

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 87 Criminal History in Professional Licensing Applications

**SPONSOR(S):** Chambliss and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	13 Y, 0 N	Wright	Anstead
2) Criminal Justice & Public Safety Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) regulates and licenses several Florida professions. Generally, DBPR, or a licensing board (board), may deny a license application if the applicant's criminal history:

- Relates to the practice of the applicant's profession, or
- Is an impairment to a finding of good moral character, if the profession's licensing standards specifically require "good moral character."

When reviewing an applicant's criminal history, most boards take the number of years that have passed into account before using it as grounds to deny a license. Certain listed professions under DBPR have a separate time-limited review process or look-back periods for considering criminal history. Those professions are:

- Construction trades contractors,
- Electrical contractors,
- Barbers, and
- Cosmetologists.

For these professions, the board may review criminal history and use it to make a decision related to licensing if the crime occurred in the past **five** years prior to application. However, boards may consider forcible felonies and sexual predator crimes regardless of how long ago the crime occurred if they relate to the practice of the profession.

As part of the requirements for licensure, construction and electrical contractor applicants are required to show "good moral character," but barber and cosmetology applicants are not. The contractor boards may consider a contractor applicant's complete criminal history regardless of how long ago the crime occurred if it relates to good moral character.

The bill shortens the look-back period or review period, from five years to **two** years prior to the application. However, boards may continue to consider forcible felonies and sexual predator crimes if they relate to the practice of the profession.

The bill prohibits the contractor boards from considering crimes which relate to "good moral character" as grounds to deny a license if the conviction occurred more than two years before the date of application.

The bill also requires certain boards to approve educational program credits earned by inmates in a correctional institution vocational training program or through an industry certification program for the purposes of satisfying training requirements for licensure.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### *Department of Business and Professional Regulation Umbrella Chapter*

The Department of Business and Professional Regulation (DBPR) has 12 divisions that regulate several Florida professions and businesses.<sup>1</sup> Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”<sup>2</sup> Chapter 455, F.S., also provides general DBPR powers and sets forth the procedural and administrative framework for all professional DBPR boards.<sup>3</sup>

##### *Licensing Determinations and Criminal History*

Generally, any state agency may deny an application for professional license, permit, or certification for a prior felony or first-degree misdemeanor conviction that is:

- Directly related to the profession’s standards; and
- Reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license, permit, or certificate is sought.<sup>4</sup>

However, an agency may not deny an application for a license, permit, certificate, or employment based solely on the applicant’s lack of civil rights.<sup>5</sup>

DBPR or a licensing board may deny a license application for a 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, the applicant’s profession,<sup>6</sup> or for other reasons listed in the applicable practice act. Some professions require applicants to be of good moral character, and boards may deny a license on such basis.

Applicants for a DBPR license may apply for licensure while they are still incarcerated or under some form of supervised release, and may not be charged an additional fee.<sup>7</sup> DBPR also currently allows some correctional training programs to be accepted for licensure purposes.<sup>8</sup>

##### *Barbers*

The Barbers’ Board under DBPR governs the regulation and licensing of barbers and barbershops in the state. A barber license is required to perform barbering services.<sup>9</sup> Barbering services include hair services and limited skin care services when done for compensation, but not for medical purposes<sup>10</sup>

To be eligible for a barber license, an applicant must:<sup>11</sup>

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<sup>1</sup> Section 20.165, F.S, creates 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> S. 455.01(6), F.S.

<sup>3</sup> 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. Ss. 455.203 and 455.221(1), F.S.

<sup>4</sup> S. 112.011(1)(b), F.S.

<sup>5</sup> S. 112.011(1)(c), F.S.

<sup>6</sup> S. 455.227(1)(c), F.S.

<sup>7</sup> S. 455.213(3)(c)1., F.S.

<sup>8</sup> DBPR, Agency Analysis of 2022 House Bill 87, p. 6 (Oct. 14, 2021).

<sup>9</sup> S. 476.144(1), F.S.

<sup>10</sup> S. 476.034(2), F.S.

<sup>11</sup> S. 476.114, F.S.

- Be at least 16 years old,
- Complete the required training,
- Pass the written examination, and
- Pay an application fee.

### *Criminal History of Barbers*

The Barbers' Board may deny a barber 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 barbering.<sup>12</sup> Barbers do not have a good moral character requirement.

### *Cosmetologists*

The Board of Cosmetology under DBPR governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. A cosmetology license or a specialty registration is required to perform cosmetology services. Cosmetology services include hair services, nail services, and skin care services when done for compensation, but not for medical purposes.<sup>13</sup>

To be eligible for a cosmetology or specialty license, an applicant must:<sup>14</sup>

- Be at least age 16 or have a high school diploma,
- Complete the required training,
- Pass the licensure examination (if applicable), and
- Pay an application fee.

### *Criminal History of Cosmetologists*

The Board of Cosmetology may deny a cosmetology 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, cosmetology.<sup>15</sup> Cosmetologists do not have a good moral character requirement.

### *DBPR Contracting Professionals*

The Construction Industry Licensing Board (CILB) under DBPR is responsible for licensing and regulating professionals in the construction industry described in part I of ch. 489, F.S..<sup>16</sup>

A construction contractor is a person who, for compensation, takes on a job or submits a bid to construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure for others, or for resale to others,<sup>17</sup> including the attempted sale of contracting services and the negotiation or bid for a contract on these services.<sup>18</sup> This can also include receiving funds for the job from customers.<sup>19</sup>

The CILB is divided into two divisions with separate jurisdictions:

- Division I is comprised of the following types of contractors:
  - General,
  - Building, and
  - Residential.

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<sup>12</sup> S. 455.227(1)(c), F.S.

<sup>13</sup> S. 477.013(4), F.S.

<sup>14</sup> S. 477.019(2), F.S.

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

<sup>16</sup> S. 489.107, F.S.

<sup>17</sup> S. 489.105(3), F.S.

<sup>18</sup> S. 489.105(6), F.S.

<sup>19</sup> See ss. 489.103(6), 489.126, F.S.

- Division II is comprised of the following types of contractors:
  - Sheet metal,
  - Roofing,
  - Classes A, B, and C air conditioning,
  - Mechanical,
  - Commercial pool and spa,
  - Residential pool and spa,
  - Swimming pool and spa servicing,
  - Plumbing,
  - Underground utility and excavation,
  - Solar, and
  - Pollutant storage systems.

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB.<sup>20</sup>

The Electrical Contractors' Licensing Board (ECLB) within DBPR is responsible for licensing and regulating electrical contractors and alarm system contractors described in part II of ch. 489, F.S.<sup>21</sup>

An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation, including the attempted sale of contracting services and the negotiation or bid for a contract on these services.<sup>22</sup> This can also include receiving funds for the job from customers.<sup>23</sup>

All construction contractor and electrical contractor applicants must meet the following criteria:<sup>24</sup>

- Be at least 18 years of age;
- Submit an application and fee;
- Successfully pass the certification examination; and
- Meet eligibility requirements according to a combination of education and experience as approved by the CILB or ECLB.

### *Criminal History of Contractors*

The CILB and ECLB 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, contracting.<sup>25</sup>

Construction and electrical contractors must be of **good moral character**.<sup>26</sup> In considering an applicant's good moral character, CILB and ECLB may consider any matter, including criminal background, that has a substantial connection to the good moral character of the applicant and the professional responsibilities of such a contractor by clear and convincing evidence.<sup>27</sup>

The CILB must consider the length of time since the commission of a crime and the applicant's rehabilitation in denying or approving licensure.<sup>28</sup> The CILB may not deny licensure based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.<sup>29</sup>

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<sup>20</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. R. 61G4-15.032 (2016), F.A.C.

<sup>21</sup> S. 489.507, F.S.

<sup>22</sup> S. 489.505(9), F.S.

<sup>23</sup> See s. 489.505(9), F.S.

<sup>24</sup> Ss. 489.111(2)(c)1.-3., 489.113, and 489.516, F.S.

<sup>25</sup> S. 455.227(2), F.S. See also ss. 489.129(1)(b) and 489.553(1)(d), F.S., providing the disciplinary grounds for construction contractors and electrical contractors, respectively.

<sup>26</sup> There is not a specific definition of "good moral character applicable to CILB contractors, but the definition applicable to ECLB contractors means having "a personal history of honesty, fairness, and respect for the rights of others and for laws of this state and nation." S. 489.511(3)(a), F.S.

<sup>27</sup> Ss. 489.111(2)(b), (3)(a) and 489.513(1)(b), (c), F.S.

<sup>28</sup> S. 489.115(6), F.S.

For licensing electrical contractors, the ECLB is 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.

### **Criminal History Review Process – Current Situation**

In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for certain listed professions.<sup>30</sup>

The time-limited review process applies to the following listed professions:<sup>31</sup>

- Barbers;
- Cosmetologists and cosmetology specialists;
- 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;
- Specialty contractors; and
- Any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional facility as vocational training or through an industry certification program.

The process limits the period for which a board may consider criminal history as an impairment to licensure to **five years prior** to application for listed professions. However, boards may consider forcible felonies and sexual predator crimes if they relate to the practice of the profession, regardless of when it occurred.<sup>32</sup>

Additionally, the CILB and ECLB may still consider a contractor applicant's complete criminal history if it relates to good moral character, and regardless of when it occurred.

A person may apply for a license in a listed profession before being released from confinement or supervision, and may not be charged an additional fee. The applicable board may not deny an application for a license solely on the basis of the applicant's current confinement or supervision.<sup>33</sup>

The applicable board of a listed profession must permit an applicant under confinement or supervision to appear by teleconference or video conference, as appropriate, at any meeting of the applicable board or other hearing by the agency concerning their application, and the Department of Corrections (DOC) and the board must cooperate and coordinate to facilitate such appearance.<sup>34</sup> If a person who is under confinement or supervision is approved for a license for a listed profession, the applicable board must stay the issuance of the license until the applicant is lawfully released, and the applicant notifies the board of such release. The board must verify the applicant's release with the DOC before it issues such a license.<sup>35</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> Ch. 2019-167, L.O.F.

<sup>31</sup> S. 455.213(3)(a), F.S.

<sup>32</sup> S. 455.213(3)(b)1., F.S.

<sup>33</sup> S. 455.213(3)(c)1., F.S.

<sup>34</sup> S. 455.213(3)(c)3.-4., F.S.

<sup>35</sup> S. 455.213(3)(c)2., F.S.

The boards of the listed professions must list on DBPR's website the crimes that have not impaired a person's qualifications for licensure, and update the list annually. Such boards must also identify the crimes on DBPR's website that have impaired a person's qualifications for licensure, and update the list quarterly.<sup>36</sup>

### *Criminal Offenses*

Sexual predator<sup>37</sup> registration criteria are described in s. 775.21(4)1, F.S. Criminal offenses that require registration include:<sup>38</sup>

- A capital, life, or first degree felony for:
  - Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;
  - Sexual battery;
  - Lewd or lascivious battery or molestation;
  - 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>39</sup>

Forcible felonies include:

- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Burglary;
- Kidnapping;
- Aggravated assault;
- Aggravated battery; and
- Aggravated stalking.<sup>40</sup>

### **Criminal History Review Process – Effect of the Bill**

The bill reduces the time frame, from **five years to two** years before the date of application, that a board of a listed profession may look back and use certain criminal history as grounds to deny a license application. The boards may consider any criminal history if, at any time during the 2 year period, the applicant was an inmate in any correctional institution or correctional facility. Boards may also continue to consider forcible felonies and sexual predator crimes regardless of when they occurred if they relate to the practice of the profession.

In addition, the bill prohibits the CILB and ECLB from considering criminal history as grounds to deny a license as a listed contractor based on "good moral character" if the conviction occurred more than two years before the date of application.

The bill requires a board of a listed profession to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure.

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<sup>36</sup> S. 455.213(3)(e), F.S.

<sup>37</sup> A sexual predator is someone who has been convicted of a first-degree felony sex crime or has been convicted of two second-degree felony sex crimes within a ten-year period.

<sup>38</sup> S. 775.21(4), F.S.

<sup>39</sup> Ss. 787.01, 787.02, 847.0145, and 800.04, F.S.

<sup>40</sup> S. 776.08, F.S.

The bill has an effective date of July 1, 2021.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 455.213, F.S.; relating to certain licensing procedures for applicants with certain criminal history.

Section 2: Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may allow more people to become licensed in their chosen profession.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

DBPR has identified concerns with the bill as it relates to construction and electrical contractors:

“Construction and electrical contractors enter into contracts, accept deposits before work is performed, and may have access to their customer’s financial information. The bill does not grant specific authority for application denial based upon theft, financial crimes, or other crimes that may relate to the practice

of a profession and are more than two years old. Consequently, the bill may allow individuals who have committed such crimes at least two years prior to their application for licensure to obtain a license without consideration of the severity of the crime or the potential risk to the public. Also, the boards may be placed in the position of issuing licenses to some individuals to handle funds who have not yet completed their criminal sanctions, such as probation and restitution, which may put those funds at risk.”<sup>41</sup>

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>41</sup> DBPR, *supra* note 8, at 6.  
**STORAGE NAME:** h0087a.RRS  
**DATE:** 12/2/2021