

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1041 Professional Regulation  
**SPONSOR(S):** Careers and Competition Subcommittee and Plakon  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	15 Y, 0 N, As CS	Wright	Anstead
2) Appropriations Committee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Generally, if an applicant for a professional license in Florida has a criminal background, they may be denied if their history includes a crime that is specifically prohibited by a practice act, or is related to moral character or the practice of the profession for which they seek licensure.

The bill changes the standards used in the current procedures for reviewing the criminal history of applicants for barber, cosmetology, and certain construction contracting licenses under the Department of Business and Professional Regulation (DBPR); and certified nursing assistant licenses under the Department of Health (DOH). The bill:

- expressly permits a person to apply for a license while under incarceration or supervision;
- generally limits the period during which the agency may consider criminal history as an impairment to licensure to 5 years for barbers, cosmetologists, and certain contractors, or 7 years for certified nursing assistants;
- requires DBPR and DOH to identify the crimes on their website that either do or do not impair a person's ability to qualify for licensure; and
- requires the licensing agency and the Department of Corrections to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.

The bill has an indeterminate fiscal impact on state government and does not appear to have a fiscal impact on local government.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### **Department of Business and Professional Regulation**

The Department of Business and Professional Regulation (DBPR) has 12 divisions tasked with the regulation of several professions and businesses in Florida.<sup>1</sup>

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”<sup>2</sup>

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR.<sup>3</sup>

When a person is authorized to engage in a profession or occupation in Florida, DBPR issues a “permit, registration, certificate, or license” to the licensee.<sup>4</sup>

In Fiscal Year 2015-2016, there were 434,574 licensees in the Division of Professions,<sup>5</sup> including, in relevant part:

- Barbers (19,098 active and 199 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Construction industry contractors (71,818 active and 15,004 inactive); and
- Electrical contractors (11,960 active and 1,285 inactive).

Sections 455.203 and 455.213, F.S., establish general licensing authority for DBPR, including the authority to charge license fees and license renewal fees. Each board within DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.<sup>6</sup>

##### **Licensing and Criminal Background**

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license, permit, or certification for prior conviction for a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license, permit, or certificate is sought.<sup>7</sup> Notwithstanding any law to the contrary, a state agency may not deny

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<sup>1</sup> See Section 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

<sup>2</sup> s. 455.01(6), F.S.

<sup>3</sup> See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

<sup>4</sup> Section 455.01(4) and (5), F.S.

<sup>5</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited January 13, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

<sup>6</sup> s. 455.219(1), F.S.

<sup>7</sup> s. 112.011(1)(b), F.S.

an application for a license, permit, certificate, or employment based solely on the applicant's lack of civil rights.<sup>8</sup>

Specifically, for DBPR licensed applicants, DBPR or an applicable board may deny a license application for any person having been “convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee’s profession<sup>9</sup> or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release, nor are such individuals charged any additional fees.<sup>10</sup>

Specifically, for DOH licensed applicants, DOH or an applicable board may deny a license application for any person having been “convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state<sup>11</sup> or related to certain types of fraud,<sup>12</sup> or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.<sup>13</sup>

### **Barbers**

Barbers are regulated under ch. 476, F.S., by the Barber’s Board within the DBPR. To be licensed as a barber, a person must be at least 16 years of age, satisfactorily complete a licensure examination, and pay the required application fee. In order to be eligible to sit for the licensure examination, a person must have held a license to practice barbering in another state for at least one year or have received a minimum of 1,200 hours of training.<sup>14</sup>

“Barbering” includes any of the following practices when done for payment by the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.<sup>15</sup>

Chapter 476, F.S., does not provide a basis for denial of a license application based on a person’s criminal background. However, a person may be denied a license application as a barber for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee’s profession.<sup>16</sup> Fingerprints are not required to be submitted to DBPR for a formal background check for barber license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 8,691 applicants for a barbering license were disqualified based on criminal history.<sup>17</sup>

### **Cosmetologists**

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology processes licenses and responds to consumer complaints and inquiries by

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<sup>8</sup> s. 112.011(1)(c), F.S.

<sup>9</sup> Section 455.227(1)(c), F.S.

<sup>10</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2018 Senate Bill 1114, p. 2 (Jan. 8, 2018).

<sup>11</sup> ss. 456.024(3)(c); 456.072(1)(c), (x), (ii), (ll); and 456.072(2)(a), F.S.

<sup>12</sup> s. 456.0635, F.S.

<sup>13</sup> Florida Department of Health, Agency Analysis of 2018 House Bill 1041, p. 2 (Jan. 24, 2018).

<sup>14</sup> See s. 476.114, F.S.

<sup>15</sup> s. 476.034(2), F.S.

<sup>16</sup> See s. 455.227(1)(c), F.S.

<sup>17</sup> Department of Business and Professional Regulation, *Response to Senate Bill 146 Ex-Offender Report*, p. 40 (2015), (on file with the Careers and Competition Subcommittee).

monitoring activities and compliance within the cosmetology industry. Individuals are prohibited from providing cosmetology services in Florida without first being licensed as a cosmetologist or a specialist.<sup>18</sup>

A “cosmetologist” is a person who is licensed to engage in the practice of cosmetology in Florida under the authority of ch. 477, F.S.<sup>19</sup> “Cosmetology” is defined as “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.”<sup>20</sup>

A “specialist” is defined as “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”<sup>21</sup> The term “specialty” includes performing manicures, pedicures, and facials.<sup>22</sup> A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.<sup>23</sup> All cosmetology and specialty salons are subject to inspection by the DBPR.<sup>24</sup>

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least one year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.<sup>25</sup>

To qualify for a specialist license, the applicant must be at least 16 years old or have a high school diploma, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with the DBPR with the registration fee.<sup>26</sup>

The Board of Cosmetology may deny a cosmetology license or specialty registration application based on a person’s criminal background. The board may deny a license or application for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee’s profession.<sup>27</sup> Fingerprints are not required to be submitted to DBPR for a formal background check for cosmetology license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 95,715 applicants for a cosmetology license were disqualified based on criminal history.<sup>28</sup>

## ***Construction Contracting Professionals***

### ***CILB and ECLB***

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.<sup>29</sup> The CILB is divided into two divisions with separate jurisdictions:

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<sup>18</sup> s. 477.014, F.S.

<sup>19</sup> s. 477.013(3), F.S.

<sup>20</sup> s. 477.013(4), F.S.

<sup>21</sup> s. 477.013(5), F.S.

<sup>22</sup> s. 477.013(6), F.S.

<sup>23</sup> s. 477.0263, F.S.

<sup>24</sup> s. 477.025, F.S.

<sup>25</sup> Section 477.019(2), F.S.

<sup>26</sup> Section 477.0201, F.S.

<sup>27</sup> See s 477.029(1)(h), F.S.

<sup>28</sup> DBPR, *supra* note 17, at 50.

<sup>29</sup> See s. 489.107, F.S.

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.<sup>30</sup>

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors in this state under part II of Ch. 489, F.S.<sup>31</sup>

Construction contractors under part I of ch. 489, F.S., and electrical contractors under part II of ch. 489, F.S., must satisfactorily complete experience and education requirements, and a licensure examination before being licensed.<sup>32</sup>

The CILB and the ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.<sup>33</sup> Specifically, the CILB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.<sup>34</sup>

CILB and ECLB contractors must be of good moral character. In considering good moral character, DBPR may consider any matter, including criminal background, that has a substantial connection between the good moral character of the applicant and the professional responsibilities of such a contractor by clear and convincing evidence.<sup>35</sup>

For Fiscal Years 2011-12 through 2014-15, 6 out of 7,575 applicants for a ECLB license, and 29 out of 22,934 applicants for a CILB license were denied based on criminal history.<sup>36</sup>

### *Septic Tank Contracting*

Master septic tank contractors and septic tank contractors are regulated by the Department of Health (DOH) under part III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DOH before engaging in the occupation.<sup>37</sup> A master septic tank contractor" must have at least 3 years' experience as a registered septic tank contractor or a plumbing contractor certified under part I of ch. 489, F.S., who has provided septic tank contracting services for at least 3 years.

<sup>30</sup> For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. *See* Fla. Admin. Code R. 61G4-15.032 (2016).

<sup>31</sup> Section 489.507, F.S.

<sup>32</sup> *See* ss. 489.113 and 489.516, F.S., respectively.

<sup>33</sup> s. 455.227(2), F.S.

<sup>34</sup> ss. 489.129(1)(b) and 489.553(1)(d), F.S., proving the disciplinary grounds for construction contractors and electrical contractors, respectively.

<sup>35</sup> ss. 489.111(2)(b), (3)(a) and 489.513(1)(b), (c), F.S.

<sup>36</sup> DBPR, *supra* note 17, at 55. The numbers for CILB licenses include Div. I contractors who are not the subject of this bill, but the numbers in the report are inextricable.

<sup>37</sup> ss. 489.552 and 489.553, F.S.

To be eligible for registration by the DOH, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DOH may consider any matter, including criminal background, that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor.<sup>38</sup> This includes crimes which affect the profession of septic tank contracting.<sup>39</sup>

### *Lookback Considerations for CILB, ECLB, and Septic Tank Contractors*

The CILB must consider length of time since the commission of a crime and the rehabilitation of the applicant in denying or approving licensure.<sup>40</sup> The CILB may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.<sup>41</sup> For licensing electrical or septic tank contractors, the ECLB or DOH, respectively, are not specifically required to consider the passage of time between the disqualifying criminal offense and the time of application before denying or granting a license or registration.

### **Certified Nursing Assistants**

The Board of Nursing within the Department of Health is responsible for licensing and regulating certified nursing assistants under part II of ch. 464, F.S.<sup>42</sup> In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.<sup>43</sup>

The "practice of a certified nursing assistant" means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents' or patients' rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.<sup>44</sup>

The definition of "practice of a certified nursing assistant" does not restrict the ability of any person who is otherwise trained and educated from performing the tasks specified in the definition.<sup>45</sup>

To be certified, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified if they have been licensed in another state and not have been found to have committed abuse, neglect, or exploitation in that state.<sup>46</sup>

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<sup>38</sup> s. 489.553(4)(a), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> s. 489.115(6), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> *See* s. 489.107, F.S.

<sup>43</sup> *See* Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited January 18, 2018) at page 13.

<sup>44</sup> s. 464.201(5), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> s. 464.203, F.S.

Although the practice act for certified nursing assistants does not specifically reference a person's criminal background, applicants for certification may be disqualified based on crimes related to the practice of certified nurse assisting.<sup>47</sup> Additionally, as with all health practitioner licenses, pursuant to s. 456.0635, F.S., CNA applicants will automatically be disqualified for felonies related to health care fraud or violent crimes under chs. 409, 817, and 893, F.S., or similar offenses in other jurisdictions, and certain federal offenses, until the sentence and any subsequent probation has ended and for a certain time frame afterward, ranging from 5 to 15 years.<sup>48</sup>

The applicant also must successfully pass a required background screening<sup>49</sup> either pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level 2 background screening, or pursuant to s. 408.809, F.S., which also requires pre-employment, level 2 background screening for specified persons, including employees of medical facilities.<sup>50</sup> The background screening must be completed every five years following licensure, employment, or entering into contract in a capacity that requires background screening.<sup>51</sup> Both of these background screenings include checking for crimes related to various types of fraud, in addition to violent crimes.<sup>52</sup>

Section 435.04, F.S., prohibits the licensure of any person based on 52 prohibited offenses listed in s. 435.04(2), F.S., which include violent crimes, property crimes, and sexual offenses.<sup>53</sup> A level 2 background screening is meant to ensure a person subject to the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of (regardless of adjudication), not entered a plea of nolo contendere or guilty to, has not been adjudicated delinquent, and has not had a sealed or expunged record for, any of the listed offenses. Both CNA background screening procedures use ch. 435, F.S. as a guide.

A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. DOH then determines if the screening contains any disqualifying information for employment.<sup>54</sup>

If a person is disqualified from employment due to failing the required background screening, the Department of Health may grant an exemption from disqualification for:

1. Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
2. Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
3. Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully

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<sup>47</sup> *supra* note 14, and s. 464.204(1)(b), F.S.

<sup>48</sup> s. 456.0635(2)(a), F.S.

<sup>49</sup> s. 464.203(1), F.S.

<sup>50</sup> s. 408.809(1), F.S.

<sup>51</sup> s. 408.809(2), F.S.

<sup>52</sup> ss. 400.215 and 408.809(4)(a), F.S.

<sup>53</sup> *See* s. 435.04(2), F.S.

<sup>54</sup> s. 435.04, F.S.

released from confinement, supervision, or nonmonetary condition imposed by the court; or

4. Findings of delinquency.<sup>55</sup>

However, if the delinquency would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least three years have elapsed since completion or lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense.<sup>56</sup>

To be granted an exemption, a person must have paid any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.<sup>57</sup>

However, the Department of Health may not grant an exemption to an individual who is found guilty of, or who has entered a plea of nolo contendere or guilty to, regardless of adjudication, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.<sup>58</sup>

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).<sup>59</sup> The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.<sup>60</sup>

### **Effect of the Bill**

The bill changes the standards used in the current procedures for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and DOH.

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application provisions in the bill applies to the following professions and occupations:

- Certified Nursing Assistants (CNA).
- Barbers.
- Cosmetologists and cosmetology specialists.
- Construction Professionals:
  - Electrical Contractors;
  - Alarm System Contractors;
  - Septic Tank Contractors;
  - Swimming pool and spa contractors;
  - Sheet metal contractors;
  - Roofing contractors;
  - Air-conditioning contractors;
  - Mechanical contractors;
  - Plumbing contractors;
  - Underground utility and excavation contractors;
  - Solar contractors;

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<sup>55</sup> s. 435.07(1)(a), F.S.

<sup>56</sup> *Id.*

<sup>57</sup> s. 435.07(1)(b), F.S.

<sup>58</sup> *See* s. 435.07(4)(a), F.S.

<sup>59</sup> *See* s. 435.07(4)(b), F.S.

<sup>60</sup> *See* s. 435.07(4)(c), F.S.



- Pollutant storage systems contractor; and
- Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The bill:

- Expressly permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to a conviction for a crime less than 5 years prior to application for barbers, cosmetologists, and certain contractors, or 7 years prior to application for CNAs. This does not change license qualifications based on the applicant’s moral character for CILB or ECLB applicants. DOH may only consider a certified nursing assistant applicant’s criminal history from longer than 7 years before the date of application if such applicant has committed a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S; or health care fraud-related crimes pursuant to s. 456.0635, F.S.
- Requires the licensing agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person’s license application.
- Requires the Department of Corrections (DOC) to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the license applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

The bill requires the Barbers’ Board, Board of Cosmetology, ECLB, and CILB (collectively “boards”) to list on DBPR’s website the crimes that if committed by an applicant, do not impair a person’s qualifications for licensure. This list will be updated annually. Beginning October 1, 2018, the boards must compile a list of crimes that although reported by an applicant for licensure, were not used as a basis for denial. The list must identify the crime reported and the date of conviction, finding of guilt, plea, or adjudication entered or the date of sentencing for each such license application.

The bill requires each agency to identify the crimes that do impair a person’s qualifications for licensure. The boards must compile a list of crimes that have been used as a basis for denial of a license in the past 2 years, which shall be made available on DBPR’s website. Starting October 1, 2018, and updated quarterly thereafter, the boards must compile a list indicating each crime used as a basis for a license denial. For each crime listed, the board must identify the date of conviction, finding of guilt, plea, or adjudication entered, or date of sentencing. Such denials must be available to the public upon request.

The bill requires the Board of Nursing to perform the same crime list procedures for CNAs as boards under DBPR.

The bill provides an effective date of October 1, 2018.

#### B. SECTION DIRECTORY:

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|-----------|--|
| Section 1 | Amends s. 455.213, F.S., providing specific standards for certain DBPR professional licenses regarding an applicant’s criminal background.   |
| Section 2 | Amends s. 464.203, F.S., providing specific standards for certified nursing assistant licenses regarding an applicant’s criminal background. |
| Section 3 | Amends s. 400.211, F.S., making a conforming change.   |
| Section 4 | Provides an effective date.  |

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be an insignificant, negative impact on DBPR, DOH, and DOC related to increased technology costs associated with providing new teleconferencing methods for licensure hearings. DBPR and DOH may see an insignificant, negative impact related to complying with the new crime listing requirements.

DOH states that they will have a recurring increase in rulemaking costs and technology costs for teleconferencing at board meetings, but the current budget authority is adequate to absorb.<sup>61</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may be an increase in the number of people in the workforce practicing their chosen professions and enable more people to join the workforce.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

DBPR and DOH will need to promulgate rules amending license applications. Current rulemaking authority is sufficient.

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<sup>61</sup> *supra* note 32, at 4.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear as to whether the time limitation for considering a criminal conviction in licensure determinations is drawn from the date of conviction or the date that the crime was committed.

The bill needs to clarify that the provisions apply to septic tank contractors, who are regulated by DOH, not DBPR.

Representative Plakon has indicated an amendment is forthcoming that will address these issues.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- removes provisions related to declaratory statements issued by agencies;
- provides requirements for DBPR and DOH, with regard to barbers, cosmetologists, certain construction contractors, and certified nursing assistants (CNA), to list crimes on their respective websites that do or do not affect an applicant's eligibility for licensure;
- removes the requirement that DBPR and DOH promulgate certain rules;
- clarifies that CNAs may be denied a license for having a criminal history which includes certain health care-related fraud crimes, even if they occurred longer than 7 years prior to application; and
- provides a later effective date of October 1, 2018.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.