

1 A bill to be entitled
2 An act relating to professional regulation; amending
3 s. 120.565, F.S.; authorizing a person to seek a
4 declaratory statement from an agency as to the effect
5 of the person's criminal background on his or her
6 eligibility for certain licenses, registrations, or
7 certificates; specifying that a person may seek a
8 declaratory statement before meeting any prerequisites
9 for the license, registration, or certification;
10 requiring that an agency's conclusion in the
11 declaratory statement contain certain statements;
12 providing that the agency's conclusion is binding
13 except under certain circumstances; requiring a person
14 seeking a declaratory statement to submit certain
15 items to the agency and pay certain fees and costs;
16 providing requirements for the processing of the
17 fingerprints; requiring the petitioner to pay the
18 actual cost of processing the fingerprints; amending
19 s. 455.213, F.S.; conforming a cross-reference;
20 requiring the board to use a specified process for the
21 review of an applicant's criminal record to determine
22 the applicant's eligibility for certain licenses;
23 prohibiting the conviction of a crime before a
24 specified date from being grounds for the denial of
25 certain licenses; defining the term "conviction";

26 | authorizing a person to apply for a license before his
27 | or her lawful release from confinement or supervision;
28 | prohibiting additional fees for an applicant confined
29 | or under supervision; prohibiting the board from
30 | basing a denial of a license application solely on the
31 | applicant's current confinement or supervision;
32 | authorizing the board to stay the issuance of an
33 | approved license under certain circumstances;
34 | requiring the board to verify an applicant's release
35 | with the Department of Corrections; providing
36 | requirements for the appearance of certain applicants
37 | at certain meetings; requiring the board to adopt
38 | rules specifying how certain crimes affect an
39 | applicant's eligibility for licensure; amending s.
40 | 464.203, F.S.; prohibiting the conviction of a crime
41 | before a specified date from being grounds for the
42 | denial of a certification under certain circumstances;
43 | prohibiting the conviction of a crime before a
44 | specified date from being grounds for the failure of a
45 | background screening; defining the term "conviction";
46 | authorizing a person to apply for certification before
47 | his or her lawful release from confinement or
48 | supervision; prohibiting additional fees for an
49 | applicant confined or under supervision; prohibiting
50 | the board from basing the denial of a certification

51 solely on the applicant's current confinement or
 52 supervision; authorizing the board to stay the
 53 issuance of an approved certificate under certain
 54 circumstances; requiring the board to verify an
 55 applicant's release with the Department of
 56 Corrections; providing requirements for the appearance
 57 of certain applicants at certain meetings; requiring
 58 the board to adopt rules specifying how certain crimes
 59 may affect an applicant's eligibility for
 60 certification; amending s. 400.211, F.S.; conforming a
 61 cross-reference; providing an effective date.

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 63 Be It Enacted by the Legislature of the State of Florida:

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 65 Section 1. Subsection (4) is added to section 120.565,
 66 Florida Statutes, to read:

67 120.565 Declaratory statement by agencies.—

68 (4) (a) Any person may seek a declaratory statement
 69 regarding an agency's opinion as to the effect of the
 70 petitioner's criminal background on his or her eligibility for a
 71 specific occupational or professional license, registration, or
 72 certificate issued by the agency based on the applicable
 73 statutes and rules for the occupation or profession. The
 74 petition may include mitigating factors or other information the
 75 petitioner believes relevant to establish the petitioner's

76 eligibility, including, but not limited to, the time elapsed
77 since completion of or lawful release from confinement,
78 supervision, or nonmonetary condition imposed by the court for a
79 disqualifying offense, and the petitioner's standing in his or
80 her community. A person may seek a declaratory statement under
81 this subsection before attaining any education, training,
82 experience, or other prerequisites for the license,
83 registration, or certification.

84 (b) The agency's conclusion in the declaratory statement
85 must indicate whether:

86 1. The petitioner is disqualified from obtaining the
87 license, registration, or certification due to the petitioner's
88 criminal background, regardless of the petitioner's education,
89 training, experience, or other prerequisites required for the
90 license, registration, or certification.

91 2. The petitioner is not eligible for a specified
92 occupational or professional license, registration, or
93 certification because of his or her criminal background, but
94 that the conclusion may be reversed upon the petitioner's
95 presentation of evidence of rehabilitation or mitigation
96 identified by the agency in the declaratory statement at any
97 time subsequent to the issuance of the declaratory statement.

98 3. Federal laws or regulations may impede the petitioner's
99 licensure, registration, or certification in the profession or
100 occupation.

101 4. Conditions or restrictions imposed by the court on the
102 petitioner for a disqualifying offense may impede the
103 petitioner's licensure, registration, or certification in the
104 profession or occupation.

105 (c) The agency's conclusion in the declaratory statement
106 shall be binding on the agency as to the petitioner, unless the
107 petitioner's subsequent criminal history constitutes an
108 independent basis for denial of the petitioner's application for
109 a license, registration, or certification in the profession or
110 occupation. The agency's conclusion is subject to judicial
111 review pursuant to s. 120.68.

112 (d) A person seeking a declaratory statement under this
113 subsection must submit to the agency, in addition to the
114 petition for a declaratory statement:

- 115 1. A fee set by the agency not to exceed \$100;
116 2. A certified copy of each criminal judgment rendered
117 against the petitioner; and
118 3. A complete set of electronic fingerprints.

119 (e) The agency shall submit the fingerprints to the
120 Department of Law Enforcement for a state criminal history
121 record check, and the Department of Law Enforcement shall
122 forward the fingerprints to the Federal Bureau of Investigation
123 for a national criminal history record check. The agency shall
124 review the criminal history record results to determine if the
125 petitioner meets licensure, registration, or certification

126 requirements. The petitioner shall pay the actual cost of state
127 and federal processing in addition to the fee in subparagraph
128 (d)1.

129 Section 2. Present subsections (3) through (12) of section
130 455.213, Florida Statutes, are redesignated as subsections (4)
131 through (13), respectively, subsection (2) of that section is
132 amended, and a new subsection (3) is added to that section, to
133 read:

134 455.213 General licensing provisions.—

135 (2) Before the issuance of any license, the department may
136 charge an initial license fee as determined by rule of the
137 applicable board or, if no such board exists, by rule of the
138 department. Upon receipt of the appropriate license fee, except
139 as provided in subsection (4) ~~(3)~~, the department shall issue a
140 license to any person certified by the appropriate board, or its
141 designee, or the department when there is no board, as having
142 met the applicable requirements imposed by law or rule. However,
143 an applicant who is not otherwise qualified for licensure is not
144 entitled to licensure solely based on a passing score on a
145 required examination. Upon a determination by the department
146 that it erroneously issued a license, or upon the revocation of
147 a license by the applicable board, or by the department when
148 there is no board, the licensee must surrender his or her
149 license to the department.

150 (3) (a) Notwithstanding any other provision of law, the

151 board shall use the process in this subsection for review of an
152 applicant's criminal record to determine his or her eligibility
153 for licensure as a:

154 1. Barber under chapter 476;

155 2. Cosmetologist or cosmetology specialist under chapter
156 477; or

157 3. Any of the following construction professions under
158 chapter 489:

159 a. Air-conditioning contractor;

160 b. Electrical contractor;

161 c. Mechanical contractor;

162 d. Plumbing contractor;

163 e. Pollutant storage systems contractor;

164 f. Roofing contractor;

165 g. Septic tank contractor;

166 h. Sheet metal contractor;

167 i. Solar contractor;

168 j. Swimming pool and spa contractor;

169 k. Underground utility and excavation contractor; and

170 l. Other specialty contractors.

171 (b) A conviction for a crime more than 5 years before the
172 date of the application may not be grounds for denial of a
173 license specified in paragraph (a). For purposes of this
174 paragraph, the term "conviction" means a determination of guilt
175 that is the result of a plea or trial, regardless of whether

176 adjudication is withheld.

177 (c)1. A person may apply for a license before his or her
178 lawful release from confinement or supervision. The department
179 may not charge an applicant an additional fee for being confined
180 or under supervision. The board may not deny an application for
181 a license solely on the basis of the applicant's current
182 confinement or supervision.

183 2. After a license application is approved, the board may
184 stay the issuance of a license until the applicant is lawfully
185 released from confinement or supervision and the applicant
186 notifies the board of such release. The board must verify the
187 applicant's release with the Department of Corrections before it
188 issues a license.

189 3. If an applicant is unable to appear in person due to
190 his or her confinement or supervision, the board must permit the
191 applicant to appear by teleconference or video conference, as
192 appropriate, at any meeting of the board or other hearing by the
193 agency concerning his or her application.

194 4. If an applicant is confined or under supervision, the
195 Department of Corrections and the board shall cooperate and
196 coordinate to facilitate the appearance of the applicant at a
197 board meeting or agency hearing in person, by teleconference, or
198 by video conference, as appropriate.

199 (d) The board shall adopt rules specifying the crimes
200 that, if committed, and regardless of adjudication, do not

201 relate to the practice of the profession or the ability to
202 practice the profession and do not constitute grounds for denial
203 of a license.

204 (e) The board shall adopt rules specifying the crimes
205 that, if committed, and regardless of adjudication, relate to
206 the practice of the profession or the ability to practice the
207 profession and may constitute grounds for denial of a license.

208 Section 3. Present subsections (2) through (8) of section
209 464.203, Florida Statutes, are redesignated as subsections (3)
210 through (9), respectively, and a new subsection (2) is added to
211 that section, to read:

212 464.203 Certified nursing assistants; certification
213 requirement.—

214 (2) (a) 1. Except as provided in s. 435.07(4), a conviction
215 for a crime more than 7 years before the date of the application
216 may not be grounds for denial of a certificate to practice as a
217 certified nursing assistant.

218 2. Except as provided in s. 435.07(4), a conviction for a
219 crime more than 7 years before the date of the application may
220 not be grounds for failure of a required background screening.

221 3. For purposes of this paragraph, the term "conviction"
222 means a determination of guilt that is the result of a plea or
223 trial, regardless of whether adjudication is withheld.

224 (b) 1. A person may apply for a certificate to practice as
225 a certified nursing assistant before his or her lawful release

226 from confinement or supervision. The department may not charge
227 an applicant an additional fee for being confined or under
228 supervision. The board may not deny an application for a
229 certificate solely on the basis of the person's current
230 confinement or supervision.

231 2. After a certification application is approved, the
232 board may stay the issuance of a certificate until the applicant
233 notifies the board of his or her lawful release from confinement
234 or supervision. The board must verify the applicant's release
235 with the Department of Corrections before it issues a
236 certificate.

237 3. If an applicant is unable to appear in person due to
238 his or her confinement or supervision, the board must permit the
239 applicant to appear by teleconference or video conference, as
240 appropriate, at any meeting of the board or other hearing by the
241 agency concerning his or her application.

242 4. If an applicant is confined or under supervision, the
243 Department of Corrections and the board shall cooperate and
244 coordinate to facilitate the appearance of the applicant at a
245 board meeting or agency hearing in person, by teleconference, or
246 by video conference, as appropriate.

247 (c) The board shall adopt rules specifying the crimes
248 that, if committed, and regardless of adjudication, do not
249 relate to the practice of the profession or the ability to
250 practice the profession and do not constitute grounds for denial

251 of a certification.

252 (d) The board shall adopt rules specifying the crimes
253 that, if committed, and regardless of adjudication, relate to
254 the practice of the profession or the ability to practice the
255 profession and may constitute grounds for denial of a
256 certification.

257 Section 4. Subsection (4) of section 400.211, Florida
258 Statutes, is amended to read:

259 400.211 Persons employed as nursing assistants;
260 certification requirement.—

261 (4) When employed by a nursing home facility for a 12-
262 month period or longer, a nursing assistant, to maintain
263 certification, shall submit to a performance review every 12
264 months and must receive regular inservice education based on the
265 outcome of such reviews. The inservice training must meet all of
266 the following requirements:

267 (a) Be sufficient to ensure the continuing competence of
268 nursing assistants and must meet the standard specified in s.
269 464.203(8). ~~s. 464.203(7);~~

270 (b) Include, at a minimum:

271 1. Techniques for assisting with eating and proper
272 feeding;

273 2. Principles of adequate nutrition and hydration;

274 3. Techniques for assisting and responding to the
275 cognitively impaired resident or the resident with difficult

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276 behaviors;

277 4. Techniques for caring for the resident at the end-of-
278 life; and

279 5. Recognizing changes that place a resident at risk for
280 pressure ulcers and falls. ~~and~~

281 (c) Address areas of weakness as determined in nursing
282 assistant performance reviews and may address the special needs
283 of residents as determined by the nursing home facility staff.

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285 Costs associated with this training may not be reimbursed from
286 additional Medicaid funding through interim rate adjustments.

287 Section 5. This act shall take effect July 1, 2018.