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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Substitute for Amendment (753714) (with title amendment)

Before line 17
insert:

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

120.565 Declaratory statement by agencies.—

(4) (a) Any person may seek a declaratory statement
regarding an agency's opinion as to the effect of the



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11 petitioner's criminal background on his or her eligibility for a
12 specific occupational or professional license, registration, or
13 certificate issued by the agency based on the applicable
14 statutes and rules for the occupation or profession. The
15 petition may include mitigating factors or other information the
16 petitioner believes relevant to establish the petitioner's
17 eligibility, including, but not limited to, the time elapsed
18 since completion of or lawful release from confinement,
19 supervision, or nonmonetary condition imposed by the court for a
20 disqualifying offense, and the petitioner's standing in his or
21 her community. A person may seek a declaratory statement under
22 this subsection before attaining any education, training,
23 experience, or other prerequisites for the license,
24 registration, or certification.

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

27 1. The petitioner is disqualified from obtaining the
28 license, registration, or certification due to the petitioner's
29 criminal background, regardless of the petitioner's education,
30 training, experience, or other prerequisites required for the
31 license, registration, or certification.

32 2. The petitioner is not eligible for a specified
33 occupational or professional license, registration, or
34 certification because of his or her criminal background, but
35 that the conclusion may be reversed upon the petitioner's
36 presentation of evidence of rehabilitation or mitigation
37 identified by the agency in the declaratory statement at any
38 time subsequent to the issuance of the declaratory statement.

39 3. Federal laws or regulations may impede the petitioner's



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40 licensure, registration, or certification in the profession or
41 occupation.

42 4. Conditions or restrictions imposed by the court on the
43 petitioner for a disqualifying offense may impede the
44 petitioner's licensure, registration, or certification in the
45 profession or occupation.

46 (c) The agency's conclusion in the declaratory statement
47 shall be binding on the agency as to the petitioner, unless the
48 petitioner's subsequent criminal history constitutes an
49 independent basis for denial of the petitioner's application for
50 a license, registration, or certification in the profession or
51 occupation. The agency's conclusion is subject to judicial
52 review pursuant to s. 120.68.

53 (d) A person seeking a declaratory statement under this
54 subsection must submit to the agency, in addition to the
55 petition for a declaratory statement:

- 56 1. A fee set by the agency not to exceed \$100;
57 2. A certified copy of each criminal judgment rendered
58 against the petitioner; and
59 3. A complete set of electronic fingerprints.

60 (e) The agency shall submit the fingerprints to the
61 Department of Law Enforcement for a state criminal history
62 record check and the Department of Law Enforcement shall forward
63 them to the Federal Bureau of Investigation for a national
64 criminal history record check. The agency shall review the
65 criminal history record results to determine if the petitioner
66 meets licensure, registration, or certification requirements.
67 The petitioner shall pay the actual cost of state and federal
68 processing in addition to the fee in subparagraph (d)1.



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69 Section 2. Present subsections (3) through (12) of section
70 455.213, Florida Statutes, are redesignated as subsections (4)
71 through (13), respectively, subsection (2) of that section is
72 amended, and a new subsection (3) is added to that section, to
73 read:

74 455.213 General licensing provisions.—

75 (2) Before the issuance of any license, the department may
76 charge an initial license fee as determined by rule of the
77 applicable board or, if no such board exists, by rule of the
78 department. Upon receipt of the appropriate license fee, except
79 as provided in subsection (4) ~~(3)~~, the department shall issue a
80 license to any person certified by the appropriate board, or its
81 designee, or the department when there is no board, as having
82 met the applicable requirements imposed by law or rule. However,
83 an applicant who is not otherwise qualified for licensure is not
84 entitled to licensure solely based on a passing score on a
85 required examination. Upon a determination by the department
86 that it erroneously issued a license, or upon the revocation of
87 a license by the applicable board, or by the department when
88 there is no board, the licensee must surrender his or her
89 license to the department.

90 (3) (a) Notwithstanding any other provision of law, the
91 board shall use the process in this subsection for review of an
92 applicant's criminal record to determine his or her eligibility
93 for licensure as a:

94 1. Barber under chapter 476;

95 2. Cosmetologist or cosmetology specialist under chapter
96 477; or

97 3. Any of the following construction professions under



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98 chapter 489:

99 a. Air-conditioning contractor;

100 b. Electrical contractor;

101 c. Mechanical contractor;

102 d. Plumbing contractor;

103 e. Pollutant storage systems contractor;

104 f. Roofing contractor;

105 g. Septic tank contractor;

106 h. Sheet metal contractor;

107 i. Solar contractor;

108 j. Swimming pool and spa contractor;

109 k. Underground utility and excavation contractor; and

110 l. Other specialty contractors.

111 (b) A conviction for a crime more than 5 years before the
112 date of the application may not be grounds for denial of a
113 license specified in paragraph (a). For purposes of this
114 paragraph, the term "conviction" means a determination of guilt
115 that is the result of a plea or trial, regardless of whether
116 adjudication is withheld.

117 (c)1. A person may apply for a license before his or her
118 lawful release from confinement or supervision. The department
119 may not charge an applicant an additional fee for being confined
120 or under supervision. The board may not deny an application for
121 a license solely on the basis of the applicant's current
122 confinement or supervision.

123 2. After a license application is approved, the board may
124 stay the issuance of a license until the applicant is lawfully
125 released from confinement or supervision and the applicant
126 notifies the board of such release. The board must verify the



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127 applicant's release with the Department of Corrections before it
128 issues a license.

129 3. If an applicant is unable to appear in person due to his
130 or her confinement or supervision, the board must permit the
131 applicant to appear by teleconference or video conference, as
132 appropriate, at any meeting of the board or other hearing by the
133 agency concerning his or her application.

134 4. If an applicant is confined or under supervision, the
135 Department of Corrections and the board shall cooperate and
136 coordinate to facilitate the appearance of the applicant at a
137 board meeting or agency hearing in person, by teleconference, or
138 by video conference, as appropriate.

139 (d) The board shall adopt rules specifying the crimes that,
140 if committed, and regardless of adjudication, do not relate to
141 the practice of the profession or the ability to practice the
142 profession and do not constitute grounds for denial of a
143 license.

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

148 Section 3. Present subsections (2) through (8) of section
149 464.203, Florida Statutes, are redesignated as subsections (3)
150 through (9), respectively, and a new subsection (2) is added to
151 that section, to read:

152 464.203 Certified nursing assistants; certification
153 requirement.—

154 (2) (a) 1. Except as provided in s. 435.07(4), a conviction
155 for a crime more than 7 years before the date of the application



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156 may not be grounds for denial of a certificate to practice as a
157 certified nursing assistant.

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

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

164 (b)1. A person may apply for a certificate to practice as a
165 certified nursing assistant before his or her lawful release
166 from confinement or supervision. The department may not charge
167 an applicant an additional fee for being confined or under
168 supervision. The board may not deny an application for a
169 certificate solely on the basis of the person's current
170 confinement or supervision.

171 2. After a certification application is approved, the board
172 may stay the issuance of a certificate until the applicant
173 notifies the board of his or her lawful release from confinement
174 or supervision. The board must verify the applicant's release
175 with the Department of Corrections before it issues a license.

176 3. If an applicant is unable to appear in person due to his
177 or her confinement or supervision, the board must permit the
178 applicant to appear by teleconference or video conference, as
179 appropriate, at any meeting of the board or other hearing by the
180 agency concerning his or her application.

181 4. If an applicant is confined or under supervision, the
182 Department of Corrections and the board shall cooperate and
183 coordinate to facilitate the appearance of the applicant at a
184 board meeting or agency hearing in person, by teleconference, or



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185 by video conference, as appropriate.

186 (c) The board shall adopt rules specifying the crimes that,
187 if committed, and regardless of adjudication, do not relate to
188 the practice of the profession or the ability to practice the
189 profession and do not constitute grounds for denial of a
190 certification.

191 (d) The board shall adopt rules specifying the crimes that,
192 if committed, and regardless of adjudication, relate to the
193 practice of the profession or the ability to practice the
194 profession and may constitute grounds for denial of a
195 certification.

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

198 400.211 Persons employed as nursing assistants;
199 certification requirement.—

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

206 (a) Be sufficient to ensure the continuing competence of
207 nursing assistants and must meet the standard specified in s.
208 464.203(8). ~~s. 464.203(7);~~

209 (b) Include, at a minimum:

- 210 1. Techniques for assisting with eating and proper feeding;
211 2. Principles of adequate nutrition and hydration;
212 3. Techniques for assisting and responding to the
213 cognitively impaired resident or the resident with difficult



214 behaviors;
215 4. Techniques for caring for the resident at the end-of-
216 life; and
217 5. Recognizing changes that place a resident at risk for
218 pressure ulcers and falls. ~~and~~
219 (c) Address areas of weakness as determined in nursing
220 assistant performance reviews and may address the special needs
221 of residents as determined by the nursing home facility staff.
222
223 Costs associated with this training may not be reimbursed from
224 additional Medicaid funding through interim rate adjustments.
225

226 ===== T I T L E A M E N D M E N T =====

227 And the title is amended as follows:

228 Delete line 2

229 and insert:

230 An act relating to licensing and training; amending s.
231 120.565, F.S.; authorizing a person to seek a
232 declaratory statement from an agency as to the effect
233 of the person's criminal background on his or her
234 eligibility for certain licenses, registrations, or
235 certificates; specifying that a person may seek a
236 declaratory statement before meeting any prerequisites
237 for the license, registration, or certification;
238 requiring that an agency's conclusion in the
239 declaratory statement contain certain statements;
240 providing that the agency's conclusion is binding,
241 except under certain circumstances; requiring a person
242 seeking a declaratory statement to submit certain



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243 items to the agency and pay certain fees and costs;
244 providing requirements for the processing of
245 fingerprints; requiring the petitioner to pay the
246 actual cost of processing the fingerprints; amending
247 s. 455.213, F.S.; requiring the board to use a
248 specified process for the review of an applicant's
249 criminal record to determine the applicant's
250 eligibility for certain licenses; prohibiting the
251 conviction of a crime before a specified date from
252 being grounds for the denial of certain licenses;
253 defining the term "conviction"; authorizing a person
254 to apply for a license before his or her lawful
255 release from confinement or supervision; prohibiting
256 additional fees for an applicant confined or under
257 supervision; prohibiting the board from basing a
258 denial of a license application solely on the
259 applicant's current confinement or supervision;
260 authorizing the board to stay the issuance of an
261 approved license under certain circumstances;
262 requiring the board to verify an applicant's release
263 with the Department of Corrections; providing
264 requirements for the appearance of certain applicants
265 at certain meetings; requiring the board to adopt
266 rules specifying how certain crimes affect an
267 applicant's eligibility for licensure; conforming a
268 cross-reference; amending s. 464.203, F.S.; providing
269 that the conviction of a crime before a specified date
270 may not serve as grounds for the denial of a
271 certification under certain circumstances; providing



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272 that the conviction of a crime before a specified date
273 may not serve as grounds for the failure of a
274 background screening; defining the term "conviction";
275 authorizing a person to apply for certification before
276 his or her lawful release from confinement or
277 supervision; prohibiting additional fees for an
278 applicant confined or under supervision; prohibiting
279 the board from basing the denial of a certification
280 solely on the applicant's current confinement or
281 supervision; authorizing the board to stay the
282 issuance of an approved certificate under certain
283 circumstances; requiring the board to verify an
284 applicant's release with the Department of
285 Corrections; providing requirements for the appearance
286 of certain applicants at certain meetings; requiring
287 the board to adopt rules specifying how certain crimes
288 may affect an applicant's eligibility for
289 certification; amending s. 400.211, F.S.; conforming a
290 cross-reference; amending