

By Senator Calatayud

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1 A bill to be entitled
2 An act relating to employment of ex-offenders;
3 amending s. 112.011, F.S.; revising the criteria a
4 state agency must consider before denying a license,
5 permit, or certification to a person previously
6 convicted of a crime; requiring a state agency to
7 consider specified factors when determining whether an
8 ex-offender applying for a license, permit, or
9 certificate has not been rehabilitated; requiring a
10 state agency to use a specified process in its
11 decision to deny a license, permit, or certificate to
12 a person previously convicted of a crime; authorizing
13 certain persons to petition a state agency to
14 determine whether their criminal record will
15 disqualify them from obtaining a license, permit, or
16 certificate; providing the requirements for the
17 petition; requiring the state agency to use certain
18 standards, factors, and procedures when making a
19 decision on the petition; providing that such decision
20 is binding on the state agency regarding any
21 subsequent license, permit, or certification
22 application received from that person; providing an
23 exception; prohibiting a person from submitting a new
24 petition during a specified timeframe; prohibiting a
25 state agency from using specified terminology in a
26 decision related to the denial of a license, permit,
27 or certification; amending s. 112.0111, F.S.; revising
28 legislative intent; requiring specified agencies to
29 submit an annual report to the Governor and the

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30 Legislature; requiring such report to be made
31 available on the agency's website; providing report
32 requirements; amending s. 455.213, F.S.; requiring
33 applicable boards to use a specified process to review
34 an applicant's criminal record; conforming provisions
35 to changes made by the act; providing an effective
36 date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 112.011, Florida Statutes, is amended to
41 read:

42 112.011 Disqualification from licensing and public
43 employment based on criminal conviction.—

44 (1)~~(a)~~ Except as provided in s. 775.16, a person may not be
45 disqualified from employment by the state, any of its agencies
46 or political subdivisions, or any municipality solely because of
47 a prior conviction for a crime. However, a person may be denied
48 employment by the state, any of its agencies or political
49 subdivisions, or any municipality by reason of the prior
50 conviction for a crime if the crime was a felony or first-degree
51 misdemeanor and directly related to the position of employment
52 sought.

53 (2) (a) ~~(b)~~ Notwithstanding any law to the contrary ~~Except as~~
54 ~~provided in s. 775.16,~~ a person may be denied a license, permit,
55 or certification to pursue, practice, or engage in an
56 occupation, trade, vocation, profession, or business by reason
57 of the prior conviction for a crime only if all of the following
58 apply:

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59 1. The crime was a forcible felony as defined by s. 776.08;
60 the crime was a felony or first-degree misdemeanor for which the
61 person was convicted less than 3 years before the agency's
62 consideration, if the person was not incarcerated for the
63 offense; or the crime was a felony or first-degree misdemeanor
64 for which the person's incarceration ended less than 3 years
65 before the agency's consideration, if the person was
66 incarcerated for the offense.

67 2. The conviction specifically relates to the duties and
68 responsibilities of the occupation.

69 3. Granting the license, permit, or certification would
70 pose a direct and substantial risk to public safety because
71 there is clear and convincing evidence the person has not been
72 rehabilitated, per the criteria in paragraph (c), to safely
73 perform the duties and responsibilities of the specific
74 occupation, trade, vocation, profession, or business for which
75 the license, permit, or certificate is sought ~~that is directly~~
76 ~~related to the standards determined by the regulatory authority~~
77 ~~to be necessary and reasonably related to the protection of the~~
78 ~~public health, safety, and welfare for the specific occupation,~~
79 ~~trade, vocation, profession, or business for which the license,~~
80 ~~permit, or certificate is sought.~~

81 (b) ~~(e)~~ Notwithstanding any law to the contrary, a state
82 agency may not deny an application for a license, permit,
83 certificate, or employment based solely on the applicant's lack
84 of civil rights. However, this paragraph does not apply to
85 applications for a license to carry a concealed weapon or
86 firearm under chapter 790.

87 (c) To determine whether a person has not been

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88 rehabilitated for purposes of deciding whether to grant a
89 license, permit, or certificate under paragraph (a), the agency
90 shall consider the person's current circumstances and mitigating
91 factors, including all of the following:

92 1. The age of the person when he or she committed the
93 offense.

94 2. The time elapsed since the offense.

95 3. The circumstances and nature of the offense.

96 4. The completion of the criminal sentence.

97 5. A certificate of rehabilitation or good conduct.

98 6. Completion of or active participation in rehabilitative
99 drug or alcohol treatment.

100 7. Testimonials and recommendations, which may include a
101 progress report from the person's probation or parole officer.

102 8. Education and training.

103 9. Employment history and aspirations.

104 10. The person's family responsibilities.

105 11. Whether the person will be bonded in the occupation.

106 12. Other evidence of rehabilitation or information the
107 person submitted to the state agency or board.

108 (d) A state agency may deny a license, permit, or
109 certificate to pursue, practice, or engage in an occupation,
110 trade, vocation, profession, or business pursuant to paragraph
111 (a) by using only the following process:

112 1. If the agency intends to deny the application because of
113 the person's criminal record, the agency must notify the person
114 of its intention and request an informal meeting with the person
115 regarding the application. The notice must be consistent with s.
116 120.60(3) and must notify the person that he or she may bring

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117 character witnesses to the informal meeting to offer verbal or
118 written support. The agency must hold the informal meeting
119 within 60 days after receiving the person's completed
120 application and must provide the person the option to attend the
121 informal meeting in person, by teleconference, or by video
122 conference. The agency may not make an adverse inference from a
123 person's decision not to attend an informal meeting or to not
124 include witnesses at the meeting.

125 2. Within 60 days after the informal meeting, if
126 applicable, or a complete application is submitted to the agency
127 for its consideration, whichever is later, the agency must
128 notify the applicant of its written decision, consistent with s.
129 120.60(3). If the agency denies or intends to deny the license,
130 permit, or certificate, its notice must explain in detail what
131 clear and convincing evidence exists that the applicant has not
132 been rehabilitated to safely perform the duties and
133 responsibilities of the specific occupation, trade, vocation,
134 profession, or business for which the license, permit, or
135 certification is sought. The agency's decision must be
136 administratively reviewable pursuant to ss. 120.569 and 120.57.
137 The agency's notice must indicate the procedure that the
138 applicant must follow in requesting an administrative review and
139 the applicable time limits for such administrative review.

140 (e)1. Notwithstanding any law to the contrary, a person
141 with a criminal record may petition a state agency at any time,
142 including while in confinement, under supervision, or before
143 obtaining any required personal qualifications for a license,
144 permit, or certificate, for an agency decision as to whether the
145 person's criminal record would disqualify him or her from

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146 obtaining the license, permit, or certification pursuant to
147 paragraph (a). The person must include in the petition his or
148 her criminal record or authorize the state agency to obtain the
149 person's criminal record. The state agency must use the standard
150 provided in subparagraph (a)3. and the factors in paragraph (c),
151 and must follow the procedure in paragraph (d), in making its
152 decision on the petition.

153 2. An agency's decision under subparagraph 1. that a person
154 is not disqualified is binding on the agency in any later
155 decision on the license, permit, or certificate application of
156 that person unless there is a material and adverse change that
157 directly and specifically relates to the person's criminal
158 record. If the agency decides that a license, permit, or
159 certification should not be granted, the agency must advise the
160 person of any actions he or she may take to remedy the
161 disqualification. The person may submit a revised petition
162 reflecting completion of the remedial actions before a deadline
163 the agency sets in its decision notification to the person.

164 3. The person may not submit a new petition to the agency,
165 under subparagraph 1. for 1 year following a final decision on
166 the initial petition or upon obtaining the required personal
167 qualifications for the license, permit, or certificate,
168 whichever is earlier.

169 (f) Notwithstanding any law to the contrary, a state agency
170 may not use a vague term such as "good moral character," "moral
171 turpitude," or "character and fitness" in its decision to
172 disqualify a person from a license, permit, or certification
173 based on the person's criminal record.

174 (3) (a) ~~(2) (a)~~ This section does not apply to any law

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175 enforcement or correctional agency.

176 (b) This section does not apply to the employment practices
177 of any fire department relating to the hiring of firefighters.

178 (c) This section does not apply to the employment practices
179 of any county or municipality relating to the hiring of
180 personnel for positions deemed to be critical to security or
181 public safety pursuant to ss. 125.5801 and 166.0442.

182 ~~(4)~~⁽³⁾ Any complaint concerning the violation of this
183 section shall be adjudicated in accordance with the procedures
184 set forth in chapter 120 for administrative and judicial review.

185 Section 2. Section 112.0111, Florida Statutes, is amended
186 to read:

187 112.0111 Restrictions on the employment of ex-offenders;
188 legislative intent; state agency reporting requirements.-

189 (1) The Legislature declares that a goal of this state is
190 to ~~clearly identify the occupations from which ex-offenders are~~
191 ~~disqualified based on the nature of their offenses. The~~
192 ~~Legislature seeks to~~ make employment opportunities available to
193 ex-offenders in a manner that preserves and protects ~~serves to~~
194 ~~preserve and protect~~ the health, safety, and welfare of the
195 general public, yet encourages ex-offenders ~~them~~ to become
196 productive members of society. To this end, state agencies that
197 exercise regulatory authority ~~are in the best position to~~
198 ~~identify all restrictions on employment imposed by the agencies~~
199 ~~or by boards that regulate professions and occupations and are~~
200 obligated to protect the health, safety, and welfare of the
201 general public ~~by clearly setting forth those restrictions in~~
202 keeping with standards in state law and protections determined
203 by the agencies to be in the least restrictive manner.

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204 (2) Each state agency, ~~including, but not limited to, those~~
205 ~~state agencies~~ responsible for issuing licenses, permits, or
206 certifications to pursue, practice, or engage in an occupation,
207 trade, vocation, profession, or business professional and
208 occupational regulatory boards, shall annually ensure the
209 appropriate restrictions necessary to protect the overall
210 health, safety, and welfare of the general public are in place,
211 and by December 31, 2011, and every 4 years thereafter, submit
212 to the Governor, the President of the Senate, and the Speaker of
213 the House of Representatives and make publicly available on its
214 website a report that includes all of the following:

215 (a) The number of applicants with a criminal record who:

216 1. Applied for each license, permit, or certificate in the
217 prior year, and of that number, the number of times the state
218 agency granted the application and the number of times it
219 denied, withheld, or refused to grant a license, permit or
220 certification because of an applicant's criminal history and the
221 offense or offenses on which each decision to deny, withhold, or
222 refuse to grant the license, permit, or certification was based.

223 2. Applied for renewal of a license, permit, or certificate
224 in the prior year, and of that number, the number of times the
225 state agency granted an application for renewal and the number
226 of times it denied, withheld, or refused to renew a license,
227 permit, or certification because of an applicant's criminal
228 history and the offense or offenses on which each decision to
229 deny, withhold, or refuse to renew the license, permit, or
230 certification was based on A list of all agency or board
231 statutes or rules that disqualify from employment or licensure
232 persons who have been convicted of a crime and have completed

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233 ~~any incarceration and restitution to which they have been~~
234 ~~sentenced for such crime.~~

235 (b) The number of applicants petitioning each agency under
236 s. 112.011(2)(e) in the prior year, the number of each agency's
237 approvals and denials under s. 112.011(2)(e), and the offense or
238 offenses for which each board approved or denied petitions under
239 s. 112.011(2)(e) ~~A determination of whether the disqualifying~~
240 ~~statutes or rules are readily available to prospective employers~~
241 ~~and licensees.~~

242 (c) Any other data the agency deems relevant in fulfilling
243 the purpose identified in subsection (1) ~~The identification and~~
244 ~~evaluation of alternatives to the disqualifying statutes or~~
245 ~~rules which protect the health, safety, and welfare of the~~
246 ~~general public without impeding the gainful employment of ex-~~
247 ~~offenders.~~

248 Section 3. Subsections (3) and (11) of section 455.213,
249 Florida Statutes, are amended to read:

250 455.213 General licensing provisions.—

251 (3)(a) Notwithstanding any other law, the applicable board
252 shall use the process in s. 112.011(2) ~~this subsection~~ for
253 review of an applicant's criminal record to determine his or her
254 eligibility for licensure, a permit, or certification ~~as:~~

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

256 ~~2. A cosmetologist or cosmetology specialist under chapter~~
257 ~~477;~~

258 ~~3. Any of the following construction professions under~~
259 ~~chapter 489:~~

260 ~~a. Air-conditioning contractor;~~

261 ~~b. Electrical contractor;~~

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262 ~~e. Mechanical contractor;~~
 263 ~~d. Plumbing contractor;~~
 264 ~~e. Pollutant storage systems contractor;~~
 265 ~~f. Roofing contractor;~~
 266 ~~g. Sheet metal contractor;~~
 267 ~~h. Solar contractor;~~
 268 ~~i. Swimming pool and spa contractor;~~
 269 ~~j. Underground utility and excavation contractor; or~~
 270 ~~k. Other specialty contractors; or~~
 271 ~~4. Any other profession for which the department issues a~~
 272 ~~license, provided the profession is offered to inmates in any~~
 273 ~~correctional institution or correctional facility as vocational~~
 274 ~~training or through an industry certification program.~~
 275 ~~(b)1. A conviction, or any other adjudication, for a crime~~
 276 ~~more than 5 years before the date the application is received by~~
 277 ~~the applicable board may not be grounds for denial of a license~~
 278 ~~specified in paragraph (a). For purposes of this paragraph, the~~
 279 ~~term "conviction" means a determination of guilt that is the~~
 280 ~~result of a plea or trial, regardless of whether adjudication is~~
 281 ~~withheld. This paragraph does not limit the applicable board~~
 282 ~~from considering an applicant's criminal history that includes a~~
 283 ~~crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but~~
 284 ~~only if such criminal history has been found to relate to the~~
 285 ~~practice of the applicable profession.~~
 286 ~~2. The applicable board may consider the criminal history~~
 287 ~~of an applicant for licensure under subparagraph (a)3. if such~~
 288 ~~criminal history has been found to relate to good moral~~
 289 ~~character.~~
 290 ~~(c)1. A person may apply for a license before his or her~~

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291 lawful release from confinement or supervision. The department
292 may not charge an applicant an additional fee for being confined
293 or under supervision. The applicable board may not deny an
294 application for a license solely on the basis of the applicant's
295 current confinement or supervision.

296 2. After a license application is approved, the applicable
297 board may stay the issuance of a license until the applicant is
298 lawfully released from confinement or supervision and the
299 applicant notifies the applicable board of such release. The
300 applicable board must verify the applicant's release with the
301 Department of Corrections before it issues a license.

302 3. If an applicant is unable to appear in person due to his
303 or her confinement or supervision, the applicable board must
304 permit the applicant to appear by teleconference or video
305 conference, as appropriate, at any meeting of the applicable
306 board or other hearing by the agency concerning his or her
307 application.

308 4. If an applicant is confined or under supervision, the
309 Department of Corrections and the applicable board shall
310 cooperate and coordinate to facilitate the appearance of the
311 applicant at a board meeting or agency hearing in person, by
312 teleconference, or by video conference, as appropriate.

313 (c)~~(d)~~ Each applicable board shall compile a list of crimes
314 that, if committed and regardless of adjudication, do not relate
315 to the practice of the profession or the ability to practice the
316 profession and do not constitute grounds for denial of a
317 license. This list must be made available on the department's
318 website and updated annually. Beginning October 1, 2019, each
319 applicable board shall compile a list of crimes that although

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320 reported by an applicant for licensure, were not used as a basis
321 for denial. The list must identify for each such license
322 application the crime reported and the date of conviction and
323 whether there was a finding of guilt, a plea, or an adjudication
324 entered or the date of sentencing.

325 (d)~~(e)~~ Each applicable board shall compile a list of crimes
326 that have been used as a basis for denial of a license in the
327 past 2 years and shall make the list available on the
328 department's website. Starting October 1, 2019, and updated
329 quarterly thereafter, the applicable board shall compile a list
330 indicating each crime used as a basis for denial. For each crime
331 listed, the applicable board must identify the date of
332 conviction, finding of guilt, plea, or adjudication entered, or
333 date of sentencing. Such denials must be made available to the
334 public upon request.

335 (11) For any profession requiring fingerprints as part of
336 the registration, certification, or licensure process or for any
337 profession requiring a criminal history record check ~~to~~
338 ~~determine good moral character~~, the fingerprints of the
339 applicant must accompany all applications for registration,
340 certification, or licensure. The fingerprints shall be forwarded
341 to the Division of Criminal Justice Information Systems within
342 the Department of Law Enforcement for processing to determine
343 whether the applicant has a criminal history record. The
344 fingerprints shall also be forwarded to the Federal Bureau of
345 Investigation to determine whether the applicant has a criminal
346 history record. The information obtained by the processing of
347 the fingerprints by the Department of Law Enforcement and the
348 Federal Bureau of Investigation shall be sent to the department

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349 to determine whether the applicant is statutorily qualified for
350 registration, certification, or licensure.

351 Section 4. This act shall take effect July 1, 2023.