

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.; defining terms; prohibiting
4 the denial of a license, permit, or certification
5 because of an arrest for a crime not followed by a
6 conviction; authorizing a state agency to defer a
7 decision on an application for a license, permit, or
8 certification pending the resolution of criminal
9 charges against the applicant; revising the
10 circumstances under which a state agency may deny an
11 application for a license, permit, or certification by
12 reason of a prior conviction for a crime; providing
13 the circumstances and mitigating factors that an
14 agency must consider to determine whether granting a
15 license, permit, or certification to a person would
16 pose a direct and substantial risk to public safety;
17 requiring a state agency to provide an applicant with
18 a certain written notification to deny his or her
19 application for a license, permit, or certification on
20 the basis of a prior conviction; authorizing a person
21 to petition a state agency at any time for a decision
22 as to whether his or her prior conviction disqualifies
23 him or her from obtaining a license, permit, or
24 certification; requiring the state agency to review
25 the petition according to specified procedures and
26 make a certain determination; providing that a
27 decision that the person is not disqualified for a
28 specified license, permit, or certification is binding
29 on the agency unless certain conditions exist;

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30 requiring the agency to advise the person of any
31 actions he or she may take to remedy the
32 disqualification; prohibiting a person from submitting
33 a new petition to the state agency within a specified
34 timeframe after a final decision is made; prohibiting
35 a state agency from using specified terminology in a
36 decision related to the denial of a license, permit,
37 or certification; making technical changes; amending
38 s. 112.0111, F.S.; revising legislative intent;
39 requiring certain state agencies to submit to the
40 Governor and the Legislature and post on their
41 respective websites a specified report beginning on a
42 specified date and annually thereafter; providing
43 requirements for the report; amending s. 120.60, F.S.;

44 requiring an agency to provide applicants with certain
45 written notice if the agency intends to base its
46 denial of an application for a license on a prior
47 conviction; providing requirements for such notice;
48 authorizing an applicant to submit a rebuttal;
49 requiring the agency to provide written notice of its
50 decision within a specified timeframe after the
51 deadline to submit such rebuttal; providing that such
52 decision is administratively and judicially
53 reviewable; providing requirements for notice of such
54 decision; making technical changes; amending ss.
55 310.071, 455.213, 562.13, 626.207, 626.9954, and
56 648.34, F.S.; conforming provisions to changes made by
57 the act; providing an effective date.

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59 Be It Enacted by the Legislature of the State of Florida:

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61 Section 1. Section 112.011, Florida Statutes, is amended to
62 read:

63 112.011 Disqualification from licensing, permitting,
64 certification, and public employment based on criminal
65 conviction.—

66 (1) For the purposes of this section, the term:

67 (a) "Conviction" means a determination of guilt which is
68 the result of a plea or trial, regardless of whether
69 adjudication is withheld, under the laws of this state or
70 another state.

71 (b) "Fiduciary duty" means a duty to act for someone else's
72 benefit while subordinating one's personal interest to that of
73 the other person.

74 (2) (a) Except as provided in s. 775.16, a person may not be
75 disqualified from employment by the state, any of its agencies
76 or political subdivisions, or any municipality solely because of
77 a prior conviction for a crime. However, a person may be denied
78 employment by the state, any of its agencies or political
79 subdivisions, or any municipality by reason of the prior
80 conviction for a crime if the crime was a felony or first-degree
81 misdemeanor and directly related to the position of employment
82 sought.

83 (b) Notwithstanding any other law, a person may not be
84 denied a license, permit, or certification to pursue, practice,
85 or engage in an occupation, a trade, a vocation, a profession,
86 or a business by reason of the person's arrest for a crime not
87 followed by a conviction. However, when a person has criminal

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88 charges pending that may serve as the basis for the denial of a
89 license, permit, or certification to pursue, practice, or engage
90 in an occupation, a trade, a vocation, a profession, or a
91 business under paragraph (c), a state agency may defer its
92 decision on the person's application for a license, permit, or
93 certification pending resolution of the criminal charges.

94 (c) Notwithstanding any other law ~~Except as provided in s.~~
95 ~~775.16,~~ a person may be denied a license, permit, or
96 certification to pursue, practice, or engage in an occupation, a
97 trade, a vocation, a profession, or a business by reason of the
98 prior conviction for a crime only if all of the following apply:

99 1. The crime was:

100 a. A forcible felony as defined in s. 776.08;

101 b. An offense involving a breach of fiduciary duty;

102 c. An offense for a fraudulent practice under chapter 817
103 or a substantially similar offense under the laws of another
104 state;

105 d. A felony or first-degree misdemeanor for which the
106 person was not incarcerated, and he or she was convicted less
107 than 3 years before a state agency began considering his or her
108 application for the license, permit, or certification; or

109 e. A felony or first-degree misdemeanor for which the
110 person was incarcerated, and his or her incarceration ended less
111 than 3 years before a state agency began considering his or her
112 application for the license, permit, or certification.

113 2. The conviction directly and specifically relates to the
114 duties and responsibilities of the occupation, trade, vocation,
115 profession, or business for which the license, permit, or
116 certification is sought.

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117 3. A determination is made pursuant to paragraph (e), with
118 clear and convincing evidence, that granting the license,
119 permit, or certification would pose a direct and substantial
120 risk to public safety because the person is unable to safely
121 perform the duties and responsibilities of ~~that is directly~~
122 related to the standards determined by the regulatory authority
123 to be necessary and reasonably related to the protection of the
124 public health, safety, and welfare for the specific occupation,
125 trade, vocation, profession, or business for which the license,
126 permit, or certification certificate is sought.

127 (d) ~~(e)~~ Notwithstanding any law to the contrary, a state
128 agency may not deny an application for a license, a permit, a
129 certification certificate, or employment based solely on the
130 applicant's lack of civil rights. However, this paragraph does
131 not apply to applications for a license to carry a concealed
132 weapon or firearm under chapter 790.

133 (e) To determine whether granting a license, a permit, or a
134 certification to a person would pose a direct and substantial
135 risk to public safety under paragraph (c), a state agency must
136 consider the person's current circumstances and mitigating
137 factors, including all of the following:

138 1. The age of the person when he or she committed the
139 crime.

140 2. The amount of time that has elapsed since the person
141 committed the crime.

142 3. The circumstances surrounding the nature of the crime.

143 4. Whether the person completed his or her criminal
144 sentence and, if completed, the amount of time since completing
145 such sentence.

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146 5. Whether the person received a certificate of
147 rehabilitation or good conduct.

148 6. Whether the person completed or is an active participant
149 in a rehabilitative substance abuse program.

150 7. Any testimonials or recommendations, including progress
151 reports from the person's probation or parole officer.

152 8. Whether the person has received any education or
153 training.

154 9. The person's employment history and employment
155 aspirations.

156 10. The person's family responsibilities.

157 11. Whether the occupation, trade, vocation, profession, or
158 business requires that the person be bonded.

159 12. Any other evidence of rehabilitation or information the
160 person submits to the state agency.

161 (f) A state agency may deny the application for a license,
162 permit, or certification to pursue, practice, or engage in an
163 occupation, a trade, a vocation, a profession, or a business
164 based on a person's prior conviction for a crime only if the
165 state agency provides written notification consistent with s.
166 120.60(3).

167 (g)1. Notwithstanding any other law, a person with a prior
168 conviction for a crime may petition a state agency at any time,
169 including while in confinement, while under supervision, or
170 before obtaining any required personal qualifications for a
171 license, permit, or certification, for a decision as to whether
172 the person's prior conviction for a crime would disqualify him
173 or her from obtaining the license, permit, or certification. In
174 the petition, the person must include a record of his or her

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175 prior conviction for a crime or must authorize the state agency
176 to obtain such record. In reviewing the petition, the state
177 agency shall determine whether granting the license, permit, or
178 certification to the person would pose a direct and substantial
179 risk to public safety because there is clear and convincing
180 evidence that the person is unable to safely perform the duties
181 and responsibilities of the specific occupation, trade,
182 vocation, profession, or business for which the license, permit,
183 or certification is sought. The state agency shall follow the
184 procedure in paragraph (e) when reviewing and making its
185 decision on the petition.

186 2. If a state agency determines under subparagraph 1. that
187 a person is not disqualified for a license, permit, or
188 certification, such decision is binding on the state agency in
189 any later ruling on the person's formal application unless the
190 information contained in the petition is found to be inaccurate
191 or incomplete, or the person is subsequently convicted of a
192 crime.

193 3. If the state agency determines under subparagraph 1.
194 that a person is disqualified for a license, permit, or
195 certification, the agency must advise the person of any action,
196 if any, he or she may take to remedy the disqualification. The
197 person may submit a revised petition reflecting completion of
198 the remedial actions before a deadline set by the agency in its
199 final decision on the petition.

200 4. A person may not otherwise submit a new petition to the
201 state agency until 1 year after a final decision on the initial
202 petition is rendered or the person obtains the required
203 qualifications for a license, permit, or certification,

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204 whichever is earlier.

205 (h) Notwithstanding any other law, a state agency may not
206 use vague terms, including, but not limited to, "good moral
207 character," "moral turpitude," or "character and fitness," in
208 its decision to disqualify a person from a license, permit, or
209 certification based on the person's prior conviction for a
210 crime.

211 (3) (a) ~~(2) (a)~~ This section does not apply to any law
212 enforcement or correctional agency.

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

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

219 (4) ~~(3)~~ Any complaint concerning the violation of this
220 section must ~~shall~~ be adjudicated in accordance with the
221 procedures set forth in chapter 120 for administrative and
222 judicial review.

223 Section 2. Section 112.0111, Florida Statutes, is amended
224 to read:

225 112.0111 Restrictions on the employment of ex-offenders;
226 legislative intent; state agency reporting requirements.—

227 (1) The Legislature declares that a goal of this state is
228 ~~to clearly identify the occupations from which ex-offenders are~~
229 ~~disqualified based on the nature of their offenses. The~~
230 ~~Legislature seeks to make employment opportunities available to~~
231 ~~ex-offenders in a manner that preserves and protects ~~serves to~~~~
232 ~~preserve and protect~~ the health, safety, and welfare of the

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233 general public, yet encourages ex-offenders ~~them~~ to become
234 productive members of society. To this end, state agencies that
235 exercise regulatory authority are ~~in the best position to~~
236 ~~identify all restrictions on employment imposed by the agencies~~
237 ~~or by boards that regulate professions and occupations and are~~
238 obligated to protect the health, safety, and welfare of the
239 general public ~~by clearly setting forth those restrictions in~~
240 keeping with standards in state law and protections determined
241 by the agencies to be in the least restrictive manner.

242 (2) Beginning December 31, 2024, and annually each December
243 31 thereafter, each state agency, ~~including, but not limited to,~~
244 ~~those state agencies~~ responsible for issuing licenses, permits,
245 or certifications to pursue, practice, or engage in an
246 occupation, a trade, a vocation, a profession, or a business
247 shall professional and occupational regulatory boards, shall
248 ~~ensure the appropriate restrictions necessary to protect the~~
249 ~~overall health, safety, and welfare of the general public are in~~
250 ~~place, and by December 31, 2011, and every 4 years thereafter,~~
251 submit to the Governor, the President of the Senate, and the
252 Speaker of the House of Representatives, and make publicly
253 available on its website, a report that includes all of the
254 following:

255 (a) The number of applicants with a prior conviction for a
256 crime who applied for each license, permit, or certification in
257 the previous year, and of that number, the number of times the
258 state agency granted the application for, and the number of
259 times it denied, withheld, or refused to grant, a license,
260 permit, or certification because of the applicant's criminal
261 history. The report must also specify the offense or offenses

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262 that served as the basis for each decision to deny, withhold, or
263 refuse to grant the license, permit, or certification ~~A list of~~
264 ~~all agency or board statutes or rules that disqualify from~~
265 ~~employment or licensure persons who have been convicted of a~~
266 ~~crime and have completed any incarceration and restitution to~~
267 ~~which they have been sentenced for such crime.~~

268 (b) The number of applicants with a prior conviction for a
269 crime whose applications were denied, withheld, or refused who
270 petitioned the state agency pursuant to s. 112.011(2)(e) in the
271 previous year and the number of such petitions that were
272 approved or denied. The report must also specify the offense or
273 offenses that served as the basis for each decision to approve
274 or deny a petition ~~A determination of whether the disqualifying~~
275 ~~statutes or rules are readily available to prospective employers~~
276 ~~and licensees.~~

277 (c) Any other data the agency deems relevant in fulfilling
278 its purpose under subsection (1) ~~The identification and~~
279 ~~evaluation of alternatives to the disqualifying statutes or~~
280 ~~rules which protect the health, safety, and welfare of the~~
281 ~~general public without impeding the gainful employment of ex-~~
282 ~~offenders.~~

283 Section 3. Subsection (3) of section 120.60, Florida
284 Statutes, is amended to read:

285 120.60 Licensing.—

286 (3)(a) Each applicant must ~~shall~~ be given written notice,
287 personally or by mail, that the agency intends to grant or deny,
288 or has granted or denied, the application for license; however,
289 if the agency intends to deny the application for license based
290 upon a person's prior conviction for a crime pursuant to s.

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291 112.011, the agency must first provide the applicant with
292 written notice of the agency's intention as stated in paragraph
293 (b). The notice required by this paragraph must state with
294 particularity the grounds or basis for the issuance or denial of
295 the license, except when issuance is a ministerial act. Unless
296 waived, a copy of the notice ~~must~~ shall be delivered or mailed
297 to each party's attorney of record and to each person who has
298 made a written request for notice of agency action. Each notice
299 must inform the recipient of the basis for the agency decision,
300 inform the recipient of any administrative hearing pursuant to
301 ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68
302 which may be available, indicate the procedure that must be
303 followed, and state the applicable time limits. The issuing
304 agency shall certify the date the notice was mailed or
305 delivered, and the notice and the certification must be filed
306 with the agency clerk.

307 (b)1. The agency may deny the application for license based
308 upon a person's prior conviction for a crime consistent with s.
309 112.011 only if the agency provides the applicant with written
310 notice, in person or by mail, of its intention to deny the
311 application. The notice must state with particularity the
312 grounds or the basis for the agency's intention to deny the
313 license. The notice must inform the recipient that, before the
314 denial becomes final, he or she may provide a rebuttal with
315 additional evidence of circumstances or rehabilitation,
316 including written support provided by character witnesses.
317 Pursuant to subsection (1), the agency must allow the applicant
318 at least 30 days to provide a rebuttal before issuing a decision
319 on the application for license. A copy of the notice must be

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

325 2. The agency shall provide written notification of its
326 decision on the application for license within 60 days after the
327 deadline for submitting a rebuttal. If the agency denies or
328 intends to deny the application for license, the agency must
329 specify the clear and convincing evidence on which the agency
330 based its determination. The agency's decision is
331 administratively reviewable pursuant to ss. 120.569 and 120.57
332 and judicially reviewable pursuant to s. 120.68. The
333 notification must indicate the procedure and applicable time
334 limits that must be followed to seek administrative review, and
335 must state the earliest date that the applicant may submit
336 another application for license. A copy of the notice must be
337 delivered or mailed to each party's attorney of record, if
338 applicable, and to each person who has made a written request
339 for notice of agency action. The agency shall certify the date
340 the notice was mailed or delivered, and the notice and the
341 certification must be filed with the agency clerk.

342 Section 4. Subsection (4) of section 310.071, Florida
343 Statutes, is amended to read:

344 310.071 Deputy pilot certification.—

345 (4) The board must follow the requirements in s. 112.011(2)
346 before ~~Notwithstanding s. 112.011 or any other provision of law~~
347 ~~relating to the restoration of civil rights,~~ an applicant may
348 ~~shall~~ be disqualified from applying for or ~~and shall be~~ denied a

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349 deputy pilot certificate if the applicant, regardless of
 350 adjudication, has ever been found guilty of, or pled guilty or
 351 nolo contendere to, a charge which was:

352 (a) A felony or first degree misdemeanor which directly
 353 related to the navigation or operation of a vessel; or

354 (b) A felony involving the sale of or trafficking in, or
 355 conspiracy to sell or traffic in, a controlled substance as
 356 defined by chapter 893, or an offense under the laws of any
 357 state or country which, if committed in this state, would
 358 constitute the felony of selling or trafficking in, or
 359 conspiracy to sell or traffic in, such controlled substance.

360 Section 5. Subsections (3) and (11) of section 455.213,
 361 Florida Statutes, are amended to read:

362 455.213 General licensing provisions.-

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

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

368 2. ~~A cosmetologist or cosmetology specialist under chapter~~
 369 ~~477;~~

370 3. ~~Any of the following construction professions under~~
 371 ~~chapter 489:~~

372 a. ~~Air conditioning contractor;~~

373 b. ~~Electrical contractor;~~

374 c. ~~Mechanical contractor;~~

375 d. ~~Plumbing contractor;~~

376 e. ~~Pollutant storage systems contractor;~~

377 f. ~~Roofing contractor;~~

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378 ~~g. Sheet metal contractor;~~
379 ~~h. Solar contractor;~~
380 ~~i. Swimming pool and spa contractor;~~
381 ~~j. Underground utility and excavation contractor; or~~
382 ~~k. Other specialty contractors; or~~
383 ~~4. Any other profession for which the department issues a~~
384 ~~license, provided the profession is offered to inmates in any~~
385 ~~correctional institution or correctional facility as vocational~~
386 ~~training or through an industry certification program.~~
387 ~~(b)1. A conviction, or any other adjudication, for a crime~~
388 ~~more than 5 years before the date the application is received by~~
389 ~~the applicable board may not be grounds for denial of a license~~
390 ~~specified in paragraph (a). For purposes of this paragraph, the~~
391 ~~term "conviction" means a determination of guilt that is the~~
392 ~~result of a plea or trial, regardless of whether adjudication is~~
393 ~~withheld. This paragraph does not limit the applicable board~~
394 ~~from considering an applicant's criminal history that includes a~~
395 ~~crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but~~
396 ~~only if such criminal history has been found to relate to the~~
397 ~~practice of the applicable profession.~~
398 ~~2. The applicable board may consider the criminal history~~
399 ~~of an applicant for licensure under subparagraph (a)3. if such~~
400 ~~criminal history has been found to relate to good moral~~
401 ~~character.~~
402 ~~(c)1. A person may apply for a license before his or her~~
403 ~~lawful release from confinement or supervision. The department~~
404 ~~may not charge an applicant an additional fee for being confined~~
405 ~~or under supervision. The applicable board may not deny an~~
406 ~~application for a license solely on the basis of the applicant's~~

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407 current confinement or supervision.

408 2. After a license application is approved, the applicable
409 board may stay the issuance of a license until the applicant is
410 lawfully released from confinement or supervision and the
411 applicant notifies the applicable board of such release. The
412 applicable board must verify the applicant's release with the
413 Department of Corrections before it issues a license.

414 3. If an applicant is unable to appear in person due to his
415 or her confinement or supervision, the applicable board must
416 allow ~~permit~~ the applicant to appear by teleconference or video
417 conference, as appropriate, at any meeting of the applicable
418 board or other hearing by the agency concerning his or her
419 application.

420 4. If an applicant is confined or under supervision, the
421 Department of Corrections and the applicable board must ~~shall~~
422 cooperate and coordinate to facilitate the appearance of the
423 applicant at a board meeting or agency hearing in person, by
424 teleconference, or by video conference, as appropriate.

425 (c) ~~(d)~~ Each applicable board shall compile a list of crimes
426 that, if committed and regardless of adjudication, do not relate
427 to the practice of the profession or the ability to practice the
428 profession and do not constitute grounds for denial of a
429 license. This list must be made available on the department's
430 website and updated annually. Beginning October 1, 2019, each
431 applicable board shall compile a list of crimes that although
432 reported by an applicant for licensure, were not used as a basis
433 for denial. The list must identify for each such license
434 application the crime reported and the date of conviction and
435 whether there was a finding of guilt, a plea, or an adjudication

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436 entered or the date of sentencing.

437 (d)~~(e)~~ Each applicable board shall compile a list of crimes
438 that have been used as a basis for denial of a license in the
439 past 2 years and shall make the list available on the
440 department's website. Starting October 1, 2019, and updated
441 quarterly thereafter, the applicable board shall compile a list
442 indicating each crime used as a basis for denial. For each crime
443 listed, the applicable board shall ~~must~~ identify the date of
444 conviction, finding of guilt, plea, or adjudication entered, or
445 date of sentencing. Such denials must be made available to the
446 public upon request.

447 (11) For any profession requiring fingerprints as part of
448 the registration, certification, or licensure process or for any
449 profession requiring a criminal history record check ~~to~~
450 ~~determine good moral character~~, the fingerprints of the
451 applicant must accompany all applications for registration,
452 certification, or licensure. The fingerprints must ~~shall~~ be
453 forwarded to the Division of Criminal Justice Information
454 Systems within the Department of Law Enforcement for processing
455 to determine whether the applicant has a criminal history
456 record. The fingerprints must ~~shall~~ also be forwarded to the
457 Federal Bureau of Investigation to determine whether the
458 applicant has a criminal history record. The information
459 obtained by the processing of the fingerprints by the Department
460 of Law Enforcement and the Federal Bureau of Investigation must
461 ~~shall~~ be sent to the department to determine whether the
462 applicant is statutorily qualified for registration,
463 certification, or licensure.

464 Section 6. Paragraph (a) of subsection (3) of section

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465 562.13, Florida Statutes, is amended to read:

466 562.13 Employment of minors or certain other persons by
467 certain vendors prohibited; exceptions.—

468 (3) (a) It is unlawful for any vendor licensed under the
469 beverage law to employ as a manager or person in charge or as a
470 bartender any person:

471 1. Who has been convicted within the last past 5 years of
472 any offense against the beverage laws of this state, the United
473 States, or any other state.

474 2. Who has been convicted within the last past 5 years in
475 this state or any other state or the United States of soliciting
476 for prostitution, pandering, letting premises for prostitution,
477 keeping a disorderly place, or any felony violation of chapter
478 893 or the controlled substances act of any other state or the
479 Federal Government.

480 ~~3. Who has, in the last past 5 years, been convicted of any~~
481 ~~felony in this state, any other state, or the United States.~~

482
483 The term "conviction" shall include an adjudication of guilt on
484 a plea of guilty or nolo contendere or forfeiture of a bond when
485 such person is charged with a crime.

486 Section 7. Subsection (9) of section 626.207, Florida
487 Statutes, is amended to read:

488 626.207 Disqualification of applicants and licensees;
489 penalties against licensees; rulemaking authority.—

490 (9) Section 112.011(2) applies ~~112.011 does not apply~~ to
491 any applicants for licensure under the Florida Insurance Code,
492 including, but not limited to, agents, agencies, adjusters,
493 adjusting firms, or customer representatives.

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494 Section 8. Subsection (8) of section 626.9954, Florida
495 Statutes, is amended to read:

496 626.9954 Disqualification from registration.—

497 (8) Section 112.011(2) applies ~~112.011 does not apply~~ to an
498 applicant for registration as a navigator.

499 Section 9. Subsection (7) of section 648.34, Florida
500 Statutes, is amended to read:

501 648.34 Bail bond agents; qualifications.—

502 (7) Section 112.011(2) applies ~~The provisions of s. 112.011~~
503 ~~do not apply~~ to bail bond agents or to applicants for licensure
504 as bail bond agents.

505 Section 10. This act shall take effect July 1, 2024.