

SUMMARY—Revises provisions relating to offenders. (BDR 14-1015)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.

Effect on the State: Yes.

AN ACT relating to offenders; requiring a court to set aside a judgment of conviction and grant a certificate of second chance under certain circumstances; requiring the State Forester Firewarden to establish a hiring program to appoint certain former offenders to firefighting positions; requiring a regulatory body to recognize a certificate of second chance as removing any disqualification of a person with a criminal history from obtaining a professional or occupational license; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a court is authorized to defer proceedings for certain defendants and place the defendant on probation upon certain terms and conditions that must include the attendance and successful completion of certain programs. Upon fulfillment of the terms and conditions, with certain exceptions, the court is required, in certain circumstances, and authorized, under other circumstances, to set aside the judgment of conviction. (NRS 176A.240, 176A.260, 176A.290)

Section 2 of this bill authorizes a person convicted of certain criminal offenses to apply to the court to have the judgment of conviction set aside and receive a certificate of second chance. If the



court grants the application to have the judgment set aside, **section 2** provides that the person must, with certain exceptions, be released from all penalties imposed from the conviction.

Section 3 of this bill provides that if the court grants the application to have the judgment of conviction set aside and the person was convicted of certain offenses, the court must include a certificate of second chance which: (1) removes any disqualification from obtaining a professional or occupational license on the basis of the criminal history of the person; and (2) prohibits the criminal conviction from being introduced as evidence in certain negligent hiring actions or housing actions. **Section 6** of this bill requires a regulatory body to recognize a certificate of second chance as removing any disqualification for a person with a criminal history from obtaining a license from the regulatory body.

Under existing law, the State Forester Firewarden, in cooperation with the Department of Corrections, is required to establish and carry out a program for operating conservation camps in this State which may use offenders who meet certain requirements to perform certain work, including firefighting. (NRS 209.457) **Section 5** of this bill requires the State Forester Firewarden to establish a hiring program to appoint without competition former offenders who performed firefighting work in such conservation camps to firefighting positions in the Division of Forestry of the State Department of Conservation and Natural Resources.

Under existing law, a position in the classified service of the Executive Department of the State Government may be filled without competition only under certain circumstances. (NRS 284.305) **Section 4** of this bill provides that the hiring program established by the State Forester Firewarden pursuant to **section 5** is an exception to this requirement.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 176A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *Except as otherwise provided in subsection 7, upon fulfillment of the terms and conditions of probation or sentence and discharge by the court, every person convicted of a criminal offense may apply to the court to have the judgment of conviction set aside and receive a certificate of second chance pursuant to section 3 of this act, if applicable. A person must not be required to pay a fee to file such an application with the court.*

2. At the time of the sentencing of any defendant, the court shall inform the defendant of the provisions of subsection 1.

3. In determining whether to set aside a judgment of conviction pursuant to this section, the court shall consider:

- (a) The nature and circumstances of the offense on which the conviction is based;*
- (b) The compliance of the applicant with the conditions of probation, the sentence imposed and any rules or regulations of the Department of Corrections, if applicable;*
- (c) Any prior or subsequent convictions;*
- (d) The input of the victim and the status of any restitution due to the victim;*



- (e) The amount of time that has passed since the sentence of the applicant was completed;*
- (f) The age of the applicant at the time of the conviction; and*
- (g) Any other factor that is relevant to the application, as determined by the court.*

4. At any proceeding to have a judgment of conviction set aside, the court shall afford the victim the opportunity to:

- (a) Appear personally, by counsel or by personal representative; and*
- (b) Reasonably express any views concerning the crime, the person responsible and the impact of the crime on the victim.*

5. Notwithstanding any other provision of law, if the court grants the application, the court shall set aside the judgment of conviction and, except as otherwise provided in subsection 6, order that:

- (a) The person be released from all penalties imposed from the conviction except any penalty imposed pursuant to NRS 62E.660, 483.460, 484C.220 or 501.388; and*
- (b) The right of the person to vote, hold office and serve as a juror in a criminal action be restored.*

6. A judgment of conviction set aside pursuant to this section may be:

- (a) Alleged as an element of an offense;*
- (b) Used as a prior conviction;*
- (c) Plead and proved in any subsequent prosecution of the person by this State or any political subdivision of this State for any offense;*



(d) Used by the Department of Motor Vehicles to enforce NRS 483.460 or 484C.220 as if the judgment of conviction had not been set aside; and

(e) Used by the Department of Wildlife to enforce NRS 62E.660 or 501.388 as if the judgment of conviction had not been set aside.

7. The provisions of this section do not:

(a) Require a law enforcement agency to redact or remove a record or information from the records of criminal history of a person whose conviction is set aside; or

(b) Prohibit any state agency from considering the conviction when conducting a background investigation of applicants for employment, if authorized under existing law.

8. A person convicted of a violent or sexual offense or a crime against a child may not apply to have a judgment of conviction set aside pursuant to this section.

9. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.0357.

(b) "Law enforcement agency" has the meaning ascribed to it in NRS 202.873.

(c) "Violent or sexual offense" has the meaning ascribed to it in NRS 202.876.

Sec. 3. 1. *Except as otherwise provided in subsection 2, if a court grants an application to have a judgment of conviction set aside pursuant to section 2 of this act, the order of the court shall include a certificate of second chance if the person was convicted of:*

(a) A misdemeanor or gross misdemeanor;

(b) A category C, D or E felony and at least 2 years have passed since the person fulfilled the conditions of probation or the sentence imposed; or



(c) A category B felony and at least 5 years have passed since the person fulfilled the conditions of probation or the sentence imposed.

2. A person is not eligible to receive a certificate of second chance pursuant to this section if the person has previously received a certificate of second chance and had a judgment of conviction set aside for a felony conviction.

3. If a person is granted a certificate of second chance pursuant to this section:

(a) The person may not be disqualified from obtaining a license from a regulatory body pursuant to title 54 of NRS on the basis of the criminal conviction for which he or she received the certificate of second chance; and

(b) The criminal conviction for which he or she received a certificate of second chance may not be introduced as evidence:

(1) In a negligent hiring action filed against an employer for the acts of an employee or independent contractor based on a theory of liability other than the prior offense of the employee; or

(2) In a housing action filed against a landlord for the acts of a tenant based on a theory of liability other than that of the prior offense of the tenant.

4. A certificate of second chance issued pursuant to this section is not a recommendation, sponsorship or promotion of the person who possesses the certificate when applying for a professional or occupational license, employment or housing.

5. If a person does not meet the requirements set forth in subsection 1 at the time his or her judgment of conviction is set aside, the person may apply for a certificate of second chance from



the court once he or she meets the requirements. A person may not be required to pay a fee to file such an application with the court.

6. At any proceeding to have a certificate of second chance granted pursuant to subsection 5, the court shall afford the victim the opportunity to:

(a) Appear personally, by counsel or by personal representative; and

(b) Reasonably express any views concerning the crime, the person responsible and the impact of the crime on the victim.

Sec. 4. NRS 284.305 is hereby amended to read as follows:

284.305 1. Except as otherwise provided in subsection 2, positions in the classified service may be filled by an appointing authority without competitive evaluation only as provided in NRS 284.155, 284.300, 284.307, 284.308, 284.309, 284.310, 284.315, 284.320, 284.325, 284.327, 284.330, 284.375 and 284.3775 ~~[.]~~ *and section 5 of this act.*

2. The Commission may adopt regulations which provide for filling positions in the classified service without competitive evaluation in cases involving:

(a) The appointment of a current employee with a disability to a position at or below the grade of his or her position if the employee becomes unable to perform the essential functions of his or her position with or without reasonable accommodation;

(b) The demotion of a current employee;

(c) The reemployment of a current or former employee who was or will be adversely affected by layoff, military service, reclassification or a permanent partial disability arising out of and in the course of the employment of the current or former employee; or



(d) The reappointment of a current employee.

Sec. 5. Chapter 472 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The State Forester Firewarden shall establish a hiring program to provide a pathway to hire for firefighting positions within this State. Under the hiring program, the State Forester Firewarden may appoint a person without competition to fill a position in the classified service as a firefighter with the Division of Forestry of the State Department of Conservation and Natural Resources if the person:

(a) Was a former offender assigned to work in a program for operating conservation camps established pursuant to NRS 209.457 and performed work relating to firefighting;

(b) Successfully completed the training necessary to prepare the offenders assigned to the conservation camp to assist in firefighting pursuant to NRS 209.457;

(c) Has obtained any certifications required for employment as a firefighter with the Division of Forestry; and

(d) Meets any other qualifications established by the State Forester Firewarden.

2. The State Forester Firewarden may adopt regulations to carry out the provisions of this section.

Sec. 6. Chapter 622 of NRS is hereby amended by adding thereto a new section to read as follows:



Each regulatory body shall recognize a certificate of second chance issued pursuant to section 3 of this act as removing any disqualification for a person with a criminal history from obtaining a license from the regulatory body.

