

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 Governmental Oversight and Accountability

BILL: SB 1124

INTRODUCER: Senator Calatayud

SUBJECT: Employment of Ex-offenders

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limones-Borja</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1124 creates state-level procedures by which agencies and licensing boards must abide in their determinations whether to grant or deny a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business based on an individual’s criminal conviction. The bill places an enhanced burden on agencies to prove by *clear and convincing* evidence that the applicant has not been rehabilitated based on the applicant’s current circumstances and mitigating factors set forth in the bill.

The bill creates additional notice procedures that allow an applicant for licensure, permitting, or certification, to dispute an agency’s grounds for denial.

The bill authorizes a person to petition a state agency for a binding agency decision as to whether the person’s criminal record would disqualify him or her from obtaining a license, permit, or certification. The bill creates a process an agency must follow to makes its decision, and any decision that a petitioner is *not disqualified* is **binding**, barring a material and adverse change that directly and specifically relates to the person’s criminal record. An agency that decides that a petitioner *is disqualified* must advise such petitioner how to remedy the disqualification. The bill creates a process by which a revised petition may be submitted.

The bill prohibits a state agency from using vague terms such as, “good moral character,” “moral turpitude,” or “character and fitness” in its decision to disqualify a person from a license, permit, or certification based on the person’s criminal record.

The bill updates the legislative intent regarding the restrictions on the employment of ex-offenders. The bill takes away a state agency’s authority to restrict occupational licenses, permits, certifications, and employment to ex-offenders based on statute, administrative rule, or agency policy. Instead, a state agency must follow the state-level procedures set forth in this bill.

The bill requires each state agency responsible for issuing licenses, permits, or certifications to pursue, practice, or engage in an occupation, trade, vocation, profession, or business to annually submit a report to the Governor, President of the Senate, and the Speaker of the House of Representatives regarding any applications, petitions, and renewals denied, withheld, or refused. Each state agency is also required to make the report publically available on its website.

The bill also prohibits the DBPR from using a criminal history record to determine good moral character, but does not prohibit a criminal history record check altogether.

The bill may have a negative fiscal impact on state agencies; however, the impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Disqualification from Licensing and Public Employment based on Criminal Conviction

Current law prohibits a person from being disqualified from employment by the state and municipalities solely because of a prior conviction from a crime.¹ However, a person may be denied employment if the crime was a felony or first-degree misdemeanor that is directly related to the position sought² or 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 occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.³ These laws do not apply to the employment practices of any law enforcement or correctional agency,⁴ fire department,⁵ or county or municipality related to the hiring of personnel for position deemed to be critical to security or public safety.⁶ Any complaints regarding a violation of this employment provision must be adjudicated according to the Administrative Procedure Act.⁷

Administrative Procedures Act

Administrative Review

The Administrative Procedures Act (APA) provides that a party who wishes to challenge an agency determination of his or her substantial interests must file a petition for a hearing with the agency. An agency request for an administrative law judge (ALJ) must be made to the Division of Administrative Hearings within 15 days after receiving the petition.^{8,9} All parties shall be

¹ Section 112.011(1)(a), F.S.

² *Id.*

³ Section 112.011(1)(b), F.S.

⁴ Section 112.011(2)(a), F.S.

⁵ Section 112.011(2)(b), F.S.

⁶ Section 112.011(2)(c), F.S.

⁷ Section 112.011(3), F.S.

⁸ Section 120.569(2)(a), F.S.

⁹ Section 120.569, F.S., applies except when mediation is elected by all parties pursuant to s. 120.573, or when a summary hearing is elected by all parties pursuant to s. 120.574, F.S.

given an opportunity for a hearing after reasonable notice.¹⁰ Generally, licensing determinations are subject to either an informal hearing in which the petitioner-applicant does not dispute any material facts of the agency's final action,¹¹ or a formal hearing, in which the petitioner disputes a material fact of the agency's final action.¹²

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) is the agency charged with the licensing and regulation of businesses and professionals in the state.¹³ The DBPR is made up by the following 12 divisions:¹⁴

- 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.

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.¹⁵ 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.¹⁶

Division of Professions

The Division of Professions (Division) is responsible for the licensing of approximately 482,886 professionals. The Division administers 12 professional boards, one council, one commission, and five Department-regulated professions. These professionals include: architects and interior designers, asbestos consultants and contractors, athlete agents, auctioneers, barbers, building code administrators and inspectors, community association managers, the construction industry, cosmetologists, electrical contractors, employee leasing companies, geologists, harbor pilots,

¹⁰ The notice must contain a statement of (1) time, place, and nature of the hearing; and (2) the legal authority and jurisdiction under which the hearing is to be held. Section 120.569(2)(b), F.S.

¹¹ Section 120.57(2), F.S.

¹² Section 120.57(1), F.S.

¹³ Florida DBPR, *General DBPR Information*, available at

https://myfloridalicense.custhelp.com/app/answers/detail/a_id/2218/~/general-dbpr-information%3A (last visited Mar. 18, 2023).

¹⁴ Section 20.165, F.S.

¹⁵ Section 455.219(1), F.S.

¹⁶ Section 455.01(4) and (5), F.S.

home inspectors, landscape architects, mold related services, talent agencies and veterinarians. In Fiscal Year 2020-2021, there was a total of 464,200 active licenses in the Division, including:¹⁷

Profession	Active	Inactive
Architecture and Interior Design	13,164	397
Asbestos Contractors & Consultants	449	9
Athlete Agents	436	2
Auctioneers	2,421	10
Barbers	23,702	92
Building Code Administrators/Inspectors	9,515	539
Community Association Managers	19,944	189
Construction Industry	79,651	12,637
Cosmetology	271,789	2,015
Electrical Contractors	13,473	1,172
Employee Leasing Companies	1,053	0
Geologists	1,697	62
Home Inspectors	7,867	608
Landscape Architecture	1,285	130
Mold-Related Services	5,070	617
Pilot Commissioners	103	0
Talent Agencies	425	0
Veterinarians	12,156	207
Total	464,200	18,686

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.¹⁸ 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.”¹⁹ 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.²⁰

¹⁷ Florida Department of Business and Professional Regulation, *Annual Report 2020-2021*, pages 12 and 20, available at: http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Mar. 18, 2023).

¹⁸ 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.

¹⁹ Section 455.201(2), F.S.

²⁰ Section 455.201(2), F.S.

Section 455.213, F.S., creates the process by which an applicable board may deny a license. The applicable board shall use the process to review an applicant's criminal record to determine his or her eligibility for the following licensures:

- A barber under chapter 476, F.S.;
- A cosmetologist or cosmetology specialist under chapter 477, F.S.;
- Any of the following construction professions under chapter 489, F.S.:
 - Air-conditioning contractor;
 - Electrical contractor;
 - Mechanical contractor;
 - Plumbing contractor;
 - Pollutant storage systems contractor;
 - Roofing contractor;
 - Sheet metal contractor;
 - Solar contractor;
 - Swimming pool and spa contractor;
 - Underground utility and excavation contractor; or
 - Other specialty contractors; or
- Any other profession for which the DBPR issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program.²¹

Current law provides that a conviction²², or any other adjudication, for a crime that occurred more than 5 years before the application date may not serve as grounds for denial of a license. DBPR's licensing boards may consider an applicant's criminal history, regardless of the time elapsed since, if it includes a crime listed in the sexual predators act²³ or a forcible felony,²⁴ but only if such criminal history has been found to relate to the practice of the applicable profession. The applicable board may also consider the criminal history of an applicant for licensure if such criminal history has been found to relate to good moral character.

Barbers

Barbers are regulated under ch. 476, F.S., by the Barber's Board within the DBPR. 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.²⁵

²¹ Section 455.213(3)(a), F.S.

²² The term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. Section 455.213(3)(b)1., F.S.

²³ Section 775.21, F.S.

²⁴ "Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. Section 776.08, F.S.

²⁵ Section 455.227(1)(c), F.S.

Cosmetologists

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.²⁶

Construction Contracting Professionals

The Construction Industry Licensing Board (CILB) and Electrical Contractors' Licensing Board (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.²⁷ 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.²⁸ 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.²⁹

III. Effect of Proposed Changes:

Currently, occupational licensing decisions are delegated to the appropriate licensing agency by the Legislature. This bill creates state-level procedures by which agencies must abide in their determinations whether to grant or deny an occupational license. The bill also creates a method through which an individual can request a binding agency decision on his or her eligibility for licensure before being required to submit an application for the license.

Section 1 amends s. 112.011, F.S., to revise the criteria a state agency must consider before denying a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession or business based on a criminal conviction. The section prohibits an agency from denying an applicant on the basis of criminal history unless:

- The applicant was convicted of:
 - A forcible felony;³⁰
 - A felony or first-degree misdemeanor (for which the applicant was not incarcerated) in the 3 years prior to his or her application determination; or
 - A felony or first-degree misdemeanor for which the person's incarceration ended less than 3 years before the agency's consideration.
- The conviction specifically relates to the duties and responsibilities of the occupation; and
- Granting the license, permit, or certification would pose a direct and substantial risk to public safety because there is clear and convincing evidence that the person has not been rehabilitated to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

²⁶ Section 477.029(1)(h), F.S.

²⁷ Section 455.227(2), F.S.

²⁸ Sections 489.129(1)(b) and 489.553(1)(d), F.S., providing the disciplinary grounds for construction contractors and electrical contractors, respectively.

²⁹ Section 477.029(1)(h), F.S.

³⁰ See supra note 24.

The bill places an enhanced burden on agencies to prove by clear and convincing evidence that the applicant has not been rehabilitated, and should therefore be subject to a denial of licensure. Section 1 creates a process to determine whether a person has *not been* rehabilitated in considering whether to grant a license, permit, or certificate. The agency must consider an applicant's current circumstances and all of the following mitigating factors:

- The age of the person when he or she committed the offense;
- The circumstances and nature of the offense;
- The completion of the criminal sentence;
- A certificate of rehabilitation or good conduct;
- Completion of or active participation in rehabilitative drug or alcohol treatment;
- Testimonials and recommendations, which may include a progress report from the person's probation or parole officer;
- Education and training;
- Employment history and aspirations;
- The person's family responsibilities;
- Whether the person will be bonded in the occupation; and
- Other evidence of rehabilitation or information the person submitted to the state agency or board.

Section 1 continues to prohibit a state agency from denying an application for a license, permit, certificate, or employment based on solely on the applicant's lack of civil rights.

Section 1 requires an agency to request additional information from an applicant if it intends to deny his or her application on the basis of a criminal background. Specifically, the agency must request an informal meeting with the applicant and provide a written notice of:

- The grounds or basis for the denial; and
- Permission to bring character witnesses to the informal meeting to offer verbal or written support.

The agency must allow the applicant to attend the meeting in person, by teleconference, or by video conference. The section prohibits an agency from making an *adverse* inference based on an applicant's decision to not attend an informal meeting or to not include witnesses at the meeting.

The agency must hold this informal meeting within 60 days after its receipt of a completed application. Within 60 days of the informal meeting or submission of a complete application to the agency, whichever is later, the agency must notify the applicant in writing the grounds or basis for the denial.

Section 1 requires an agency that denies or intends to deny a license, permit, or certificate to provide a notice with the following:

- An explanation detailing what clear and convincing evidence exists that an applicant has not been rehabilitated to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business; and

- An indication of what procedure the applicant must follow to request an administrative review and the applicable time limits for such administrative review.
- The notice must be administratively reviewable pursuant to ss. 120.569 and 120.57, F.S.

Section 1 authorizes a person with a criminal record to petition a state agency at any time (including while in confinement, under supervision, or before obtaining any required personal qualification for a license, permit, or certification) for a binding agency decision as to whether the person's criminal record would disqualify him or her from obtaining the license, permit, or certification. The petition must include the petitioner's criminal record, or authorization for the state agency to obtain the person's criminal record. For the agency to make its decision, it must:

- Consider whether granting the license, permit, or certification would pose a direct and substantial risk to public safety because there is clear and convincing evidence that the person has not been rehabilitated to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought;
- Consider an applicant's current circumstances and the mitigating factors; and
- Follow the procedure for the denial.

An agency's decision that a person is *not disqualified* is **binding** on the agency in any later decision on the license, permit, or certificate application of that person unless there is a material and adverse change that directly and specifically relates to the person's criminal record. If an agency decides that a license, permit, or certification should not be granted, then the agency must advise the person of any action he or she can take to remedy the disqualification. The decision must set a deadline for the petitioner to submit a revised petition reflecting completion of the remedial actions. The petitioner cannot submit a new petition to the agency for 1 year following the final decision on the initial petition or upon obtaining the required personal qualification for the license, permit, or certificate, whichever is earlier.

Section 1 prohibits a state agency from using vague terms such as, "good moral character," "moral turpitude," or "character and fitness" in its decision to disqualify a person from a license, permit, or certification based on the person's criminal record.

Section 2 amends s. 112.0111, F.S., to update the legislative intent regarding the restrictions on the employment of ex-offenders. The section declares that the goal of this state is to make employment opportunities available to ex-offenders in a manner that preserves and protects the health, safety, and welfare of the general public, while still encouraging ex-offenders to become productive members of society. The section takes away a state agency's ability to restrict occupational licenses, permits, certifications, and employment to ex-offenders based on statute, administrative rule, or agency policy. Instead this section requires a state agency to follow the state law.

Section 2 requires each state agency responsible for issuing licenses, permits, or certifications to pursue, practice, or engage in an occupation, trade, vocation, profession, or business to annually submit a report to the Governor, President of the Senate, and the Speaker of the House of Representatives a report that includes the following:

- The number of applicants with a criminal record who:

- Applied for each license, permit, or certificate in the prior year, and of that number, the number of times the state agency granted the application and the number of times it denied, withheld, or refused to grant a license, permit or certification because of an applicant's criminal history and the offense or offenses on which each decision to deny, withhold, or refuse to grant the license, permit, or certification was based.
- Applied for renewal of a license, permit, or certificate in the prior year, and of that number, the number of times the state agency granted an application for renewal and the number of times it denied, withheld, or refused to renew a license, permit, or certification because of an applicant's criminal history and the offense or offenses on which each decision to deny, withhold, or refuse to renew the license, permit, or certification was based on.
- The number of applicants petitioning each agency for a decision as to whether the person's criminal record would disqualify him or her from obtaining the license, permit, or certification, in the prior year, the number of each agency's approvals and denials of such petition, and the offense or offenses for which each board approved or denied the petitions.
- Any other data the agency deems relevant in fulfilling the legislative purpose identified in this section.

The report must also be made publicly available on the agency's website.

Section 3 amends s. 455.213, F.S., to replace the process for which a board responsible for reviewing an applicant's criminal history may determine an applicant's eligibility for licensure, permit, or certification with the process set forth by section 1 of the bill. The section also prohibits an agency from using a criminal history record to determine good moral character. The section does not prohibit a criminal history record check altogether.

Section 4 provides that the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is expected to have an indeterminate, negative fiscal impact on state agencies that issue licenses, permits, or certifications for any occupation, trades, or vocations. The bill shifts the burden on state agencies and creates a new process by which state agencies must follow. As such the state agencies will be taking a significant workload under this bill.

VI. Technical Deficiencies:

Criminal record is not defined, clarification is needed as to if both state and national criminal history record are considered under this term.

VII. Related Issues:

The Department of Law Enforcement states that lines 140-163, may result in an individual being improperly advised on whether or not his or her record would disqualify them prior to the true application. An arrest could be present without a disposition and then when the application is reviewed, the disposition is now present.³¹

VIII. Statutes Affected:

This bill substantially amends sections 112.011, 112.0111, and 455.213 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

³¹ Florida Department of Law Enforcement, *2023 FDLE Legislative Bill Analysis*, Mar. 3, 2023. (On File with Senate Governmental Oversight and Accountability Committee) (Last visited Mar. 18, 2023).

B. Amendments:

None.

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