

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.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1028

INTRODUCER: Senator Stewart

SUBJECT: Professional Licensing Requirements for Barbers and Cosmetologists

DATE: March 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1028 prohibits a regulatory board within the Department of Business and Professional Regulation (DBPR) from considering a criminal conviction, or any other adjudication, for crimes more than three years before the date the application is received by a board, as grounds for denial of a barber or cosmetologist or cosmetology specialist license. However, this prohibition does not apply if the applicant was convicted of a crime at any time during the three-year period immediately preceding the application. Current law prohibits the DBPR's regulatory boards from considering a conviction, or any other adjudication, as an impairment to licensure for a crime more than five years before an application is received by a board.

Under current law and the bill, a DBPR regulatory board may consider a criminal background older than three years if the background includes a sexual predator crime under s. 775.21, F.S., or a forcible felony under s. 776.08, F.S., or is related to the profession's practice.

The bill requires the DBPR's regulatory boards to approve education program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for the purpose of satisfying applicable training requirements for licensure as a barber or cosmetologist.

The bill takes effect on July 1, 2023.

II. Present Situation:

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 11 divisions tasked with the regulation of several professions and businesses.¹

Division of Professions

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.² 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.”³ 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.⁴

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.⁵

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.⁶

In Fiscal Year 2021-2022, there were 506,210 active licensees in the Division of Professions, including:⁷

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers (27,073 active and 97 inactive);⁸

¹ 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; Professions; Real Estate; Regulation; Service Operations; and Technology.

² 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.

³ Section 455.201(2), F.S.

⁴ *Id.*

⁵ Section 455.201(4)(b), F.S.

⁶ Section 455.01(4) and (5), F.S.

⁷ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%202021-22.pdf> (last visited Mar. 13, 2023).

⁸ *Id.*

- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists (281,228 active and 1,295 inactive);⁹
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Harbor pilots;
- Landscape architects;
- Mold-related services;
- Talent agencies; and
- Veterinarians.

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.¹⁰

Barbering

The term “barbering” in ss. 476.014 through 476.254, F.S. (the Barbers’ Act) includes any of the following practices when done for payment: 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.¹¹

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;
- Pay the application fee; and
- Have held an active valid license in another state for at least one year,¹² or have a minimum of 900 hours of specified training.¹³

Alternatively, a person may apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.¹⁴

⁹ *Id.*

¹⁰ Section 455.219(1), F.S.

¹¹ See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

¹² Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. See s. 476.144(5), F.S.

¹³ See s. 476.114(2), F.S. The training must include, but is not limited to the completion of services directly related to the practice of barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

¹⁴ See s. 476.144(6), F.S.

Cosmetology

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. The Board of Cosmetology, within the DBPR's Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.¹⁵

A "cosmetologist" is a person who is licensed to engage in the practice of cosmetology.¹⁶ "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."¹⁷

Certain persons who apply cosmetic products (makeup) are exempt from ch. 477, F.S., under limited conditions, including application of such products in photography studio salons, in connection with certain retail sales, or during the production of qualified films.¹⁸ In addition, persons who provide makeup in a theme park or entertainment complex to actors and others or the general public are exempt from licensing requirements.¹⁹

An applicant for a cosmetologist license must pass a licensure examination and:

- Be at least 16 years of age;
- Submit an application with the applicable fee and examination fee; and
- Be licensed in another state or country for at least one year, or received 1,200 hours training, including completion of an education at an approved cosmetology school or program.²⁰

A "specialist" is "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."²¹ 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."²²

¹⁵ See Department of Business and Professional Regulation, *Cosmetology*, available at <http://www.myfloridalicense.com/DBPR/cosmetology/> (last visited Feb. 7, 2018).

¹⁶ See s. 477.013(3), F.S.

¹⁷ See s. 477.013(4), F.S. A licensed cosmetologist is not required to register separately as a hair braider, hair wrapper, body wrapper, or specialist. See note 40, *supra*.

¹⁸ See ss. 477.013(11), 477.0135(1)(f), and 477.0135(5), F.S.

¹⁹ See s. 477.0135(6), F.S.

²⁰ See ss. 477.019(2) and (4), F.S.

²¹ See s. 477.013(5), F.S.

²² See s. 477.013(6), F.S.

An applicant for a specialist license must:

- Be at least 16 years of age;
- Obtain a certificate of completion from an approved specialty education program; and
- Submit an application for registration to the DBPR with the registration fee.²³

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.²⁴ 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.²⁵

License Applicant's Criminal Background

The DBPR's regulatory boards, or the DBPR if there is no board, may deny a license application for any person whom 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.²⁶ Specifically, the regulatory board, or the DBPR 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.²⁷

Chapter 476, F.S., relating to barbers, and ch. 477, F.S., for cosmetology, do not directly reference the criminal background of an applicant as a basis for a license denial. These practice acts reference the criminal background provisions in s. 455.227(1), F.S., as a basis for a license denial.²⁸

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.

However, s. 455.213(3), F.S., limits the period for which a regulatory board may consider an applicant's criminal conviction,²⁹ or any other adjudication, as an impairment to licensure to five

²³ See s 477.0201, F.S.

²⁴ Section 112.011(1)(b), F.S.

²⁵ Section 112.011(1)(c), F.S.

²⁶ Section 455.227(2), F.S.

²⁷ Section 455.227(1)(c), F.S.

²⁸ See s. 476.204(1)(h), F.S., relating to barbers, and s. 477.029(1)(h), F.S., relating to cosmetology.

²⁹ Section 455.213(3)(b)1., F.S., defines the term "conviction" to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

years before an application is received by a board. A regulatory board may consider a criminal conviction or other adjudication older than five years if the background:

- Includes a sexual predator crime under s. 775.21, F.S., or a forcible felony under s. 776.08, F.S.; or
- Is related to the profession's practice.

The DBPR's boards must list on their websites the crimes that, if committed by an applicant, do not impair a person's qualifications for licensure, and update the list annually. Beginning October 1, 2019, the boards were required to compile a list of crimes that, although reported by a license applicant, are not used as a basis for denial. The list must identify the crime reported and the date of conviction, finding of guilt, plea, or adjudication entered, or the date of sentencing for each such license application.³⁰

Each DBPR board must also compile a list of crimes that have been used as a basis for a license denial during the previous two years. Starting October 1, 2019, with quarterly updating, the boards must compile a list indicating each crime used as a basis for a license denial. For each crime listed, the board must identify the date of conviction, finding of guilt, plea, or adjudication entered, or date of sentencing. Such denials must be available to the public upon request.³¹

Section 455.213, F.S., also:

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision;³²
- Requires a licensing agency to permit an applicant who is incarcerated or under supervision to appear by teleconference or video conference at a board or agency license application hearing;³³ and
- Requires the Department of Corrections to cooperate and coordinate with the board or agency to facilitate the applicant's hearing appearance in person, by teleconference, or by video conference.³⁴

Vocational Training in Correctional Facilities

The Florida Department of Corrections Bureau of Education partners with state colleges, technical colleges, and community education organizations to provide vocational training in 37 trades to incarcerated inmates.³⁵ Included in these vocational programs are barbering programs at

³⁰ Section 455.213(3)(d), F.S. The Barber's Board and the Board of Cosmetology have posted this information on the DBPR's website. The information for each profession is under the "Apply for a License" below the heading "Prior Criminal Offenses" at the following Internet links. See, the Barber's Board, <http://www.myfloridalicense.com/DBPR/barbers/#apply> (last visited Mar. 16, 2023). See, the Board of Cosmetology, <http://www.myfloridalicense.com/DBPR/cosmetology/#apply> (last visited Mar. 16, 2023).

³¹ Section 455.213(3)(e), F.S., and *Id.*

³² Section 455.213(3)(c)1., F.S.

³³ Section 455.213(3)(c)2., F.S.

³⁴ Section 455.213(3)(c)3. and 4., F.S.

³⁵ Florida Department of Corrections, Bureau of Education, <http://www.dc.state.fl.us/development/programs.html> (last visited Mar. 16, 2023).

Blackwater River Correctional Facility,³⁶ Graceville Correctional Facility,³⁷ and Lake City Correctional Facility,³⁸ as well as cosmetology programs at Lowell Correctional Institution,³⁹ Homestead Correctional Institution,⁴⁰ and Gadsden Correctional Facility.⁴¹

III. Effect of Proposed Changes:

The bill amends s. 455.213(3), F.S., to prohibit a regulatory board within DBPR from considering a criminal conviction, or any other adjudication, for crimes more than three years before the date of application is received by a board as grounds for denial of a barber or cosmetologist or cosmetology specialist license, unless the applicant was convicted of a crime at any time during the three-year period immediately preceding the application.

Under the bill and current law, a DBPR regulatory board may consider a criminal background older than three years if the background includes a sexual predator crime under s. 775.21, F.S., or a forcible felony under s. 776.08, F.S., or is related to the profession's practice.

The bill requires boards to approve education program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for the purpose of satisfying applicable training requirements for licensure as a barber or cosmetologist.

The bill takes effect on July 1, 2023.

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.

³⁶ Florida Department of Corrections, *Blackwater River Correctional Facility*, <http://www.dc.state.fl.us/ci/185.html> (last visited Mar. 15, 2023).

³⁷ Florida Department of Corrections, *Graceville Correctional Facility*, <http://www.dc.state.fl.us/ci/159.html> (last visited Mar. 15, 2023).

³⁸ Florida Department of Corrections, *Lake City Correctional Facility*, <http://www.dc.state.fl.us/ci/219.html> (last visited Mar. 15, 2023).

³⁹ Florida Department of Corrections, *Lowell Correctional Institution*, <http://www.dc.state.fl.us/ci/314.html> (last visited Mar. 15, 2023).

⁴⁰ Florida Department of Corrections, *Homestead Correctional Institution*, <http://www.dc.state.fl.us/ci/419.html> (last visited Mar. 15, 2023).

⁴¹ Florida Department of Corrections, *Gadsden Correctional Facility*, <http://www.dc.state.fl.us/ci/111.html> (last visited Mar. 15, 2023). This facility also has on-site testing by the Board of Cosmetology.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some persons who have a criminal conviction, or other adjudication, that is for a crime committed more than three years before the license application may be able to qualify for a barber or cosmetologist license.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR notes that some correctional training programs are already accepted for licensure purposes. The DBPR questions whether the correctional training programs and vocation training programs referenced in the bill must meet the same training requirements as non-correctional training programs have to meet. However, the DBPR states that its regulatory boards would treat the programs the same without further direction from the legislature.⁴²

Sections 455.213(3)(d) and (e), F.S., require the DBPR's regulatory boards, including the Barber's Board and the Board of Cosmetology, to maintain and publish starting October 1, 2019, information regarding the crimes which may form the basis for a license denial and which have previously been the basis for a license denial. Neither board appears to have complied with these requirements.⁴³

VIII. Statutes Affected:

This bill substantially amends section 455.213 of the Florida Statutes.

⁴² See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for SB 1028* (Jan. 30, 2023) (on file with the Senate Regulated Industries Committee).

⁴³ *Supra* notes 30 and 31.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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