

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 751 Use of Criminal History in Licensing

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Hunschofsky

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Wright	Anstead

SUMMARY ANALYSIS

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work to obtain governmental authorization to work in a specific field. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the practice of such profession.

Every four years each state agency is required to prepare a report outlining ex-offender application information and statistics, which is known as the "Jim King Report".

The bill:

- Requires state agencies to produce a Jim King Report every year and requires the report to be publicly posted on the agency's website.
- Changes the required ex-offender applicant information that must be in the report to the following:
 - The total number of applications received by the state agency in the previous calendar year for a license, permit, or certification where the applicant had a prior conviction, or any other adjudication, for a crime.
 - Out of the total number of applications, the number of times it denied, withheld, or refused to grant an application because of the applicant's prior conviction, or any other adjudication, of a crime.
 - The report must also specify the crimes for which each decision to deny, withhold, or refuse to grant an application for a license, permit, or certification was based.
 - Out of the total number of applications, the number of times it granted an application where the applicant had a prior conviction, or any other adjudication, of a crime.
 - The report must also specify the crimes in such applications that were not used as a basis for denial.
 - Information provided by the agency in the report must be broken down by the specific type of application submitted and the types of licenses, permits, or certifications sought, including whether such applicant was a Florida resident or an out-of-state resident.
 - Any other data the state agency deems relevant.
- Allows each board at the Department of Business and Professional Regulation (DBPR), or DBPR when there is no board, to make a finding that an applicant for a license has been rehabilitated and may thus qualify for licensure.
 - Based on such finding, the board, or DBPR when there is no board, may grant a license regardless of an applicant's prior conviction, or any other adjudication, for a crime.

The bill will have an indeterminate fiscal impact on state government and no impact on local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Licensing

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work, such as nurses, contractors, and cosmetologists, to obtain governmental authorization to work in a specific field.¹

An estimated 23.5 percent of the civilian labor force nationwide has an occupational license.² Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions, including:³

- Department of Business and Professional Regulation (DBPR),
- Department of Health (DOH),
- Department of Financial Services (DFS),
- Department of Agriculture and Consumer Services (DACS),
- Florida Supreme Court (FSC),
- Department of Environmental Protection (DEP),
- Agency for Healthcare Administration (AHCA),
- Department of Children and Families (DCF),
- Department of Elder Affairs (DEA),
- Department of Highway Safety and Motor Vehicles (DHSMV), and
- Office of Financial Regulation (OFR).

Jim King Ex-Offender Report

Section 112.0111, F.S., requires each state agency, including the state agencies responsible for professional and occupational regulatory boards to, every four years, 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

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida.⁴

¹ The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015)

https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Jan. 20, 2024).

² Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, 2021*, [Certification and licensing status of the civilian noninstitutional population 16 years and over by employment status \(bls.gov\)](#), (last visited on Jan. 20, 2024).

³ Chs. 20, 25, F.S.

⁴ S. 20.165, F.S.

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.⁵

The Division of Regulation is the enforcement authority for the Florida Athletic Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.⁶ To ensure compliance with applicable laws and rules by those professions and related businesses, the division investigates complaints, utilizes compliance mechanisms, and performs inspections.⁷

The Division of Certified Public Accounting is responsible for the regulation of certified public accountants and accounting firms in the state.⁸

The Division of Real Estate is responsible for the regulation of real estate sales associates, brokers, and appraisers, in conjunction with the Florida Real Estate Commission and the Florida Real Estate Appraisal Board.⁹

Each profession is governed by an individual practice act and by ch. 455, F.S., which provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR.¹⁰ Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."¹¹

DBPR may regulate professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."¹² 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;

⁵ Florida Department of Business and Professional Regulation, *Division of Professions*, <http://www.myfloridalicense.com/DBPR/division-of-professions/> (last visited Jan. 21, 2024).

⁶ Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers.

⁷ Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/DBPR/division-of-regulation/> (last visited Jan. 21, 2024).

⁸ S. 473.3035, F.S.; Florida Department of Business and Professional Regulation, *Certified Public Accounting*, [Certified Public Accounting – MyFloridaLicense.com](http://www.myfloridalicense.com) (last visited Jan. 21, 2024).

⁹ S. 475.021, F.S.

¹⁰ S. 455.203, F.S.

¹¹ S. 455.01(6), F.S.

¹² S. 455.201(2), F.S.

- 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.¹³

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.¹⁴

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.¹⁵

License Denials Based on Criminal History Related to the Profession

Section 455.227(1)(c), F.S., authorizes a board, or the DBPR if there is no board, to take disciplinary action against a licensee if the person is 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. This grounds for discipline includes a criminal history that occurred prior to obtaining a license.¹⁶ Disciplinary action includes refusal to certify, or to certify with restrictions, an application for a license and suspension or permanent revocation of a license.¹⁷

Many professional practice acts also specifically 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;¹⁸
- Asbestos contracting and consulting issued by the DBPR;¹⁹
- Auctioneering issued by the Florida Board of Auctioneers;²⁰
- Barbering issued by the Barbers' Board;²¹
- Community association management issued by the Regulatory Council of Community Association Managers;²²
- Professional geology issued by the Board of Professional Geologists;²³
- Home inspection issued by the DBPR;²⁴
- Landscape architecture issued by the Board of Landscape Architecture;²⁵
- Real estate brokers and agents issued by the Florida Real Estate Commission;²⁶ and
- Veterinary medicine issued by the Board of Veterinary Medicine.²⁷

¹³ S. 455.201(2), F.S.

¹⁴ S. 455.201(4)(b), F.S.

¹⁵ 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. 21, 2024).

¹⁶ S. 455.227(2), F.S.

¹⁷ *Id.*

¹⁸ S. 481.225(1)(d), F.S.

¹⁹ S. 469.009(1)(g), F.S.

²⁰ S. 468.389(1)(l), F.S.

²¹ S. 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.

²² S. 468.436(2)(b), F.S.

²³ S. 492.113(1)(d), F.S.

²⁴ S. 468.832(1)(d), F.S.

²⁵ S. 481.325(1)(d), F.S.

²⁶ S. 475.25(1)(f), F.S.

Additionally, 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;²⁸
- Construction contracting issued by the Construction Industry Licensing Board;²⁹
- Electrical contracting issued by the Electrical Contractors' Board;³⁰
- Athlete agents issued by the DBPR;³¹
- Building code administrators and inspectors issued by the Florida Building Code Administrators and Inspectors Board;³²
- Certified public Accountants issued by the Board of Accountancy;³³
- Engineer issued by the Board of Professional Engineers;³⁴ and
- Mold-related services issued by the DBPR.³⁵

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.

Also, 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.³⁶

²⁷ Ss. 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.

²⁸ 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.

²⁹ 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.

³⁰ S. 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 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.

³¹ S. 468.453(2)(b), F.S.

³² S. 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.

³³ S. 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.

³⁴ S. 471.013(2)(a), F.S.

³⁵ S. 468.8414(3), F.S.

³⁶ S. 455.213(4), F.S.

Reporting of Disqualifying Crimes

DBPR and the boards under it are required to compile on their website:

- A list of crimes by rule that do not impair a person's qualifications for licensure,³⁷ and
- A list of crimes that have been used in the past two years as the basis for a license denial.³⁸

Effect of the Bill

Jim King Ex-Offender Report

The bill increases the frequency of that an agency must report certain ex-offender applicant information, to annually, from every 4 years.

The bill removes the requirement that the report be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and instead requires the report to be publicly posted on the agency's website.

The bill provides that the annual report requirements are applicable to each state agency responsible for issuing licenses, permits, or certifications to pursue, practice, or engage in an occupation, trade, vocation, profession, or business.

The bill changes the required ex-offender applicant information that must be in the report to the following:

- The total number of applications received by the state agency in the previous calendar year for a license, permit, or certification where the applicant had a prior conviction,³⁹ or any other adjudication, for a crime.
- Out of the total number of applications, the number of times it denied, withheld, or refused to grant an application because of the applicant's prior conviction, or any other adjudication, of a crime.
- The report must also specify the crimes for which each decision to deny, withhold, or refuse to grant an application for a license, permit, or certification was based.
- Out of the total number of applications, the number of times it granted an application where the applicant had a prior conviction, or any other adjudication, of a crime.
- The report must also specify the crimes in such applications that were not used as a basis for denial.
- Information provided by the agency in the report must be broken down by the specific type of application submitted and the types of licenses, permits, or certifications sought, including whether such applicant was a Florida resident or an out-of-state resident.
- Any other data the state agency deems relevant.

The bill amends related Legislative intent.

DBPR Consideration of Rehabilitation

The bill allows each board at DBPR, or DBPR when there is no board, to make a finding that an applicant for a license has been rehabilitated after a conviction, or any other adjudication, for a crime. Based on such finding, the board, or DBPR when there is no board, may grant a license regardless of an applicant's prior conviction, or any other adjudication, for a crime.

Such finding must be made based on the following factors:

- The age of the person when he or she committed the offense.
- The amount of time that has elapsed since the person committed the offense.

³⁷ S. 455.213(3)(d), F.S.

³⁸ S. 455.213(3)(e), F.S.

³⁹ For purposes of the bill, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

- The circumstances surrounding and the nature of the offense.
- If the person completed his or her criminal sentence and, if so, the amount of time that has passed since such completion.
- If the person received a certificate of rehabilitation or good conduct.
- If the person completed or is an active participant in a rehabilitative drug or alcohol program.
- Any testimonials or recommendations, including progress reports from the person's probation or parole officer.
- Any education and training the person has received.
- The person's past employment history and his or her employment aspirations.
- The person's family responsibilities.
- If the occupation, trade, vocation, profession, or business for which the person seeks employment requires him or her to be bonded.
- Any other evidence of rehabilitation or information that the person submits to the board or DBPR.

The bill has an effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1: Amends s. 112.0111, F.S.; relating to an ex-offender agency report.
 Section 2: Amends s. 455.213, F.S.; relating to a licensing process.
 Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more people to be licensed an practice their chose profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rules related to application procedures will need to be amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Regulatory Reform and Economic Development Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute made the following changes:

- Removed provisions relating to:
 - Limitations on considering criminal history for occupational license at all agencies;
 - Allowing a pre-licensure petition regarding a decision relating to an applicant's criminal history;
 - Requirements for a notice of denial related to the pre-licensure petition; and
 - Licensing for Deputy pilots, insurance professionals, health insurance exchange navigator, and bail bond agents.
- Added report requirements for the Jim King Report.
- Allowed DBPR to consider specific rehabilitation efforts by an applicant to grant a license despite certain criminal history.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform and Economic Development Subcommittee.