

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 334

INTRODUCER: Commerce and Tourism Committee; Innovation, Industry, and Technology Committee;  
and Senator Brandes

SUBJECT: Professional Regulation

DATE: April 17, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof	IT	<b>Fav/CS</b>
2. Harmsen	McKay	CM	<b>Fav/CS</b>
3. Davis	Kynoch	AP	<b>Pre-meeting</b>
4. _____	_____	RC	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 334 creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH). The process in the bill applies to septic tank contractors, regulated by the DOH, and to barbers, cosmetologists, and cosmetology specialists, (i.e., hair braiders, hair wrappers, and body wrappers), and specified construction professionals, all regulated by the DBPR.

The bill:

- Limits the period during which the agency may consider criminal history as an impairment to licensure to five years for barbers, cosmetologists, and certain contractors, unless such history includes sexual predator crimes or forcible felonies, and are considered to relate to the practice of the profession;
- Allows the licensing authority for the contractor categories listed in the bill to look at applicant's complete criminal history if it relates to good moral character;
- Expressly permits a person to apply for a license while under incarceration or supervision;
- Requires the DBPR and the DOH to identify the crimes on their website that either do or do not impair a person's ability to qualify for licensure;
- 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; and

- Reduces the size of the membership of the Construction Industry Licensing Board to 10 members from 18 members.

This bill has an indeterminate, but most likely, minimal impact on state revenues and expenditures. See Section V, Fiscal Impact Statement.

The bill takes effect October 1, 2019.

## II. Present Situation:

### Licensing Determinations and Criminal History

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of 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 is sought.<sup>1</sup> Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.<sup>2</sup>

### Department of Business and Professional Regulation

#### *Licensure, Generally*

The Department of Business and Professional Regulation (DBPR) has 12 divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.<sup>3</sup> Fifteen boards and programs exist within the Division of Professions,<sup>4</sup> two boards exist within

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<sup>1</sup> Section 112.011(1)(b), F.S. *See also*, e.g., *State ex rel. Sbordy v. Rowlett*, 138 Fla. 330, 190 So. 59, 63 (1939), holding that “the preservation of the public health is one of the duties of sovereignty and in a conflict between the right of a citizen to follow a profession and the right of a sovereignty to guard the health and welfare, it logically follows that the rights of the citizen to pursue his profession must yield to the power of the State to prescribe such restrictions and regulations as shall fully protect the people from ignorance, incapacity, deception, and fraud.”

<sup>2</sup> Section 112.011(1)(c), F.S.

<sup>3</sup> *See* s. 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>4</sup> Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

the Division of Real Estate,<sup>5</sup> and one board exists in the Division of Certified Public Accounting.<sup>6</sup>

Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the 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>7</sup> When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.<sup>8</sup>

In Fiscal Year 2017-2018, there were 434,574 licensees in the Division of Professions,<sup>9</sup> including:

- Barbers (22,119 active and 227 inactive);
- Cosmetologists (247,960 active and 1,568 inactive); and
- Construction industry contractors (75,089 active and 15,404 inactive).

### ***Denial of Licensure***

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 the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>10</sup>

The DBPR may regulate professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."<sup>11</sup> Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.<sup>12</sup>

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.<sup>13</sup>

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<sup>5</sup> See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

<sup>6</sup> See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

<sup>7</sup> Section 455.219(1), F.S.

<sup>8</sup> Section 455.01(4) and (5), F.S.

<sup>9</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2017-2018*, 19, <http://www.myfloridalicense.com/DBPR/os/documents/ProfessionsAnnualReport2017-2018.pdf> (last visited April 5, 2019).

<sup>10</sup> See ss. 455.01(6) and 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>11</sup> Section 455.201(2), F.S.

<sup>12</sup> Section 455.201(2), F.S.

<sup>13</sup> Section 455.201(4)(b), F.S.

The DBPR or a pertinent regulatory board may deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession's practice act.<sup>14</sup> Specifically, the DBPR or regulatory board may deny a licensure application for any person who was:

...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>15</sup> (Emphasis added.)

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

### **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>16</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>17</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>18</sup>

### **Cosmetologists**

The Board of Cosmetology within the DBPR licenses and regulates cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists,<sup>19</sup> body wrappers, and related salons pursuant to ch. 477, F.S. The Board of Cosmetology processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

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<sup>14</sup> Section 455.227(2), F.S.

<sup>15</sup> Section 455.227(1)(c), F.S.

<sup>16</sup> See s. 476.114, F.S.

<sup>17</sup> Section 476.034(2), F.S.

<sup>18</sup> See s. 455.227(1)(c), F.S.

<sup>19</sup> A specialist is any person who holds a specialty registration in one or more of the specialties registered under ch. 477, F.S. See, s. 477.013, F.S.

A “cosmetologist” practices cosmetology<sup>20</sup> in Florida under the authority of ch. 477, F.S.<sup>21</sup> Cosmetology is the “mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including [...] hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. The term also includes hair removal, including wax treatments, manicures, pedicures, and skin care services.”<sup>22</sup>

To qualify for licensure as a cosmetologist, an applicant must be at least 16 years old, have 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 of training including completion of an education at an approved cosmetology school or program. The applicant must also pass all parts of the licensure examination.<sup>23</sup>

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. 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>24</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>25</sup>

### **Construction Contracting Professionals**

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>26</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises 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 comprises 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

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<sup>20</sup> “Cosmetology” is “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.” Section 477.013(4), F.S.

<sup>21</sup> Section 477.013(3), F.S.

<sup>22</sup> Section 477.013(4), F.S.

<sup>23</sup> Section 477.019(2), F.S.

<sup>24</sup> Section 477.0201, F.S.

<sup>25</sup> See s 477.029(1)(h), F.S.

<sup>26</sup> See s. 489.107, F.S.

utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor's 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>27</sup>

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors in Florida under part II of ch. 489, F.S.<sup>28</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 a licensure examination before being licensed.<sup>29</sup>

The CILB and ECLB may deny a license application for any person who is found 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>30</sup> Specifically, the CILB may deny a license application for any person who was convicted or found guilty of, or entered 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>31</sup> (Emphasis added).

The CILB and ECLB may also deny a registration application under 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 profession.<sup>32</sup>

### **Department of Health**

The DOH or an applicable board may deny the licensure of any applicant who has 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>33</sup>

The DOH must also deny an application for licensure for any felony related to social welfare fraud, other fraudulent practices, or controlled substances, if the crime is:

- A felony of the first or second degree, more than 15 years before the date of application.
- A felony of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S., relating to possession of a controlled substance.

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<sup>27</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>28</sup> Section 489.507, F.S.

<sup>29</sup> *See* ss. 489.113 and 489.516, F.S., respectively.

<sup>30</sup> Section 455.227(2), F.S.

<sup>31</sup> Sections 489.129(1)(b) and 489.553(1)(d), F.S., providing the disciplinary grounds for construction contractors and electrical contractors, respectively.

<sup>32</sup> *See* s 477.029(1)(h), F.S.

<sup>33</sup> Sections 456.024(3)(c), F.S.

- A felony of the third degree under s. 893.13(6)(a), F.S., more than five years before the date of application.<sup>34</sup>

The DOH must also deny a license application if the felony conviction is for federal crimes related controlled substance violations under 21 U.S.C. ss. 801-970, or health insurance for the aged or disabled or medical assistance grants under 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for a conviction or plea ended more than 15 years before the date of the application.

### **Septic Tank Contracting Professionals**

Master septic tank contractors and septic tank contractors are regulated by the 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>35</sup> A master septic tank contractor must have at least three 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 three years.

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 that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor, including, but not limited to:

...the applicant being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting...<sup>36</sup> (Emphasis added.)

### **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>37</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>38</sup> For licensing electrical or septic tank contractors, the ECLB or the 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.

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<sup>34</sup> See s. 456.0635(a), F.S.

<sup>35</sup> Sections 489.552 and 489.553, F.S.

<sup>36</sup> Section 489.553(4)(a), F.S.

<sup>37</sup> Section 489.115(6), F.S.

<sup>38</sup> *Id.*

## Criminal Offenses

Sexual predator registration criteria are described in s. 775.21(4)(a), F.S. Criminal offenses that require registration include:<sup>39</sup>

- Capital, life, or first degree felony kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;
- Capital, life, or first degree felony sexual battery;
- Capital, life, or first degree felony lewd or lascivious battery or molestation;
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense; or
- A conviction for a similar offense committed in another jurisdiction.<sup>40</sup>

Forcible felonies, described in s. 776.08, F.S., include: murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, burglary, kidnapping, aggravated assault, aggravated battery, and aggravated stalking.<sup>41</sup>

## Department of Corrections

The Department of Corrections (DOC) indicates that it has limited funding for the provision of career and technical education.<sup>42</sup> The DOC employs full-time equivalent vocational teachers and contracts with community colleges and technical schools to provide instruction for vocational certificates and industry-recognized certifications. State inmates currently have limited opportunities to participate in the following programs that require state certification or licensure:

- Commercial Driving, Class A and B General Knowledge Test: \$75.00 each (Department of Highway Safety and Motor Vehicles);
- Wastewater and Water Distribution System Operator application and exam: \$20.00 (Department of Environmental Protection);
- Cosmetology application and exam: \$63.50 (Department of Business and Professional Regulation);
- Barber application and exam: \$250.00 (Department of Business and Professional Regulation); and
- Certified Nursing Assistant: \$140.00 (Department of Health).<sup>43</sup>

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<sup>39</sup> For a full list, see s. 775.21(4)(a), F.S.

<sup>40</sup> Sections 787.01 and 787.02, F.S.; s. 847.0145, F.S.; s. 800.04, F.S.

<sup>41</sup> For a full list, see s. 776.08, F.S.

<sup>42</sup> The funding includes the legislative appropriation and supplemental funds provided through the Department of Education, Carl D. Perkins grant. Florida Department of Corrections, *SB 334 Agency Analysis* (Oct. 1, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).

<sup>43</sup> *Id.*

### **Construction Industry Licensing Board Membership**

The CILB is comprised of 18 members who are appointed by the Governor and confirmed by the Senate. Members may not serve more than two consecutive four-year terms or more than 11 years on the CILB.<sup>44</sup>

The CILB membership consists of:

- Four general contractors,
- Three building or residential contractors, requiring at least one of each,
- One roofing contractor,
- One sheet metal contractor,
- One air conditioning contractor,
- One mechanical contractor,
- One pool contractor,
- One plumbing contractor,
- One underground utility and excavation contractor,
- Two consumer members who have never been a professional regulated by the CILB, and
- Two building officials from a municipality or county.

### **III. Effect of Proposed Changes:**

The bill limits the grounds for denial of licensure relating to an applicant's criminal history in specific professions regulated by the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH) and implements related application and review processes.

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

- Barbers;
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers);
- Septic tank contractors; and
- Construction Professionals, which include:
  - Air-conditioning contractors;
  - Electrical contractors;
  - Mechanical contractors;
  - Plumbing contractors;
  - Pollutant storage systems contractors;
  - Roofing contractors;
  - Sheet metal contractors;
  - Solar contractors;
  - Swimming pool and spa contractors;
  - Underground utility and excavation contractors; and
  - Other specialty contractors.

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<sup>44</sup> Section 489.107(1), F.S.

**Sections 1 and 3** amend s. 455.213 and s. 489.553, F.S., respectively, to limit the timeframe during which the DBPR or the DOH, respectively, may deny a license for certain professions on the basis of the criminal history to five years from the date of a criminal conviction.<sup>45</sup> However, the DBPR or the DOH may deny an application based on an applicant's criminal history, irrespective of its date, if the criminal history:

- Involves acts of sexual violence, as listed in s. 775.21(4)(a)1., F.S., or a forcible felony as defined in s. 776.08, F.S., (e.g., murder, robbery, arson, or the use or threat of physical violence) that also relate to the practice of the applicable profession; or
- Relates to the applicant's good moral character.

These sections define a conviction as a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

Additionally, the bill permits a person to apply for specific licenses while under criminal confinement (incarceration) or supervision. In order to facilitate this part, the bill:

- Prohibits the DBPR or the DOH from denying an application solely on the basis of the applicant's current confinement or supervision;
- Explicitly precludes any additional fee for applications submitted while an applicant is confined or under supervision;
- Permits 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 DOC to cooperate and coordinate with the board or department, as applicable, to facilitate the applicant's appearance at the hearing in person, by teleconference, or by video conference, as appropriate; and
- Authorizes the licensing agency to stay its issuance of an approved license until the agency has verified the applicant's lawful release from incarceration with the DOC.

Sections 1 and 3 also require each applicable board within the DBPR and the DOH to compile and post on their respective websites two lists: (1) a list of crimes that do not relate to the practice or one's ability to practice the profession, and therefore do not constitute grounds for denial of licensure and (2) a list of crimes that have been used as a basis for denial of a license in the past two years. These lists must be updated annually.

Beginning October 1, 2019, each board of the DBPR subject to this bill and the DOH must establish two additional lists: (1) a list of crimes that were reported by an applicant on his or her application that did not lead to denial of the application and (2) a list of crimes that served as a basis for denial of a license in the past two years. These lists must include the date of the conviction, finding of guilt, plea, or adjudication entered, or the date of sentencing of the crime. The board and the DOH must update these lists quarterly.

All of the boards' and the DOH denials must be available to the public upon request.

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<sup>45</sup> Section 921.0021(2), F.S., defines "conviction" under the "Criminal Punishment Code" in ch. 921, F.S., to mean "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld."

**Section 2** amends s. 489.107, F.S., to reduce the membership of the Construction Industry Licensing Board (CILB) to 10 members from 18. The CILB will consist of:

- Two general contractors,
- Three contractors primarily engaged in business as a building or residential contractor,
  - One of which must be a building contractor, and
  - One of which must be a residential contractor,
- One roofing contractor,
- One mechanical contractor,
- One pool contractor,
- One plumbing contractor, and
- One underground utility and excavation contractor.

The bill removes the following members from the CILB: two general contractors, one sheet metal contractor, one air-conditioning contractor, two consumer members, and two building officials of a municipality or county.

**Section 4** provides that the bill takes effect October 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

There may be an increase in applications for barber, cosmetology, and contracting licenses from individuals with a criminal background.

**C. Government Sector Impact:**

There is an insignificant, negative fiscal impact on the Department of Business and Professional Regulation (DBPR), the Department of Health (DOH), and the Department of Corrections (DOC) related to costs associated with providing new teleconferencing methods for licensure hearings. Additionally, the DBPR and the DOH may have a slight increase in workload and technology expenditures related to displaying the new crime listing requirements established in the bill to their respective websites.

The DBPR indicates that implementation costs would be minimal. In addition, the DBPR anticipates a reduction in expenditures of \$51,603 related to travel costs for the Construction Industry Licensing Board (CILB) due to the reduction of the CILB members.<sup>46</sup>

The Department of Corrections indicates that teleconference equipment should be available for use at each institution. If an inmate is needed to appear in person, transportation costs would be minimal.<sup>47</sup>

Specific fiscal impacts, if any, to the Department of Health are unknown at this time. The DOH has not provided an agency analysis of the bill.

**VI. Technical Deficiencies:**

It is unclear how frequently applicable boards must update the list of crimes that, although reported by an applicant on his or her application, were not used as a basis for denial.

**VII. Related Issues:**

The Department of Business and Professional Regulation (DBPR) states that it may be precluded from publishing certain information relating to an applicant's crime if the DBPR obtained that information from the Level II background check performed on the applicant. The agreements pursuant to which the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) perform Level II background checks for the DBPR limit the DBPR's ability to publish information obtained from the report, pursuant to the Privacy Act of 1974, Title 5 U.S.C., Section 552a, and Title 28, CFR, Section 50.12.<sup>48</sup>

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<sup>46</sup> Florida Department of Business and Professional Regulation, *CS/CS/CS/HB 397 Agency Analysis*, 6 (Apr. 8, 2019) (on file with the Senate Committee on Appropriations).

<sup>47</sup> Florida Department of Corrections, *SB 334 Agency Analysis*, (Oct. 1, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).

<sup>48</sup> Florida Department of Business and Professional Regulation, *HB 397 Agency Analysis*, 6 (March 5, 2019) (on file with the Senate Committee on Commerce and Tourism).

The definition of “conviction” in the bill excludes convictions that result from a plea of no contest (nolo contendere).

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.213, 489.107, and 489.553.

## IX. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Commerce and Tourism on April 8, 2019:**

The CS:

- Increases the duration of time the DBPR may consider an applicant’s criminal history as a basis for denial of licensure from three to five years;
- Permits the DBPR to deny an application based on an applicant’s criminal history for any duration of time if the underlying crime relates to:
  - Sexual offenses or forcible felonies as listed in s. 775.21(4)(a)1.F.S., and 776.08, F.S., respectively, and the crime is also found to relate to the practice of the applicable profession; or
  - The applicant’s good moral character;
- Removes certified nursing assistants from the process created by the bill, preserving their current licensing scheme pursuant to ss. 464.203 and 400.211, F.S.;
- Clarifies the application of the licensing process created in the bill to septic tank contractors;
- Defines a “conviction” for purposes of the bill to include a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld;
- Requires the DBPR to compile and post a list of crimes that have been used as a basis for denial in the past two years (updated annually), and an ongoing list (updated quarterly) of crimes used as a basis for denial of licensure; and
- Reduces the membership of the Construction Industry Licensing Board from 18 to 10 members.

#### **CS by Innovation, Industry, and Technology on March 12, 2019:**

The CS requires Certified Nursing Assistant license applicants to qualify under s. 408.809, F.S., which requires pre-employment, level two background screening for specified persons, including employees of medical facilities.

### B. Amendments:

None.