the General Assembly
156 annually beginning one year from the effective date of this act the number of applications made, the number of applications
157 that are denied, and the number of applications that are granted.

SYNOPSIS

This bill creates certificates of rehabilitation, an essential resource states can offer to support reentry, and promote public safety, by lifting statutory bars to jobs, licenses or other necessities such as housing that result from a conviction history. Certificates may be used to provide a way for qualified people with criminal records to demonstrate rehabilitation or a commitment to rehabilitation. At least six states currently have laws authorizing certificates of rehabilitation or other similar means of removing legal barriers arising from a criminal record separate and apart from seeking a governor pardon. This bill creates certificates of rehabilitation to restore the rights of people with criminal records who have paid their debt to society.