

By Senator Perry

8-01329A-22

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1                                   A bill to be entitled  
2       An act relating to occupational licensing; amending s.  
3       455.213, F.S.; prohibiting boards within the Division  
4       of Certified Public Accounting, the Division of  
5       Professions, or the Division of Real Estate of the  
6       Department of Business and Professional Regulation  
7       from inquiring into or considering a license  
8       applicant's criminal history until after the board  
9       determines the applicant is otherwise qualified for a  
10      license; prohibiting the state, its agents, and  
11      political subdivisions from using, distributing, or  
12      disseminating certain criminal history information in  
13      connection with applications for licensure;  
14      prohibiting such boards from denying an applicant's  
15      license application due to the applicant's criminal  
16      history unless the applicant was convicted of a felony  
17      that directly relates to the profession; requiring  
18      such boards to consider specified factors when  
19      determining whether a felony is directly related to a  
20      profession; requiring such boards to provide specified  
21      notification to applicants who are determined to be  
22      ineligible for licensure because of a felony  
23      conviction; prohibiting such applicants from being  
24      denied a license if they provide specified evidence;  
25      providing a timeframe for an applicant to take  
26      specified actions relating to a board's notice;  
27      requiring such boards to provide written notification  
28      of specified information to applicants after denying  
29      their license applications; providing an effective

8-01329A-22

20221548\_\_

30 date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Paragraphs (a) and (b) of subsection (3) of  
35 section 455.213, Florida Statutes, are amended to read:

36 455.213 General licensing provisions.—

37 (3)~~(a)~~ Notwithstanding any other law, the applicable board  
38 shall use the process in this subsection for review of an  
39 applicant's criminal record to determine his or her eligibility  
40 for licensure.

41 (a) A board may not inquire into or consider the criminal  
42 history of a license applicant until after the board determines  
43 the applicant is otherwise qualified for a license as:

44 ~~1. A barber under chapter 476;~~

45 ~~2. A cosmetologist or cosmetology specialist under chapter~~  
46 ~~477;~~

47 ~~3. Any of the following construction professions under~~  
48 ~~chapter 489:~~

49 ~~a. Air conditioning contractor;~~

50 ~~b. Electrical contractor;~~

51 ~~c. Mechanical contractor;~~

52 ~~d. Plumbing contractor;~~

53 ~~e. Pollutant storage systems contractor;~~

54 ~~f. Roofing contractor;~~

55 ~~g. Sheet metal contractor;~~

56 ~~h. Solar contractor;~~

57 ~~i. Swimming pool and spa contractor;~~

58 ~~j. Underground utility and excavation contractor; or~~

8-01329A-22

20221548\_\_

59 ~~k. Other specialty contractors; or~~

60 ~~4. Any other profession for which the department issues a~~  
61 ~~license, provided the profession is offered to inmates in any~~  
62 ~~correctional institution or correctional facility as vocational~~  
63 ~~training or through an industry certification program.~~

64 (b)1. Except as provided in subparagraph 3., a conviction,  
65 or any other adjudication, for a crime more than 5 years before  
66 the date the application is received by the applicable board may  
67 not be grounds for denial of a license specified in paragraph  
68 ~~(a)~~. For purposes of this paragraph, the term "conviction" means  
69 a determination of guilt that is the result of a plea or trial,  
70 regardless of whether adjudication is withheld. ~~This paragraph~~  
71 ~~does not limit the applicable board from considering an~~  
72 ~~applicant's criminal history that includes a crime listed in s.~~  
73 ~~775.21(4)(a)1. or s. 776.08 at any time, but only if such~~  
74 ~~criminal history has been found to relate to the practice of the~~  
75 ~~applicable profession.~~

76 2. Notwithstanding subparagraph 1., the following criminal  
77 history information may not be used, distributed, or  
78 disseminated by the state, its agents, or political subdivisions  
79 in connection with an application for licensure:

80 a. An arrest without a valid conviction.

81 b. A conviction that has been sealed, dismissed, or  
82 expunged.

83 c. A misdemeanor conviction without incarceration.

84 d. A noncriminal infraction.

85 3. If a board determines an applicant is otherwise  
86 qualified for a license and begins review of the applicant's  
87 criminal history, the board may deny an applicant's license

8-01329A-22

20221548\_\_

88 application due to the applicant's criminal history only if the  
89 applicant is convicted of a felony that directly relates to the  
90 occupation for which the license is sought or held. In  
91 determining if a felony directly relates to the occupation for  
92 which the license is sought or held, the board must consider:

93 a. The nature and seriousness of the felony;

94 b. Whether the conviction is directly related to the  
95 licensee's or applicant's duties or responsibilities;

96 c. Whether the profession presents the opportunity for the  
97 same or similar offense to occur;

98 d. Whether circumstances leading to the applicant's  
99 conviction are likely to occur in the profession;

100 e. The applicant's age at the time he or she committed the  
101 felony;

102 f. The amount of time that has passed since the applicant  
103 committed the felony;

104 g. All circumstances relating to the felony, including, but  
105 not limited to, mitigating circumstances or social conditions  
106 surrounding the commission of the felony; and

107 h. Evidence of the applicant's rehabilitation and present  
108 fitness to perform the duties of the profession.

109 4. If a board determines that an applicant is ineligible  
110 for a license due to his or her criminal history, the board must  
111 notify the applicant, in writing and before the board's final  
112 decision to deny the application, of the conviction that is the  
113 basis for the determination and must provide a copy of the  
114 criminal history report, if any, and provide examples of  
115 mitigation or rehabilitation evidence that the applicant may  
116 provide the board that may affect the board's decision.

8-01329A-22

20221548\_\_

117       5. A board may not deny an applicant convicted of an  
118 offense that a board has determined directly relates to the  
119 profession for which a license is sought a license if the  
120 applicant provides evidence of mitigation or rehabilitation and  
121 present fitness to perform the duties of the profession. An  
122 applicant has 10 business days after issuance of a notice under  
123 subparagraph 4. to respond to the notice with any required  
124 information, to challenge the accuracy of any provided  
125 information, or to submit mitigation or rehabilitation evidence.  
126 Evidence of mitigation or rehabilitation includes, but is not  
127 limited to, showing compliance with the terms and conditions of  
128 probation or parole, providing letters of reference, or  
129 providing education or program certificates.

130       6. If a board denies a license application because of a  
131 prior conviction, the board must notify the applicant in  
132 writing:

133           a. Of the final denial;

134           b. Of the appeals process;

135           c. That the applicant may be eligible for other licenses;

136 and

137           d. Of the earliest date the applicant may submit another  
138 license application for the profession ~~The applicable board may~~  
139 ~~consider the criminal history of an applicant for licensure~~  
140 ~~under subparagraph (a)3. if such criminal history has been found~~  
141 ~~to relate to good moral character.~~

142       Section 2. This act shall take effect July 1, 2022.