

**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.)

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

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BILL: SB 1012

INTRODUCER: Senator Calatayud

SUBJECT: Employment of Ex-offenders

DATE: January 19, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			CJ	
3.			FP	

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**I. Summary:**

SB 1012 revises the procedures and criteria that state agencies must follow and consider before denying a license, permit, or certification to a person previously convicted of a crime.

The bill defines the term “conviction” to mean a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld, under the laws of Florida or another state.

The bill provides that, notwithstanding any other law, a person may not be denied a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business if the person has been arrested for a crime but not convicted. However, if criminal charges are pending that may serve as the basis for the denial of a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business, a state agency may defer its decision on the person’s application for a license, permit, or certification pending resolution of the criminal charges.

Under the bill, notwithstanding any laws, a license, permit, or certification may only be denied based on a prior conviction for the following crimes:

- A forcible felony as defined in s. 776.08, F.S.;
- An offense involving a breach of fiduciary duty;
- An offense for a fraudulent practice under ch. 817, F.S., relating to fraudulent practices, or a substantially similar offense under the laws of another state;
- A felony or first-degree misdemeanor for which the person was not incarcerated, and he or she was convicted less than three years before a state agency began considering his or her application for the license, permit, or certification; or
- A felony or first-degree misdemeanor for which the person was incarcerated, and his or her incarceration ended less than three years before a state agency began considering his or her application for the license, permit, or certification.

In addition, a license, permit, or certification may be denied if the conviction directly and specifically relates to the duties and responsibilities of the occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought. Also, if granting the license, permit, or certification pose a direct and substantial risk to public safety.

The bill provides a list of mitigating circumstances and factors for agencies to consider when determining if granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety, including the age of the person at the time the crime was committed, the amount of time that has elapsed since the person committed the crime, and other evidence of rehabilitation.

The bill specifies the written notice requirements for an agency's decision on the granting or denying of a license, permit, or certificate application.

The bill permits a person with a prior conviction to petition an agency to determine if their prior conviction is disqualifying for a license, permit, or certification, including a requirement that the agency consider the mitigating circumstance and factors provided in the bill when making that determination.

Notwithstanding any other law, the bill prohibits a state agency from using vague terms, including, but not limited to, "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 prior conviction for a crime.

The bill revises the requirements for denial of a license under the Administrative Procedures Act, by:

- Requiring state agencies to inform a license applicant before a license denial becomes final;
- Allowing applicants to provide a rebuttal with additional evidence of circumstances or rehabilitation, including written support provided by character witnesses;
- Requiring agencies to give the applicant at least 30 days to provide a rebuttal before issuing a decision on the application for license; and
- Requiring agencies to provide written notice of denial or approval of an application within 60 days after the deadline for submitting a rebuttal.

The bill deletes the criminal record disqualification for a deputy pilot certification by the Board of Pilot Commissioners within the Department of Business and Professional Regulation (DBPR).

Notwithstanding any basis for disqualification based on a person's criminal record, the bill affects applications for the professional licenses issued by the DBPR, the prohibition against being employed as a manager, person in charge, or bartender for an alcoholic beverages vendor if the person has been convicted in the past five years of any felony in Florida, any other state, or the United States, licenses issued under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives, and registration as a health insurance exchange navigator and licensure as a bail bond agent's license.

The bill may affect other persons seeking a license, permit, or certification who would otherwise be disqualified because of a criminal record, including health care professionals; persons with a

direct or indirect interest in business with an alcoholic beverages license; racetrack and jai alai employees; horseracing, greyhound, and jai alai fronton permitholders, and persons engaged in the manufacture, compounding, combining, production, or distribution, dealing, or use of explosives.

The bill takes effect July 1, 2024.

## II. Present Situation:

### Licensing Determinations and Criminal History

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<sup>1</sup> or first-degree misdemeanor<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

Section 112.011, F.S., does not apply to:

- Deputy pilot certification;<sup>5</sup>
- Licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives;<sup>6</sup>

<sup>1</sup> Section 775.08(1), F.S., defines "felony" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or a term of imprisonment in a state penitentiary that exceeds one year.

<sup>2</sup> Section 775.08(2), F.S., defines "misdemeanor" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility of less than one year. A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 112.011(1)(b), F.S. *See also*, e.g., *State ex rel. Sbordy v. Rowlett*, 138 Fla. 330, 190 So. 59, 63 (1939), holding that "the preservation of the public health is one of the duties of sovereignty and in a conflict between the right of a citizen to follow a profession and the right of a sovereignty to guard the health and welfare, it logically follows that the rights of the citizen to pursue his profession must yield to the power of the State to prescribe such restrictions and regulations as shall fully protect the people from ignorance, incapacity, deception, and fraud."

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

<sup>5</sup> However, s. 310.071(4), F.S., disqualifies applicants for a deputy pilot's certificate issued by the Board of Pilot Commissioners within the Department of Business and Professional Regulation, including persons who've had their civil rights restored, who, regardless of adjudication, have ever been found guilty of, or pled guilty or nolo contendere to, a felony or first degree misdemeanor which directly related to the navigation or operation of a vessel, or a felony involving the sale of or trafficking in, or conspiracy to sell or traffic in, a controlled substance as defined by ch. 893, F.S., or an offense under the laws of any state or country which, if committed in this state, would constitute the felony of selling or trafficking in, or conspiracy to sell or traffic in, such controlled substance.

<sup>6</sup> Section 626.207(9), F.S. However, s. 626.207(2), F.S., provides that applicants for license under ch. 626, F.S., including insurance agents, service representatives, adjusters, and insurance agencies, are disqualified from licensure, and permanently barred from licensure, if the person has been found guilty of or has pleaded guilty or nolo contendere to any of the specified crimes.

- Registration as a health insurance exchange navigator;<sup>7</sup> and
- Licensure as a bail bond agent.<sup>8</sup>

Section 112.011, F.S., also does not apply to any law enforcement or correctional agency.<sup>9</sup>

Section 112.0111, F.S., requires each state agency, including the state agencies responsible for professional and occupational regulatory boards, to ensure the appropriate restrictions necessary to protect the overall health, safety, and welfare of the general public are in place, and by December 31, 2011, and every four years thereafter, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that includes:

- A list of all agency or board statutes or rules that disqualify from employment or licensure persons who have been convicted of a crime and have completed any incarceration and restitution to which they have been sentenced for such crime.
- A determination of whether the disqualifying statutes or rules are readily available to prospective employers and licensees.
- The identification and evaluation of alternatives to the disqualifying statutes or rules which protect the health, safety, and welfare of the general public without impeding the gainful employment of ex-offenders.

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

### ***Licensure, Generally***

The Department of Business and Professional Regulation (DBPR) has 11 divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.<sup>10</sup> Fifteen boards and programs exist within the Division of Professions,<sup>11</sup> two boards

<sup>7</sup> Section 626.994, F.S. Section 626.9951(3), F.S., defines the term “navigator” to mean “an individual authorized by an exchange to serve as a navigator, or who works on behalf of an entity authorized by an exchange to serve as a navigator, pursuant to 42 U.S.C. s. 18031(i)(1), who facilitates the selection of a qualified health plan through the exchange and performs any other duties specified under 42 U.S.C. s. 18031(i)(3).” A person is disqualified from registration as a navigator if they have a criminal record for the felonies specified in s. 262.9954(2), F.S., including permanent disqualifications, seven-year, and 15-year disqualifications for specified felonies.

<sup>8</sup> Section 648.34(7), F.S. However, s. 648.34(2)(e), F.S., disqualifies an applicant for a bail bond agent license to a person who has “been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered.”

<sup>9</sup> Section 112.011(2)(a), F.S.

<sup>10</sup> 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; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

<sup>11</sup> Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481, F.S.; Florida Board of Auctioneers, part VI of ch. 468, F.S.; Barbers’ Board, ch. 476, F.S.; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.; Construction Industry Licensing Board, part I of ch. 489, F.S.; Board of Cosmetology, ch. 477, F.S.; Electrical Contractors’ Licensing Board, part II of ch. 489, F.S.; Board of Employee Leasing Companies, part XI of ch. 468, F.S.; Board of Landscape Architecture, part II of ch. 481, F.S.; Board of Pilot Commissioners, ch. 310, F.S.; Board of Professional Engineers, ch. 471, F.S.; Board of Professional Geologists, ch. 492, F.S.; Board of Veterinary Medicine, ch. 474, F.S.; Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

exist within the Division of Real Estate,<sup>12</sup> and one board exists in the Division of Certified Public Accounting.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

In Fiscal Year 2022-2023, there were 950,380 active licensees regulated by the DBPR or a board within the department, including 39,336 active licensees in the Division of Certified Public Accounting, 486,336 active licensees in the Division of Professions, and 67, 827 active licensees under the Board of Professional Engineers.<sup>16</sup>

### ***Denial of Professional Licensure - DBPR***

Chapter 455, F.S., provides procedural and administrative framework for the regulation of professionals by the DBPR, and boards housed in the DBPR, including the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>17</sup>

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."<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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<sup>12</sup> See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

<sup>13</sup> See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

<sup>14</sup> Section 455.219(1), F.S.

<sup>15</sup> Section 455.01(4) and (5), F.S.

<sup>16</sup> See Department of Business and Professional Regulation, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, *Annual Report, Fiscal Year 2022-2023*, p. 18, available at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf> (last visited Jan. 15, 2024).

<sup>17</sup> 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.

<sup>18</sup> Section 455.201(2), F.S.

<sup>19</sup> Section 455.201(2), F.S.

<sup>20</sup> Section 455.201(4)(b), F.S.

The DBPR or a pertinent regulatory board may deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession's practice act.<sup>21</sup> Specifically, the DBPR or regulatory board may deny a licensure application for any 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, a licensee's profession.<sup>22</sup> (Emphasis added.)

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.

### ***Licensing and Criminal Background for Certain Professions***

However, in 2019, the Legislature created a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR.<sup>23</sup> The process applies to:

- Barbers;
- Cosmetologists and cosmetology specialists;
- Construction professionals, including:
  - 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; and
  - Other specialty contractors; and
- Any other profession for which the DBPR issues a license, provided the profession is offered to prisoners in any correctional institution or correctional facility as a vocational training or through an industry certification program.<sup>24</sup>

Under this process, a prisoner may apply for a license before he or she is lawfully released from confinement or supervision.<sup>25</sup> The application may not be denied solely on the basis of the applicant's current confinement or supervision.

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<sup>21</sup> Section 455.227(2), F.S.

<sup>22</sup> Section 455.227(1)(c), F.S.

<sup>23</sup> Chapter 2019-167, Laws of Fla., codified at s. 455.213(3), F.S.

<sup>24</sup> Section 455.213(3)(a), F.S.

<sup>25</sup> Section 455.213.(3)(c), F.S.

The DBPR may not deny a license for one of the above-listed occupations based on a conviction for a crime more than five years before the date of application.<sup>26</sup> However, a board may deny a license if the applicant's criminal history includes a crime listed in s. 775.21(4)(a)1., F.S., relating to sexual predator crimes, or s. 776.08, F.S., relating to forcible felonies, if such criminal history relates to the practice of the applicable profession.<sup>27</sup> A regulatory board may also consider the criminal history of an applicant if such criminal history is found to relate to good moral character.<sup>28</sup>

Additionally, a board must:

- Permit a person to apply for a license while under criminal confinement (incarceration) or supervision;<sup>29</sup>
- Compile a list of crimes by rule that do not impair a person's qualifications for licensure;<sup>30</sup>
- Compile a list of crimes that have been used in the past two years as the basis for a license denial;<sup>31</sup> and
- Permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.<sup>32</sup>

The DBPR or a board may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of ch. 455, F.S., or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.<sup>33</sup>

### *License Qualifications Based on Moral Character*

Several professions licensed by the DBPR or a regulatory board require the applicant to be of good moral character, including applicants for a license to practice the following professions:

- Boxing, kickboxing and mixed martial arts issued by the Florida Athletic Commission;<sup>34</sup>
- Construction contracting issued by the Construction Industry Licensing Board;<sup>35</sup>
- Electrical contracting issued by the Electrical Contractors' Board;<sup>36</sup>

<sup>26</sup> Section 455.213(3)(b)1., F.S. "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

<sup>27</sup> *Id.*

<sup>28</sup> Section 455.213(3)(b)2., F.S.

<sup>29</sup> Section 455.213(3)(c), F.S.

<sup>30</sup> Section 455.213(3)(d), F.S.

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

<sup>32</sup> Section 455.213(5), F.S.

<sup>33</sup> Section 455.213(4), F.S.

<sup>34</sup> Section 548.071(3), F.S., provides a basis for the Florida Athletic Commission to disqualify for a license any person who has been convicted of, has pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a crime involving moral turpitude in any jurisdiction within 10 years preceding the suspension or revocation.

<sup>35</sup> Section 489.111(2)(b) and (3), F.S., provides that the Construction Industry Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if there is a substantial connection between the lack of good moral character and the professional responsibility of the certified contractor; and the lack of good moral character is supported by clear and convincing evidence. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.

<sup>36</sup> 489.511(1)(b), F.S. Section 489.511(3)(a), F.S., defines good moral character as a history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation and specifies that the Electrical Contractors' Licensing Board

- Athlete agents issued by the DBPR;<sup>37</sup>
- Building code administrators and inspectors issued by the Florida Building Code Administrators and Inspectors Board;<sup>38</sup>
- Certified public Accountants issued by the Board of Accountancy;<sup>39</sup>
- Engineer issued by the Board of Professional Engineers;<sup>40</sup> and
- Mold-related services issued by the DBPR.<sup>41</sup>

***License Qualifications Based on Criminal History Related to the Profession***

Many professional practice acts permit a license application to be denied if the applicant has a specified criminal history or the applicant's criminal history directly relates to, the practice of the profession, including a license to practice the following professions:

- Architecture issued by the Board of Architecture and Interior Design;<sup>42</sup>
- Asbestos contracting and consulting issued by the DBPR;<sup>43</sup>
- Auctioneering issued by the Florida Board of Auctioneers;<sup>44</sup>
- Barbering issued by the Barbers' Board;<sup>45</sup>
- Community association management issued by the Regulatory Council of Community Association Managers;<sup>46</sup>
- Professional geology issued by the Board of Professional Geologists;<sup>47</sup>
- Home inspection issued by the DBPR;<sup>48</sup>
- Landscape architecture issued by the Board of Landscape Architecture;<sup>49</sup>
- Real estate brokers and agents issued by the Florida Real Estate Commission;<sup>50</sup> and
- Veterinary medicine issued by the Board of Veterinary Medicine.<sup>51</sup>

***License Disciplinary Action based on Section 455.227(1)(c), F.S.***

Section 455.227(1)(c), F.S., authorizes a board, or the DBPR if there is no board for the profession, to take disciplinary action against a licensee if the person is convicted or found guilty

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may refuse to certify an applicant for failure to satisfy the requirement of good moral character if certain requirements are met. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.

<sup>37</sup> Section 468.453(2)(b), F.S.

<sup>38</sup> Section 468.609(3)(b), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

<sup>39</sup> Section 473.308(5) and (6), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

<sup>40</sup> Section 471.013(2)(a), F.S.

<sup>41</sup> Section 468.8414(3), F.S.

<sup>42</sup> Section 481.225(1)(d), F.S.

<sup>43</sup> Section 469.009(1)(g), F.S.

<sup>44</sup> Section 468.389(1)(l), F.S.

<sup>45</sup> Section 476.144(6)(a)2.b., F.S., provides that the qualifications for a barber license include having no disciplinary history related to barbering for five years.

<sup>46</sup> Section 468.436(2)(b), F.S.

<sup>47</sup> Section 492.113(1)(d), F.S.

<sup>48</sup> Section 468.832(1)(d), F.S.

<sup>49</sup> Section 481.325(1)(d), F.S.

<sup>50</sup> Section 475.25(1)(f), F.S.

<sup>51</sup> Sections 474.214(1)(c), (p) and (2), F.S., authorize the Board of Veterinary Medicine to deny a license application based on criminal history, including conviction on a charge of cruelty to animals.



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. This grounds for discipline includes a criminal history that occurred prior to obtaining a license.<sup>52</sup> Disciplinary action includes refusal to certify, or to certify with restrictions, an application for a license and suspension or permanent revocation of a license.<sup>53</sup>

Several professions regulated by the DBPR, or a board within the DBPR, rely on the grounds for disciplinary action in s. 455.227(1)(c), F.S., as a basis for denial or grant of a license. A person may also be disqualified for a license based on s. 455.227(1)(c), F.S. The practice acts for the following professional licenses within the DBPR include the grounds for denial of a license set forth in s. 455.227(1)(c), F.S.:

- Barbers;<sup>54</sup>
- Engineers issued by the Board of Professional Engineers;<sup>55</sup>
- Professional geologists;<sup>56</sup>
- Home inspectors;<sup>57</sup>
- Mold-related service providers; and<sup>58</sup>
- Real estate brokers and agents.<sup>59</sup>

A license to engage in a regulated activity may require that persons with an interest in the business not have a criminal record or have good moral character. For example, an alcoholic beverages license may not be issued to any person, including persons who have a direct or indirect interest in the license or business, who does not evidence good moral character, and:<sup>60</sup>

who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state; who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, or keeping a disorderly place or of any criminal violation of chapter 893 or the controlled substance act of any other state or the Federal Government; or who has been convicted in the last past 15 years of any felony in this state or any other state or the United States; or to a corporation, any of the officers of which shall have been so convicted.

Persons with certain criminal records are also disqualified from having an occupational license to be employed at a racetrack and jai alai fronton,<sup>61</sup> and are disqualified from holding a horseracing, greyhound, or jai alai permit.<sup>62</sup>

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<sup>52</sup> Section 455.227(2), F.S.

<sup>53</sup> *Id.*

<sup>54</sup> Section 476.204(1)(h), F.S.

<sup>55</sup> Section 471.033(1)(a), F.S.

<sup>56</sup> Section 492.113(1)(d), F.S.

<sup>57</sup> Section 468.832(1)(a), F.S.

<sup>58</sup> Section 468.842(1)(a), F.S.

<sup>59</sup> Section 475.25(1)(f), F.S.

<sup>60</sup> Sections 561.15, F.S.

<sup>61</sup> Section 550.105(2), F.S.

<sup>62</sup> Section 550.1815, F.S.

## **Department of Health**

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been “convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state”<sup>63</sup> or related to certain types of fraud,<sup>64</sup> or for other reasons in the applicable practice act. For example, certified nursing assistants may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery,<sup>65</sup> and pass an employment screening under ch. 435, F.S., which provides a listing of disqualifying crimes.

## **Other State Licenses**

In addition to the licenses referenced above, it is common to disqualify a person from a license to engage in a profession, occupation, or business activity on the basis of a criminal record. For example, a license to engage in the manufacture, compounding, combining, production, or distribution, dealing, or use of explosives may be denied if the person has been convicted of a felony.<sup>66</sup>

## **Administrative Procedures Act**

Chapter 120, F.S., the Administrative Procedure Act, provides uniform procedures for state agencies, including the conduct of rulemaking, implementing disciplinary actions, and the granting and denial of license applications.

Section 120.60, F.S., provides the process for the granting or denial of license applications upon receipt of a license application. An agency must examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license because of an applicant’s failure to correct an error or omission or to supply additional information unless the agency has timely notified the applicant within this 30-day period. A license application is complete upon receipt by the agency of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

An agency must approve or deny a license application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57, F.S.<sup>67</sup> Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45

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<sup>63</sup> Sections 456.024(3)(c); 456.072(1)(c), (x), (ii) and (ll); and 456.071(2)(a), F.S.

<sup>64</sup> Section 456.0635, F.S.

<sup>65</sup> See s. 408.809(4), F.S.

<sup>66</sup> Section 552.094, F.S.

<sup>67</sup> Section 120.569 F.S., provides the administrative process for all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under the mediation process in s. 120.573, F.S., or the summary hearing process in s. 120.574, F.S. Section 120.57, F.S., provides additional procedures for matters involving disputed issues of material fact before an administrative law judge assigned by the Division of Administrative Hearings.

days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.

Section 120.60(3), F.S., requires an agency to give a written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived by the applicant, a copy of the notice must be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, and inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57, F.S., or judicial review pursuant to s. 120.68, F.S., which may be available. The notice must also indicate the procedure that must be followed, and state the applicable time limits. The issuing agency must certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

### III. Effect of Proposed Changes:

#### Chapter 112, F.S.

The bill revises the basis for disqualifying a person for a license based on a person's criminal history under s. 112.011, F.S. The bill amends s. 112.011(1), F.S., to define the following terms:

- "Conviction" to mean a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld, under the laws of this state or another state.
- "Fiduciary duty" to mean a duty to act for someone else's benefit while subordinating one's personal interest to that of the other person.

The bill provides that, notwithstanding any other law, a person may not be denied a license, permit, or certification<sup>68</sup> to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business if the person has been arrested for a crime but not convicted. However, if criminal charges are pending that may serve as the basis for the denial of a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business, a state agency may defer its decision on the person's application for a license, permit, or certification pending resolution of the criminal charges.

Section 112.011(1)(c), F.S., as revised by the bill, provides that, notwithstanding any other law, a license, permit, or certification may only be denied based on a prior conviction for the following crimes:

- A forcible felony as defined in s. 776.08, F.S.;
- An offense involving a breach of fiduciary duty;
- An offense for a fraudulent practice under ch. 817, F.S., relating to fraudulent practices, or a substantially similar offense under the laws of another state;

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<sup>68</sup> The Administrative Procedures Act in ch. 120, F.S., s. 120.52(10), F.S., defines the term "license" to mean "a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act."

- A felony or first-degree misdemeanor for which the person was not incarcerated, and he or she was convicted less than three years before a state agency began considering his or her application for the license, permit, or certification; or
- A felony or first-degree misdemeanor for which the person was incarcerated, and his or her incarceration ended less than three years before a state agency began considering his or her application for the license, permit, or certification.

In addition, under the bill a license, permit, or certification may be denied if the conviction directly and specifically relates to the duties and responsibilities of the occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought.

The bill deletes the basis for denial of a license, permit, or certification if the crime is reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought. Instead, the bill provides that a license, permit, or certification may be denied on the basis of clear and convincing evidence, that granting the license, permit, or certification would pose a direct and substantial risk to public safety because the person is unable to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business for which the license, permit, or certification certificate is sought.

When determining if granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety, a state agency must consider all of the following circumstances and mitigating factors:

- The age of the person when he or she committed the crime.
- The amount of time that has elapsed since the person committed the crime.
- The circumstances surrounding the nature of the crime.
- Whether the person completed his or her criminal sentence and, if completed, the amount of time since completing such sentence.
- Whether the person received a certificate of rehabilitation or good conduct.
- Whether the person completed or is an active participant in a rehabilitative substance abuse program.
- Any testimonials or recommendations, including progress reports from the person's probation or parole officer.
- Whether the person has received any education or training.
- The person's employment history and employment aspirations.
- The person's family responsibilities.
- Whether the occupation, trade, vocation, profession, or business requires that the person be bonded.
- Any other evidence of rehabilitation or information the person submits to the state agency.

The bill requires an agency to provide a written notification consistent with the requirements of s. 120.60(3), F.S., if a denial of a license, permit, or certification that is based on a person's prior conviction for a crime.

The bill allows a person with a prior conviction for a crime to petition a state agency at any time, including while in confinement, while under supervision, or before obtaining any required personal qualifications for a license, permit, or certification, for a decision as to whether the

person's prior conviction for a crime would disqualify him or her from obtaining the license, permit, or certification. The petition must include a record of his or her prior conviction for a crime or must authorize the state agency to obtain such record. When reviewing the petition, the state agency must determine whether granting the license, permit, or certification to the person would pose a direct and substantial risk to public safety because there is clear and convincing evidence that the person is unable to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought. The bill requires the state agency to consider the circumstances and mitigating factors provided under the bill when reviewing and making its decision on the petition.

If a state agency determines that a person is not disqualified for a license, permit, or certification, the decision is binding on the state agency in any later ruling on the person's formal application unless the information contained in the petition is found to be inaccurate or incomplete, or the person is subsequently convicted of a crime.

If the state agency determines that a person is disqualified for a license, permit, or certification, the bill requires the agency to advise the person of an action, if any, he or she may take to remedy the disqualification. The bill allows a person to submit a revised petition reflecting completion of the remedial actions before a deadline set by the agency in its final decision on the petition. The bill prohibits a person from submitting a new petition to the state agency until one year after a final decision on the initial petition is rendered or the person obtains the required qualifications for a license, permit, or certification, whichever is earlier.

Notwithstanding any other law, the bill prohibits a state agency from using vague terms, including, but not limited to, "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 prior conviction for a crime.

The bill amends s. 112.0111, F.S., to require agencies that issue licenses, permits, or certifications to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business to, beginning December 31, 2024, and annually each December 31 thereafter, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that includes the number of applicants with:

- A prior conviction for a crime who applied for each license, permit, or certification in the previous year, and of that number, the number of times the state agency granted the application for, and the number of times it denied, withheld, or refused to grant, a license, permit, or certification because of the applicant's criminal history.
- A prior conviction for a crime whose applications were denied, withheld, or refused who petitioned the state agency pursuant to s. 112.011(2)(e), F.S., in the previous year and the number of such petitions that were approved or denied.

The report must also specify the offense or offenses that served as the basis for each decision to approve, deny, withhold, or refuse to grant the license, permit, or certification.

**Chapter 120, F.S.**

The bill revises the administrative procedures for granting or denying a license under s. 120.60, F.S., to require each agency that intends to deny a license based upon a person's prior conviction for a crime pursuant to s. 112.011, F.S., to provide the applicant with written notice of the agency's intention. The notice must:

- State with particularity the grounds or the basis for the agency's intention to deny the license.
- Inform the recipient that, before the denial becomes final, he or she may provide a rebuttal with additional evidence of circumstances or rehabilitation, including written support provided by character witnesses.
- Allow the applicant at least 30 days to provide a rebuttal before issuing a decision on the application for license.

In addition, a copy of the notice must be delivered or mailed to each party's attorney of record, if applicable, and to each person who has made a written request for notice of agency action. The agency must certify the date the notice was delivered or mailed, and the notice and the certification must be filed with the agency clerk.

Within 60 days after the deadline for submitting a rebuttal, the agency must provide written notification of its decision on the application for license. If the agency denies or intends to deny the application for license, the agency must specify the clear and convincing evidence on which the agency based its determination.

The bill provides that the agency's decision is administratively reviewable pursuant to ss. 120.569 and 120.57, F.S.,<sup>69</sup> and judicially reviewable pursuant to s. 120.68, F.S. The notification must indicate the procedure and applicable time limits that must be followed to seek administrative review, and must state the earliest date that the applicant may submit another application for license. A copy of the notice must be delivered or mailed to each party's attorney of record, if applicable, and to each person who has made a written request for notice of agency action. The agency must certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

**Specific Professions and Occupations**

Section 310.071(4), F.S., is revised by the bill to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for a deputy pilot certification issued by the Board of Pilot Commissioners. However, the bill deletes the disqualification for a deputy pilot certification based on the criminal record of the applicant for the crimes specified in s. 112.011(2), F.S.

The bill amends s. 455.213, F.S., to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for the professional licenses issued by the DBPR. The bill deletes the requirements for the DBPR's review of an applicant's criminal record.

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<sup>69</sup> Section 120.569, F.S., provides the administrative procedures for proceeding in which the substantial interests of a party are determined by an agency. Section 120.57, F.S., provides the administrative procedure for hearings before the Division of Administrative Hearings in which there are disputed issues of material fact.

Section 562.13, F.S., is revised by the bill to delete the prohibition against being employed as a manager, person in charge, or bartender for an alcoholic beverages vendor if the person has been convicted in the past five years of any felony in Florida, any other state, or the United States.

The bill amends s. 626.207(9), F.S., to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives.

The bill amends s. 626.9954(8), F.S., to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for registration as a health insurance exchange navigator.

Section 648.34(7), F.S., is revised by the bill to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for a bail bond agent's license.

#### **Effective Date**

The bill takes effect July 1, 2024.

#### **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.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Persons who may be currently disqualified from a license, permit, or certificate to engage in a profession or occupation may qualify for such license, permit, or certificate under the provisions in the bill.

**C. Government Sector Impact:**

State agencies may see an increase costs related to the additional procedures provided in the bill for review of an application from an applicant with a potentially disqualifying criminal record.

The Department of Financial Services (DFS) indicated that an “undetermined amount of revenue would be lost because of the new ‘petitions’ created by the bill.”<sup>70</sup> Prospective applicants could submit applications for review in the same manner as license applications without charge.<sup>71</sup> The department estimated that the licensing unit would need one supervisor and 12 licensing technicians for a total of 13 FTEs. Salary would be \$538,000, benefits would be \$215,200 and the standard expense package of \$143,663 for a total of \$896,863.<sup>72</sup> Additional programming expense would total \$83,100.<sup>73</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 310.071(4), F.S., applies the procedures in s. 112.011(2), F.S., for agency review of a potentially disqualifying criminal record to applications for a deputy pilot certification issued by the Board of Pilot Commissioners. However, the bill deletes the disqualification for a deputy pilot certification based on the criminal record of the applicant specified in this subsection.

The Florida Department of Law Enforcement (FDLE) notes that the definition in the bill for the term “conviction” does not reference an entry of a plea of guilty or nolo contendere. The FDLE states that, if the definition does not reference a nolo contendere (no contest) plea, a person could argue that a nolo contendere plea is not a determination of guilt if adjudication withheld because the person did not admit guilt.<sup>74</sup>

Section 112.011(1)(g), F.S., permits a person with a prior conviction to petition an agency to determine if their prior conviction is disqualifying for a license, permit, or certification. The FDLE expressed the concern that requiring state agencies to give an advisory opinion on a person’s eligibility prior to an application may be binding on the agency and could “result in

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<sup>70</sup> See Department of Financial Services, *2024 Legislative Bill Analysis for SB 1012*, (Jan. 8, 2024) (on file with the Senate Regulated Industries Committee).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See Department of Law Enforcement, *2024 Agency Legislative Bill Analysis for SB 1012* (Jan. 16, 2024) (on file with the Senate Regulated Industries Committee).



substantial litigation over what was actually known by the state agency at the time of the advisory opinion.”<sup>75</sup> The DFS expressed the concern that a response to the petition may involve giving legal advice to prospective applicants.<sup>76</sup>

The DFS states that it makes license eligibility determination for over 177,000 license applications each year and that approximately 15 percent of those applicants have a criminal record. The DFS also expressed the concern that requiring an agency to determine whether a person with a criminal records has been rehabilitated may produce more subjective licensing decisions than required under current law. Currently, the DFS states, such subject subjective decisions occur in only limited situations.<sup>77</sup>

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 112.011, 112.0111, 120.60, 310.071, 455.213, 562.13, 626.207, 626.9954, and 648.34.

#### **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.

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

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<sup>75</sup> *Id.*

<sup>76</sup> *Supra*, note 70.

<sup>77</sup> *Id.*