

**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 Innovation, Industry, and Technology

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BILL: SB 334

INTRODUCER: Senator Brandes

SUBJECT: Professional Regulation

DATE: March 11, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

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 certified nursing assistants, 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 process in the bill permits a person to apply for a license while under criminal confinement or supervision. It limits the period during which an agency may consider the criminal history as an impairment to licensure to seven years from the date of the criminal conviction. However, as required under current law, the DOH must deny a certified nursing assistant application, if the applicant has a criminal history of more than three years from the date of the application, and the applicant's criminal history relates to certain violent felonies, crimes against children, sexual offenses, or financial crimes that may currently disqualify an applicant from a certified nursing assistant license.

For the professions licensed by the DBPR, the bill does not exempt any specific crimes from the licensure process specified in the bill.

By October 1, 2019, the bill requires the DBPR and DOH to compile and post on their respective websites a list of crimes that do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license application. By that date, each agency must also begin to compile a separate list of crimes that, when reported by an applicant for a license, were not used for as a basis for denial in the past two years.

The bill provides an effective date of July 1, 2019.

## II. Present Situation:

### Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions tasked with the regulation of several professions and businesses.<sup>1</sup> Fifteen boards and programs exist within the Division of Professions,<sup>2</sup> two boards are within the Division of Real Estate,<sup>3</sup> and one board exists in the Division of Certified Public Accounting.<sup>4</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>5</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 the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>6</sup> The DBPR may engage in the regulation of professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”<sup>7</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>8</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>9</sup>

<sup>1</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>2</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.

<sup>3</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>4</sup> See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

<sup>5</sup> Section 455.01(6), F.S.

<sup>6</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>7</sup> Section 455.201(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 455.201(4)(b), F.S.

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>10</sup>

In Fiscal Year 2017-2018, there were 434,574 licensees in the Division of Professions,<sup>11</sup> including, in relevant part:

- Barbers (22,119 active and 227 inactive);
- Cosmetologists (247,960 active and 1,568 inactive);
- Construction industry contractors (75,089 active and 15,404 inactive); and
- Electrical contractors (12,631 active and 1,368 inactive).

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the 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>12</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 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>13</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>14</sup>

### DBPR Licensing and Criminal Background

The regulatory boards of the DBPR, or the department if there is no board, 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>15</sup> Specifically, the regulatory board, or the department if there is no 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>16</sup> (Emphasis added.)

<sup>10</sup> Section 455.01(4) and (5), F.S.

<sup>11</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2017-2018*, at <http://www.myfloridalicense.com/DBPR/os/documents/ProfessionsAnnualReport2017-2018.pdf> (last visited March 5, 2019) at page 19.

<sup>12</sup> Section 455.219(1), F.S.

<sup>13</sup> Section 112.011(1)(b), F.S.

<sup>14</sup> Section 112.011(1)(c), F.S.

<sup>15</sup> Section 455.227(2), F.S.

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

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.

### ***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>17</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.
- A felony of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.<sup>18</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.

### **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>19</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>20</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

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<sup>17</sup> Sections 456.024(3)(c), F.S.

<sup>18</sup> See s. 456.0635(a), F.S.

<sup>19</sup> See s. 476.114, F.S.

<sup>20</sup> Section 476.034(2), F.S.

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>21</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 monitoring activities and compliance within the cosmetology industry.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.<sup>22</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>23</sup> The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."<sup>24</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>25</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>26</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>27</sup> All cosmetology and specialty salons are subject to inspection by the DBPR.<sup>28</sup>

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<sup>21</sup> See s. 455.227(1)(c), F.S.

<sup>22</sup> Section 477.014, F.S.

<sup>23</sup> Section 477.013(5), F.S.

<sup>24</sup> Section 477.013(6), F.S.

<sup>25</sup> Section 477.013(3), F.S.

<sup>26</sup> Section 477.013(4), F.S.

<sup>27</sup> Section 477.0263, F.S.

<sup>28</sup> Section 477.025, F.S.

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>29</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>30</sup>

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist.

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>31</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>32</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 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

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<sup>29</sup> Section 477.0201, F.S.

<sup>30</sup> Section 477.019(2), F.S.

<sup>31</sup> See s 477.029(1)(h), F.S.

<sup>32</sup> See s. 489.107, F.S.

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>33</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>34</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>35</sup>

Master septic tank contractors and septic tank contractors are regulated by the DBPR under part III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DBPR before engaging in the occupation.<sup>36</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.

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>37</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>38</sup>

The CILB and the 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>39</sup>

To be eligible for registration by the DBPR, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DBPR 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>40</sup> (Emphasis added.)

<sup>33</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>34</sup> Section 489.507, F.S.

<sup>35</sup> *See* ss. 489.113 and 489.516, F.S., respectively.

<sup>36</sup> Sections 489.552 and 489.553, F.S.

<sup>37</sup> Section 455.227(2), F.S.

<sup>38</sup> Sections 489.129(1)(b) and 489.553(1)(d), F.S., proving the disciplinary grounds for construction contractors and electrical contractors, respectively.

<sup>39</sup> *See* s 477.029(1)(h), F.S.

<sup>40</sup> Section 489.553(4)(a), F.S.

The DBPR 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>41</sup>

Chapter 489, F.S., does not specifically require the DBPR, the CILB, or the ECLB to consider the passage of time since the disqualifying criminal offense before denying or granting a license or registration.

### **Certified Nursing Assistants**

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.<sup>42</sup> In Fiscal Year 2017-2018, there were 147,500 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 a person who is otherwise trained and educated from performing the tasks specified in the definition.<sup>45</sup>

To be certified in Florida, 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 in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.<sup>46</sup>

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level two background screening, or s. 408.809, F.S., which also requires pre-employment, level two

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<sup>41</sup> See s 477.029(1)(h), F.S.

<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 2017-2018*, at [http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/\\_documents/annual-report-1718.pdf](http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1718.pdf) (last visited March 6, 2019) at page 16.

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

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

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



background screening for specified persons, including employees of medical facilities.<sup>47</sup> The background screening must be completed every 5 years following licensure, employment, or entering into contract in a capacity that requires background screening.<sup>48</sup>

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 prohibited offenses.<sup>49</sup> The prohibited offenses include violent crimes, property crimes, and sexual offenses.<sup>50</sup>

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.<sup>51</sup>

A level two background screening includes 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 complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. The DOH determines if the screening contains any disqualifying information for employment.

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

- 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;
- 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;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.<sup>52</sup>

However, if the disqualifying crime committed while the applicant was a delinquent would be considered a felony if committed by an adult, and the record has not been sealed or expunged, the DOH may not grant an exemption until at least 3 years have elapsed since the applicant's

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<sup>47</sup> Section 408.809(1), F.S.

<sup>48</sup> Section 408.809(2), F.S.

<sup>49</sup> Section 435.04, F.S.

<sup>50</sup> See 435.04(2), F.S.

<sup>51</sup> See 408.809(4), F.S.

<sup>52</sup> Section 435.07(1)(a), F.S.

completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense.<sup>53</sup>

An applicant who seeks an exemption must first pay 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>54</sup>

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of *nolo contendere* or guilty to, 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>55</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>56</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>57</sup>

#### Department of Corrections

The Department of Corrections (DOC) indicates that it has limited funding for the provision of career and technical education. The funding includes the legislative appropriation and supplemental funds provided through the Department of Education, Carl D. Perkins grant. The DOC employs Full-Time Equivalent vocational teachers and contracts with community colleges and technical schools for the provision of instruction and issues vocational certificates and/or industry-recognized certifications to program completers. State inmates currently have limited opportunity 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).
- Certified Nursing Assistant: \$140.00 (Department of Health).<sup>58</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> Section 435.07(1)(b), F.S.

<sup>55</sup> *See* s. 435.07(4)(a), F.S.

<sup>56</sup> *See* s. 435.07(4)(b), F.S.

<sup>57</sup> *See* s. 435.07(4)(c), F.S.

<sup>58</sup> 2019 Agency Legislative Bill Analysis for SB 334, Department of Corrections, October 1, 2019.

### III. Effect of Proposed Changes:

The bill creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the 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 review process in the bill applies to the following professions and occupations:

- Certified Nursing Assistants.
- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals:
  - Air-conditioning contractors;
  - Commercial pool/spa contractors;
  - Electrical contractors;
  - Mechanical contractors;
  - Plumbing contractors;
  - Pollutant storage systems contractor;
  - Residential swimming pool and spa contractors;
  - Roofing contractors;
  - Septic tank contractors;
  - Sheet metal contractors;
  - Solar contractors;
  - Swimming pool and spa servicing contractors
  - Underground utility and excavation contractors; and
  - 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 process created in the bill:

- Limits the period during which the agency may consider criminal history as an impairment to licensure to three years from the date of the criminal conviction.<sup>59</sup>
- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
  - 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 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.

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<sup>59</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."

- 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 Department of Corrections.
- By October 1, 2019, requires each agency to:
  - Compile and post on the agency's website a list of crimes that do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license application.
  - Begin to compile a separate list of crimes that, when reported by an applicant for a license, were not used for as a basis for denial in the past two years. Such list must identify the crime reported and the date of conviction, plea, or sentencing. The agency must maintain the list on its website and update it at least quarterly.

The bill does not change license qualifications in current law for any of the professions, including any disqualifications in current law based on the applicant's criminal history or moral character.

For the professions licensed by the DBPR, the bill does not exempt any specific crimes from the licensure process specified in the bill.

However, for CNA license applicants, the bill exempts a history of crimes specified ss. 435.04, 435.07(4), and 456.0635, F.S., from the process provided in the bill for a CNA license application. Consequently, the DOH must deny a certified nursing assistant application, if the applicant's criminal history includes any of the felony financial crimes, including Medicaid fraud and forgery, identified in s. 435.04, F.S., or any of the crimes identified in s. 456.0635, F.S. Additionally, the DOH must deny a CNA license application for an applicant's failure to pass a background screening because of a criminal history that include a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S., or any of the crimes identified in s. 456.0635, F.S. Additionally, the DOH must continue to consider as a grounds for denial of a CNA license application the passage of time since conviction, as specified in those sections.

The bill provides an effective date of July 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:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation and the Department of Health indicated that implementation costs would be minimal.

The Department of Corrections indicated 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>60</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 455.213, 464.203, and 400.211.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>60</sup> 2019 Agency Legislative Bill Analysis for SB 334, Department of Corrections, October 1, 2019.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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