



# Tennessee

## Licensing & Other Barriers to Growing Occupations That Unfairly Exclude People with Records

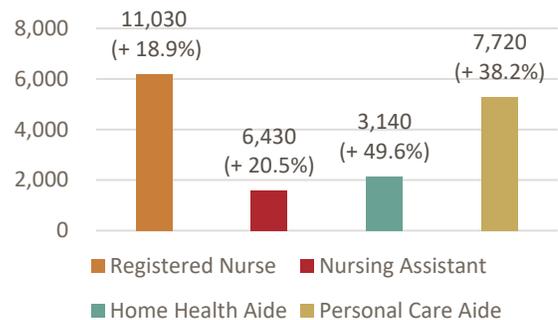
Nearly one in three Tennessee adults, disproportionately people of color, has an arrest or conviction record that may prevent them from working in a variety of occupations regulated by the state.<sup>1</sup> Tennessee requires a license or certification for **some of the largest and fastest-growing professions**, such as healthcare occupations. While Tennessee’s licensing laws were reformed in 2018 to establish helpful fair chance standards,<sup>2</sup> some boards and agencies still have broad discretion to reject applicants based on unrelated or old convictions—an unfair result that undermines economic health, government efficiency, communications wellbeing, and racial equity.

Four major industries—healthcare, K-12 education, childcare, and private security—stand out as including large, growing occupations, for which Tennessee law requires a criminal background check. These occupations account for nearly 1 in 10 annual job openings in Tennessee and are, collectively, growing at a higher-than-average rate of almost 18%, which is well above the average growth rate of occupations in the state (11%).<sup>3</sup>

### Barriers to Rapidly Growing Healthcare Professions

Healthcare professions include some of the fastest-growing occupations in Tennessee, measured by both the number of new jobs being created and the percent growth. While employers cite difficulties in filling many healthcare job openings, Tennessee background check restrictions often block qualified workers with records from filling certain healthcare positions. The standards used to evaluate a person’s record in these fields remain vague and often inadequately tailored to the goals of advancing community safety, economic growth, government efficiency, and racial equity.

Rapid Growth in TN Licensed Healthcare Occupations, 2016–2026



Source: U.S. Dep’t of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, <https://data.bls.gov/projections/occupationProj>.

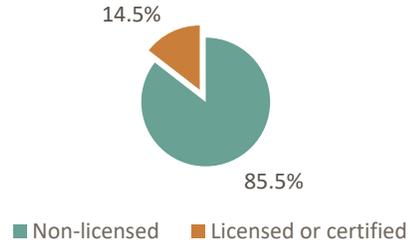
Legend:			
Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
Registered & Practical Nurses <sup>4</sup> (Bd. of Nursing)	<ul style="list-style-type: none"> <li>✘ Permanent rebuttable presumption of disqualification for class A, B, or C felony conviction.</li> <li>✘ 5-year rebuttable presumption of disqualification for conviction of any serious violent or sex offense and some theft offenses.</li> </ul>	<ul style="list-style-type: none"> <li>⚠ Certain juvenile offenses may be considered if within 5 years.</li> </ul>	<ul style="list-style-type: none"> <li>✔ Board must consider nature and seriousness of offense, passage of time, relatedness of offense to the occupation, and evidence of rehabilitation.</li> <li>✔ Board must notify applicant of reasons for denial before final determination and provide 14 days to challenge decision. After final determination, applicant may petition court for review.</li> </ul>

<b>Nursing Homes, Assisted Living Facilities &amp; Home Health Care Organizations<sup>5</sup></b> (Dep't of Health)	<ul style="list-style-type: none"> <li>⚠️ Employers must conduct background checks, but no express limitation on offenses that may disqualify an employee.</li> </ul>	<ul style="list-style-type: none"> <li>⊗ Disqualifying offenses not expressly limited to convictions.</li> </ul>	<ul style="list-style-type: none"> <li>⊗ No express requirement to consider time since offense or nature of offense.</li> <li>⊗ No express right to written decision, notice, or appeal.</li> </ul>
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## Barriers to Careers in K-12 Education, Childcare, and Private Security

About 130,000 Tennesseans are employed in K-12 education jobs that require certification or as childcare workers or private security guards. Almost 15,000 job openings in those fields emerge each year, and that number continues to increase. Despite the growing need for qualified applicants and positive licensing reforms adopted in 2018, Tennessee law prevents many people with records from obtaining the certification or other clearance that would enable them to fill those vacancies.

**Percent of Total Tennessee Workforce Licensed**



Source: The White House, *Occupational Licensing: A Framework for Policymakers tbl.1 (2015)*, [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_fina\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_fina_nonembargo.pdf).

Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
<b>K-12 Employees<sup>6</sup></b>	<ul style="list-style-type: none"> <li>⊗ Mandatory, permanent disqualification for a range of violent and sex offenses and certain drug offenses.</li> </ul>	<ul style="list-style-type: none"> <li>✔️ Disqualifying offenses are limited to convictions.</li> </ul>	<ul style="list-style-type: none"> <li>⊗ No express requirement to consider time since offense, nature of offense, and relatedness of offense to the occupation.</li> <li>⊗ No express right to written decision, notice, or appeal (the applicant is entitled to a copy of her criminal history report).</li> </ul>
<b>Childcare Agency Workers<sup>7</sup></b>	<ul style="list-style-type: none"> <li>⊗ Lifetime disqualification for any violent offense, most sex offenses, any felony or misdemeanor drug offenses, as well as other offenses that present a “threat to the health, safety or welfare” of children.</li> </ul>	<ul style="list-style-type: none"> <li>⊗ Disqualifying offenses include pending charges and certain juvenile offenses.</li> </ul>	<ul style="list-style-type: none"> <li>⊗ No express requirement to consider time since offense, nature of offense, and relatedness of offense to the occupation.</li> <li>⚠️ No express right of the worker to written decision, but the applicant may appeal the decision to an administrative tribunal within 10 days.</li> </ul>
<b>Private Security Guards<sup>8</sup></b>	<ul style="list-style-type: none"> <li>⊗ Mandatory, 5-year disqualification for any felony and misdemeanors involving firearms, theft, drug sale or manufacture, or violence.</li> <li>⚠️ Vague “good moral character” requirement.</li> <li>⊗ Permanent rebuttable presumption of disqualification for class A, B, or C felony conviction.</li> </ul>	<ul style="list-style-type: none"> <li>✔️ Disqualifying offenses are limited to convictions.</li> </ul>	<ul style="list-style-type: none"> <li>✔️ Board must consider nature and seriousness of offense, passage of time, relatedness of offense to the occupation, and evidence of rehabilitation.</li> <li>✔️ Board must provide written grounds for denial and 14 days to respond before issuing a written final decision, which can be appealed in court.</li> </ul>

# Recommended Fair Chance Licensing Reforms for Tennessee

*Adopt reasonable limitations on the discretion of boards and agencies to deny a license or certificate based on a criminal record, building on the Tennessee reforms adopted in 2018 via the “Fresh Start Act”.<sup>9</sup>*

- 1 While the Fresh Start Act made positive strides in requiring many licensing boards and agencies to adopt fair chance licensing standards that more narrowly limit consideration of unrelated and old offenses, the law authorizes lifetime “rebuttable” disqualifications for most felonies and exempts several major demand occupations (including the education and childcare workforce), which significantly limits the positive impact of the law.
- 2 Accordingly, the 2018 law should be expanded to cover all demand occupations, remove lifetime disqualifications, and require consideration of the age of the offense and evidence of rehabilitation in all cases.
- 3 The Fresh Start Act should be improved upon by auditing the regulated boards and agencies to evaluate their compliance with the law (e.g., the private security board still disqualifies applicants convicted of any felony and a broad range of misdemeanors), conspicuously publicizing each board’s standards and procedures on the internet, and collecting and reporting data to evaluate the impact of the law.

## Promote Fairness by Considering Common-Sense Relevancy Factors

To comply with Title VII of the Civil Rights Act of 1964, employers should consider three simple, common-sense factors when contemplating a record-related rejection:

- (1) Nature and gravity of the offense;
- (2) Time that has passed since the offense; and
- (3) Nature of the job

Fair and effective occupational licensing laws similarly require state agencies to weigh the time since an offense and prohibit exclusions based on convictions that aren’t occupation-related.<sup>10</sup>

## → For more information, visit

<https://www.nelp.org/campaigns/fair-chance-licensing-people-records/>

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## ENDNOTES

<sup>1</sup> NELP, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions* app. E (2019),

<https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

<sup>2</sup> The “Fresh Start Act” (effective July, 1, 2018) extends fair chance protections to most state boards and agencies that issue licenses, certificates, or registrations necessary to engage in an occupation, including nursing and other healthcare occupations, while exempting most education, childcare, law enforcement, and other selected occupations. Tenn. Code Ann. §§ 62-76-104 & 63-1-130.

<sup>3</sup> U.S. Dep’t of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, <https://data.bls.gov/projections/occupationProj> (last visited Aug. 23, 2019).

<sup>4</sup> Tenn. Code Ann. §§ 63-1-130, 63-7-115(a)(1)(B), Tenn. Comp. R. & Regs. 1000-01.13 (2) (listing the offenses that the board will “presume” to be disqualifying).

<sup>5</sup> Tenn. Code Ann. § 63-1-116 (health-related boards), Tenn. Code Ann. § 68-11-256 (nursing homes, assisted-care facilities), Tenn. Code Ann. § 68-1-233 (home health care organizations).

<sup>6</sup> Tenn. Code Ann. § 49-5-406(a)(1)(A) (the relevant provisions apply to employees with positions requiring “proximity to school children”); Tenn. Code Ann. § 49-5-413 (listing disqualifying offenses).

<sup>7</sup> Tenn. Code Ann. § 71-3-507; Tenn. Comp. R. & Regs. § 1240-04-01-.07.

<sup>8</sup> Tenn. Code Ann. §§ 62-35-106, -107, -117. Private security guards are subject to the protections of the Fresh Start Act. Tenn. Code Ann. § 62-76-104.

<sup>9</sup> The Fresh Start Act requires selected state boards and agencies that issue licenses, certificates, or registrations to consider the passage of time since the offense, evidence of rehabilitation, and other mitigating factors, to issue written findings detailing the grounds for denial, and to provide an opportunity for a hearing to review the determination. The law creates a “rebuttable presumption” that convictions for a Class A, B, or C felony directly relate to the occupations covered by the law. Tenn. Code Ann. § 62-76-104.

<sup>10</sup> See, e.g., Equal Emp’t Opportunity Comm’n, *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (2012), [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).