



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

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March 6, 2023

Mr. Tim Storey
Executive Director
National Conference of State Legislatures
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001

Re: Request for Continued Support Related to State Legislation That Would Infringe on the Authority of State Securities Regulators to License Investment Professionals

Dear Mr. Storey:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am writing to request your continued assistance and support with respect to state legislation related to occupational licensing regulations. As we explained in our April 2021 letter to you regarding these proposals,² NASAA does not necessarily support or oppose the merits of these initiatives. However, we want state legislators to preserve the authority of state securities regulators to register or license investment professionals and have prepared model preservation language they can use.

As you may recall, state securities laws generally grant state securities regulators considerable discretion to approve or deny broker-dealer and investment adviser registration applications in the public interest. We believe that empowering states with the discretion necessary to make licensing and registration decisions is appropriate and is not causing individuals to be denied at levels that would cause concern. As an illustrative example, in 2021, securities regulators in Ohio approved licenses for 99.93% of the individuals who applied.

Indeed, securities regulators take this regulatory responsibility very seriously. They absolutely should have the discretion to deny a registration application from someone with a proven history of dishonest or unethical conduct so that they cannot enter the securities industry.

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

² Letter dated April 13, 2021 from Joseph Brady of NASAA to Tim Storey of NCSL Regarding Investor Protection and State Occupational Licensing Legislation in the 2021 State Legislative Sessions ([available here](#)).

Registered investment professionals have access to highly sensitive financial information and often have direct access to investors' financial accounts and assets. Investors have a reasonable expectation that anyone who has achieved a broker-dealer agent or investment adviser representative license has earned this position of trust and confidence after satisfactorily completing review and consideration by the state's securities regulator.

Despite the important policy goals underlying regulatory discretion, state lawmakers have introduced or enacted several bills that would limit, or could be construed to limit, state securities regulators' discretion when reviewing broker-dealer agent and investment adviser representative registration applications, including those from individuals with criminal convictions. Unless amended, these bills could prevent state securities regulators from denying applications from individuals convicted of plainly disqualifying conduct, such as securities fraud, forgery, theft, or embezzlement. Such a result is contrary to the investor protection role that securities regulators have carried out for decades.³

To the end of preserving state regulatory authority, we respectfully request your and the NCSL's continued assistance and support. First, we request that you continue to keep your members apprised of these concerns. NASAA appreciated the opportunity to discuss this issue during a July 24, 2022, episode of NCSL's Our American States podcast. We hope to collaborate in 2023 around a similar event or communication.⁴ Second, we request support with, where appropriate, ensuring that bills amending state occupational licensing regulations take account of these issues to preserve the important investor protection mechanisms in current law. As you know, there are several introduced or enacted bills that have addressed the need to preserve state securities authority.⁵ We again offer the following as model language that could be inserted into these bills:

*Model Legislation Language*⁶

Nothing in this [act/section] shall apply to an applicant for a license or registration that would allow the applicant to provide financial services in an industry regulated by the [jurisdiction's] securities regulator.

Last, we urge NCSL to continue advising state legislators to seek early counsel from state securities regulators regarding legislative proposals that would or may affect the authority the regulator has to protect investors and promote responsible capital formation. While we encourage everyone to use NASAA's [Contact Your Regulator](#) directory, we are happy to try to assist with requests for introductions.

³ Appendix A hereto sets forth short summaries of legislation that has become law. Appendix B hereto sets forth short summaries of legislation that has been introduced.

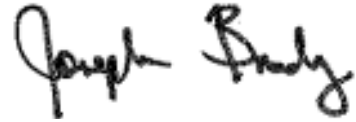
⁴ NCSL Our American States Podcast, Episode 165 dated July 24, 2022.

⁵ Appendix C hereto sets forth short summaries of legislation that has become law. Appendix D hereto sets forth short summaries of legislation that has been introduced.

⁶ This model language is based on an exclusion included in Texas Occupations Code, Chapter 53.

Thank you for your time and consideration. Should you or your members have any questions, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

A handwritten signature in black ink that reads "Joseph Brady". The signature is written in a cursive style with a large initial "J" and "B".

Joseph Brady
NASAA Executive Director

Appendix A to NASAA Letter to NCSL Dated March 6, 2023

<p style="text-align: center;">Appendix A - New Laws Related to Occupational Licensing that Can Be Construed as Affecting State Securities Regulation</p>		
State & Year of Adoption	Text	Brief Summaries
CA (2021)	<u>AB1171</u>	This law amends business and professions code to require automatic suspension of professional licenses for those convicted of spousal rape after changes to the state’s spousal rape law. The law amends other state code relevant to changes in a criminal offense.
CT (2022)	<u>SB1019</u>	This law amends criminal expungement code and corrections code to allow a person convicted of a misdemeanor and a variety of felonies to file for erasure after seven, ten, or twelve years has elapsed since serving their respective sentence. The law establishes an advisory committee for reentry. The law amends code on human rights and opportunities to establish an antidiscrimination provision which prohibits a board that issues state licenses from refusing to license solely based on that person's erased criminal history record information.
DE (2021)	<u>SB111</u> <u>SB112</u>	SB111 amends expungement provisions to allow for automatic expungement for persons convicted of juvenile, drug-related misdemeanors who were previously eligible to have their record expunged through voluntary filing. SB112 amends expungement provisions to expand automatic expungement for persons convicted of felonies and ten years have elapsed since sentence completion who had prior convictions unrelated to the one sought for expungement. The law provides an automatic expungement of these convictions where it previously allowed a convicted person had to file for such expungement.

Appendix A - New Laws Related to Occupational Licensing that Can Be Construed as Affecting State Securities Regulation

State & Year of Adoption	Text	Brief Summaries
LA (2022)	SB486	This law amends occupational license code to prohibit state licensing agencies, with a few agencies exempted, from disqualifying an individual from a licensed occupation solely or in part because of a prior conviction unless it directly relates to the duties and responsibilities of the occupation. The law requires state agencies to produce documentation and other notices to those denied licenses and requires agencies to consider factors relevant to the conviction in its determination.
NC (2019)	HS770	This law amends the occupational licensing boards code to require state licensing boards or departments, including the Secretary of State to provide the legislature with data on those licensed with convictions or without and their reason for denial. This law amends administrative procedures like hearings on denials or revocation of license based on criminal history. The law recognizes certain apprenticeship licenses.
OH (2021/2022)	HB263/SB131	HB263 amends the occupations and professions code to require state agencies issuing professional occupation licenses to file a report to the director of administrative services regarding the nature of why licenses were denied or revoked with lists of offenses for each revocation. The law requires the agency or board to not revoke or deny a license based solely on a conviction but allows the agency or board to consider whether that conviction, with other factors, relates to the occupation or poses a threat to public welfare. SB131 amends occupations and professions code for multiple professions to require applicants to submit to a criminal background check. The law also requires licensure for activities that were unlicensed in a previous state where applicants meet certain requirements for reciprocity. The law includes financial responsibility requirements for some professions.

Appendix B to NASAA Letter to NCSL Dated March 6, 2023

Appendix B - Recent Introduced Occupational Licensing Legislation that Can Be Construed as Affecting State Securities Regulation		
State & Introduction Year⁷	Text	Brief Summaries
IA (2022)	<u>HSB647</u>	The bill would amend professional and occupations code to detail that a board may deny a license or revoke one if that person has been convicted of an offense and the offense directly relates to the duties and responsibilities of the profession. This bill would require occupational boards to recognize out of state licenses with prescribed factors. The bill would require that an applicant provide by clear and convincing evidence that they are rehabilitated as an appropriate candidate for licensure and the board must consider certain factors in the analysis of such evidence.
MA (2021)	<u>HB4154</u>	This bill amends code pertaining to the maintenance of criminal records to require that an individual applying for a license may not be denied license solely on the basis of a conviction unless the individual's non-excluded criminal record directly relates to the duties and responsibilities of the profession or occupation. The bill would require any state licensing entity to consider different factors for evaluating an applicant who has a criminal record.

⁷ This table uses the most recent version of legislation that has been introduced more than once.

Appendix C to NASAA Letter to NCSL Dated March 6, 2023

Appendix C - New Laws Related to Occupational Licensing that Cannot Be Construed as Affecting State Securities Regulation		
State & Year of Adoption	Text	Brief Summaries
AZ (2021)	SB1218	This law amends code pertaining to non-health occupational licensing and establishes a new legislative committee that reviews state agencies' rules to ensure the rules for occupational licensing are the least restrictive means of regulation. The law directs the commission to instruct state agencies to adopt rules pertaining to the commission's recommendations on the requisite qualifications for licensing non-health occupations, which will be reviewed by the new legislative committee. After that review, the standing committee that reviews legislation pertaining the related industry of that state agency will also review the agency's prescribed "personal qualifications" for the occupational license.
DC (2021)	Act A23-561	This law amends code pertaining to health occupations. The law also amends code pertaining to non-health occupations providing that a person applying for an application establish they have not been convicted of an offense that is directly related to the license for the occupation. The changes allow a person seeking education for a license to petition the relevant licensing board to determine whether they would be disqualified due to a previous conviction.
GA (2021)	SB114	This law amends code on professions and business for various occupations listed in the code , excluding the state bar examiners but including by reference, pharmacist and pharmacy licensing. The law provides that professional licensing boards may not prevent renewal or refuse license in part or solely due to a conviction of a crime of moral turpitude, arrest for such offense, or the first sentence of an act that requires serving probation.

Appendix C - New Laws Related to Occupational Licensing that Cannot Be Construed as Affecting State Securities Regulation

State & Year of Adoption	Text	Brief Summaries
NJ (2021)	SB942	<p>This law amends professions and occupations code, for occupations licensed by a limited number of professional boards, to change language about convictions of moral turpitude to requiring disciplinary action when convictions have a direct or substantial relationship to the activity regulated by the board or is of a nature that licensure would be inconsistent with the public’s health, safety, or welfare. The amendments describe factors an entity must weigh to qualify or disqualify a person for licensure. The law adds a new section that incorporates the above provisions and establishes that these rules also apply to executive branch agency departments including the division of consumer affairs. The law amends the code pertaining to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety and provides that the Director must maintain data over the number of, and reasons for disqualification by a professional licensing board and submit a report to the legislature containing such data.</p>
NM (2021)	SB2	<p>This law amends the professional and occupational licenses code pertaining to professions found in Chapter 61 Art. 2-37. The amendments are primarily related to changes for veterans and their spouses’ applications for professional licenses. The amendments include specific changes to nursing, optometry, chiropractic, dental, medical, psychologist, and other professions may issue temporary licenses or expedite such licenses and relaxes provisions regarding out of state licenses.</p>
TN (2021)	HB785	<p>This law amends provisions regarding issuing licenses for professions created pursuant to Title 62 ch. 1-45 for code on professions, businesses and trades. The law requires occupational boards to consider among other factors, whether a criminal conviction relates to the profession an applicant is seeking license for.)</p>

Appendix C - New Laws Related to Occupational Licensing that Cannot Be Construed as Affecting State Securities Regulation

State & Year of Adoption	Text	Brief Summaries
TX (2019)	HB1342	This law amends occupations code to allow the Texas Department of Licensing and Regulation to consider work experience from prison for license applicants. The law requires the applicable licensing commission to give notice to persons who were denied or revoked a license. The law also requires an auditor to publish what convictions would be the basis for denial for a license.
UT (2022)	SB43	This law amends code pertaining to the Utah Division of Professional Licensing and includes several other divisions to amend provisions for specific licensing including nail technicians, construction of air conditioning, medical and nonmedical occupations. The law also amends provisions for publishing booking photographs of those arrested. The law amends the code to require departments or divisions issuing licenses to publish rules regarding what criteria the department will use to determine whether licenses will be revoked, issued, or denied based on convictions and arrests.
WA (2021)	HB1399	This law amends the business and professions code to prohibit boards in the title from preventing a person with a prior criminal conviction from obtaining a professional license when that conviction does not directly relate to the applicable profession, business, or trade. The law provides that a board or agency must provide a determination for denying licenses and allows an applicant to appeal a decision. The law prohibits denial of a professional license, government certification, or state recognition if the applicant requested and received a certificate of restoration opportunity.
WV (2022)	HB4634	This law amends labor code and code pertaining miscellaneous boards and officers. The law requires the issuance of a professional license where certain requirements are met for those who hold a professional license from a different state.

Appendix D to NASAA Letter to NCSL Dated March 6, 2023

Appendix D - Recent Introduced Occupational Licensing Legislation that Cannot Be Construed as Affecting State Securities Regulation		
State & Introduction Year⁸	Text	Brief Summaries
AK (2021)	SB705	This bill would amend Professions, Occupations, and Businesses code and would prohibit state licensing agencies from disqualifying an individual from a licensed occupation solely or in part because of a prior conviction unless it relates to the duties and responsibilities of the occupation. The provisions apply to nonmedical professions listed in Title 17, Subtitle 2, Chapters 10-56 and medical professions. The bill would require state agencies to produce rulemaking detailing specific convictions that would disqualify a person from licensure and requires the agency to consider factors relevant to the conviction in its determination.
IL (2018)	SB3646	This bill would allow a convicted person to file a preliminary licensing application to any state licensing agency to determine whether their conviction would disqualify themselves from receiving a license prior to completing the required training or examination for such license. The bill would require the licensing entity to file a report summarizing data pertaining to licenses issued, denied, or revoked to the legislative committee that deals with the oversight or subject matter of the state agency.
ME (2021)	LD612 LD992	LD612 amends professions and occupations code and would require a state licensing agency to provide a reason for a denial of license within sixty days of the application. LD992 amends code pertaining to mandated reporter training and would require that a business license may not be denied or revoked for a violation unrelated to the practice of such licensed occupation.

⁸ This table uses the most recent version of legislation that has been introduced more than once.

**Appendix D - Recent Introduced Occupational Licensing Legislation
that Cannot Be Construed as Affecting State Securities Regulation**

State & Introduction Year⁸	Text	Brief Summaries
MD (2022)	SB111	This bill would amend Criminal Procedure code and applies the following departments: Agriculture, Environment, Health, Human Services, Labor, and Public Safety and Correctional Services. The bill would allow a person convicted of a nonviolent crime to apply to the departments referenced to receive a determination on whether their conviction would disqualify the applicant prior to completing educational or training requirements for the license. The bill would require the departments referenced to consider a variety of factors pertaining to the conviction. Further, the bill requires that a department may not deny a license solely due to a nonviolent conviction where more than 7 years has passed since the applicant completed the sentence and had not been charged with a crime since.
MI (2019)	SB40	This bill would amend the legislative council act to create a commission that would evaluate legislation to create more opportunities for workers and among other things, solutions to unemployment. The bill would require the commission to review 20% of state agencies' rulemaking on occupational licensing. The bill would also create a rebuttable presumption that private remedies and market competition would protect consumers but that the commission would seek to protect consumers from fraud and other health and safety problems through issuing licenses or creating rules to issue licenses. The commission would be able to recommend the removal of rules from state agencies for occupational licensing if they do not align with the commission's direction.
MS (2021)	SB2187	This bill would require a state licensing board to issue a license to a person who worked in a different state for three years in an unlicensed profession in that state and who satisfies other factors such as not having a disqualifying criminal record.
MO (2023)	SB347 HB352	This bill would amend expungement code to require that all offenses regularly eligible for expungement under current law will be eligible for automatic expungement without petition beginning August 28, 2025, subject to some limitations.

Appendix D - Recent Introduced Occupational Licensing Legislation that Cannot Be Construed as Affecting State Securities Regulation

State & Introduction Year ⁸	Text	Brief Summaries
MT (2023)	HB152	This bill amends occupational licensing code for licenses not including securities professionals with new requirements pertaining to fingerprinting, mental health evaluations, military spouse licensing, and other changes.
NE (2021)	LB263	This bill amends state officer code and would require an occupational licensing board to issue a license if a person was practicing in similar scope in a different state or in the United States Military for at least one year. The license would be issued if the applicant with prior experience or a previous license, among other factors, did not have a disqualifying criminal record as determined by the occupational licensing board. The bill would provide the applicant with an avenue for appealing the licensing board's determination through the state's administrative procedure act.
OK (2022)	SB1678	This bill amends labor code and would require a legislative committee to recommend licensing rules that reduce harms arising from contractual disputes, fraud, and various factors pertaining to health and public safety. The bill would require staff on the legislative committee to analyze existing occupational code.
OR (2022)	SB1512	This bill amends occupations and profession code and juvenile code. The bill would require a licensing board to not deny or revoke a license solely due to a criminal conviction unless that conviction relates directly to the occupation. The bill details factors for determining how a board should determine whether the conviction relates to the licensed occupation.
RI (2021)	H5428	This bill would amend code relating to board regulation of professions and occupations. The bill would prohibit a licensing board from denying solely or in part an applicant a license because of a prior conviction. The bill would require each regulatory board or commission to make a list of criminal convictions that would directly relate to the duties and responsibilities of the occupation based on a set of factors. The bill would also permit an applicant to petition a board to see if their conviction would bar them from obtaining a license prior to completing educational requirements or training. The bill also establishes an apprenticeship program.

**Appendix D - Recent Introduced Occupational Licensing Legislation
that Cannot Be Construed as Affecting State Securities Regulation**

State & Introduction Year⁸	Text	Brief Summaries
UT (2023)	SB35 SB36	These two bills amend professional licensing code pertaining to certain professions. The legislation includes a carve-out provision for Utah Division of Securities licensing.
VA (2020)	HB982	This bill amends occupations and licensing code pertaining to health professions and those professions governed by the Department of Professional and Occupational Regulation . The bill would prohibit a licensing board from denying solely or in part an applicant a license because of a prior conviction. The bill would require each regulatory board or commission to make a list of criminal convictions that would directly relate to the duties and responsibilities of the occupation based on a set of factors. The bill would also permit an applicant to petition a board to see if their conviction would bar them from obtaining a license prior to completing educational requirements or training.