

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1114

INTRODUCER: Senator Brandes and others

SUBJECT: Professional Regulation

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1114 permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure. The petitioner need not meet any underlying training or education requirements prior to submission of a petition for declaratory statement.

The petition for declaratory statement may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility for licensure, registration, or certification. A person may request the declaratory statement while under criminal confinement or supervision. Although the agency's conclusion is binding on the agency as to the petitioner, the petitioner's subsequent criminal history may form an independent basis for denial of an application for a license, registration, or certificate. The fee for the declaratory may not exceed \$100, and the petitioner is also responsible for the actual cost of state and federal fingerprint processing in addition to the fee for the declaratory statement.

The bill also creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH). The process in the bill applies to certified nursing assistants, regulated by the DOH, and to barbers, cosmetologists, and cosmetology specialists, i.e., hair braiders, hair wrappers, and body wrappers, and specified construction professionals, all regulated by the DBPR.

The process in the bill permits a person to apply for a license while under criminal confinement or supervision. It limits the period during which an agency may consider the criminal history as an impairment to licensure to seven years from the date of the criminal conviction. However, as required under current law, the DOH must deny a certified nursing assistant application, if the applicant has a criminal history of more than seven years from the date of the application, and

the applicant's criminal history relates to certain violent felonies, crimes against children, or sexual offenses.

The bill also requires the DBPR and DOH to identify by rule the crimes that do and do not impair a person's qualifications for the licenses specified in the bill.

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Agency Declaratory Statements

The Administrative Procedure Act provides uniform procedures for agencies to exercise their authority, and is applicable to every Florida administrative agency.¹

A declaratory statement is meant to “enable members of the public to definitively resolve ambiguities of law arising in the conduct of their daily affairs or in the planning of their future affairs’ and ‘to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.’”² A petition for declaratory statement must include a petitioner's specific set of circumstances and the applicable law, rule, or order he or she wishes to have interpreted in light of those circumstances.³

When a petitioner files a petition for a declaratory statement with an agency, the agency must file a notice of the petition in the next available issue of the Florida Administrative Register and transmit copies of the petition to the Joint Administrative Procedures Committee.⁴ Within 90 days from the petition's filing, the agency must either issue a declaratory statement or deny the petition. The agency must give notice of its action in the next available issue of the Florida Administrative Register.⁵

Generally, an agency will only issue a declaratory statement on actions that will take place in the future.⁶ However, the fact pattern must not be hypothetical so as to amount to a request for an advisory opinion regarding facts that are only ‘contingent, uncertain, [and] rest in the future.’⁷

Current law does not require a fee for filing a petition for declaratory statement with an agency.

¹ See, ss. 120.50-120.515, F.S.

² Section 120.565(1), F.S.; *Fla. Dept. of Bus. & Pro. Reg., Div. of Pari-Mutuel Wagering v. Invest. Corp. of Palm Bch.*, 747 So. 2d 374 (Fla. 1999), quoting Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 Fla. St. U. L. Rev. 965 (1986).

³ Section 120.565(2), F.S.

⁴ Section 120.565(3), F.S. The Joint Administrative Procedures Committee (JAPC) is a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature. It is composed of five Senators appointed by the President of the Senate and six Representatives appointed by the Speaker of the House. The primary function of JAPC is to generally review agency action pursuant to the operation of the Administrative Procedure Act in ch. 120, F.S., related to the rulemaking process, to ensure that rules adopted by the executive branch agencies do not create new law and stay within the authority specifically delegated to them by the Legislature.

⁵ Section 120.565(3), F.S.

⁶ *Fed'n of Mobile Home Owners of Fla., Inc. v. Dept. of Bus. Regulation*, 479 So. 2d 252 (Fla. Dist. Ct. App. 1985).

⁷ *Santa Rosa Cnty.*, 661 So. 2d 1190 (Fla. 1995).

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions tasked with the regulation of several professions and businesses.⁸ Fifteen boards and programs exist within the Division of Professions,⁹ two boards are within the Division of Real Estate,¹⁰ and one board exists in the Division of Certified Public Accounting.¹¹

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”¹²

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹³

The DBPR may engage in the regulation of professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹⁴ 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.¹⁵

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.¹⁶

⁸ 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.

⁹ 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; Florida Board of Auctioneers, part VI of ch. 468; Barbers’ Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors’ Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

¹⁰ 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.

¹¹ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

¹² Section 455.01(6), F.S.

¹³ See s. 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.

¹⁴ Section 455.201(2), F.S.

¹⁵ *Id.*

¹⁶ Section 455.201(4)(b), F.S.

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.¹⁷

In Fiscal Year 2015-2016, there were 434,574 licensees in the Division of Professions,¹⁸ including, in relevant part:

- Barbers (19,098 active and 199 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Construction industry contractors (71,818 active and 15,004 inactive); and
- Electrical contractors (11,960 active and 1,285 inactive).

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the 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.¹⁹

Licensing and Criminal Background

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 or first-degree misdemeanor 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.²⁰ 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.²¹

DBPR

The regulatory boards of the DBPR, or the department if there is no board, may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession’s practice act.²² Specifically, the regulatory board, or the department if there is no board, may deny a license application for any person having been:

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.²³ (Emphasis added.)

¹⁷ Section 455.01(4) and (5), F.S.

¹⁸ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited Feb. 5, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

¹⁹ Section 455.219(1), F.S.

²⁰ Section 112.011(1)(b), F.S.

²¹ Section 112.011(1)(c), F.S.

²² Section 455.227(2), F.S.

²³ Section 455.227(1)(c), F.S.

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.

Department of Health

The 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”²⁴ or related to certain types of fraud,²⁵ or for other reasons in the applicable practice act.

There are no statutory provisions of rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.²⁶

Barbers

Barbers are regulated under ch. 476, F.S., by the Barber’s Board within the DBPR. To be licensed as a barber, a person must be at least 16 years of age, satisfactorily complete a licensure examination, and pay the required application fee. In order to be eligible to sit for the licensure examination, a person must have held a license to practice barbering in another state for at least one year or have received a minimum of 1,200 hours of training.²⁷

“Barbering” includes any of the following practices when done for payment by the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.²⁸

Chapter 476, F.S., does not provide a basis for denial of a license application based on a person’s criminal background. However, a person may be denied a license application as a barber for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee’s profession.²⁹

Cosmetologists

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

²⁴ Sections 456.024(3)(c); 456.072(1)(c), (x), (ii) and (ll); and 456.071(2)(a), F.S.

²⁵ Section 456.0635, F.S.

²⁶ Florida Department of Health, *Agency Analysis of HB 1041*, p. 2 (Jan. 24, 2018).

²⁷ See s. 476.114, F.S.

²⁸ Section 476.034(2), F.S.

²⁹ See s. 455.227(1)(c), F.S.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.³⁰

A “specialist” is defined as “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”³¹ The term “specialty” is defined as “the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”³²

A “cosmetologist” is a person who is licensed to engage in the practice of cosmetology in Florida under the authority of ch. 477, F.S.³³ “Cosmetology” is defined as “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.”³⁴

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.³⁵ All cosmetology and specialty salons are subject to inspection by the DBPR.³⁶

To qualify for a specialist license, the applicant must be at least 16 years old or have a high school diploma, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with the DBPR with the registration fee.³⁷

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least one year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.³⁸

³⁰ Section 477.014, F.S.

³¹ Section 477.013(5), F.S.

³² Section 477.013(6), F.S.

³³ Section 477.013(3), F.S.

³⁴ Section 477.013(4), F.S.

³⁵ Section 477.0263, F.S.

³⁶ Section 477.025, F.S.

³⁷ Section 477.0201, F.S.

³⁸ Section 477.019(2), F.S.

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist.

The Board of Cosmetology may deny a cosmetology license or specialty registration application based on a person's criminal background. The board may deny a license or application for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.³⁹

Construction Contracting Professionals

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.⁴⁰ The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor's scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.⁴¹

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors in this state under part II of ch. 489, F.S.⁴²

Construction contractors under part I of ch. 489, F.S., and electrical contractors under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁴³

Master septic tank contractors and septic tank contractors are regulated by the DBPR under part III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DBPR

³⁹ See s 477.029(1)(h), F.S.

⁴⁰ See s. 489.107, F.S.

⁴¹ For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. See Fla. Admin. Code R. 61G4-15.032 (2016).

⁴² Section 489.507, F.S.

⁴³ See ss. 489.113 and 489.516, F.S., respectively.

before engaging in the occupation.⁴⁴ A master septic tank contractor must have at least 3 years' experience as a registered septic tank contractor or a plumbing contractor certified under part I of ch. 489, F.S., who has provided septic tank contracting services for at least 3 years.

The CILB and the ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁴⁵ Specifically, the CILB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.⁴⁶

The CILB and the ECLB may also deny a registration application under s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a profession.⁴⁷

To be eligible for registration by the DBPR, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DBPR may consider any matter that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor, including, but not limited to:

the applicant being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting...⁴⁸ (Emphasis added.)

The DBPR may also deny a registration application under s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a profession.⁴⁹

Chapter 489, F.S., does not specifically require the DBPR, the CILB, or the ECLB to consider the passage of time since the disqualifying criminal offense before denying or granting a license or registration.

⁴⁴ Sections 489.552 and 489.553, F.S.

⁴⁵ Section 455.227(2), F.S.

⁴⁶ Sections 489.129(1)(b) and 489.553(1)(d), F.S., proving the disciplinary grounds for construction contractors and electrical contractors, respectively.

⁴⁷ See s 477.029(1)(h), F.S.

⁴⁸ Section 489.553(4)(a), F.S.

⁴⁹ See s 477.029(1)(h), F.S.

Certified Nursing Assistants

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.⁵⁰ In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.⁵¹

The “practice of a certified nursing assistant” means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.⁵²

The definition of “practice of a certified nursing assistant” does not restrict a person who is otherwise trained and educated from performing the tasks specified in the definition.⁵³

To be certified in Florida, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.⁵⁴

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level two background screening, or s. 408.809, F.S.⁵⁵ The background screening must be completed every 5 years following licensure, employment, or entering into contract in a capacity that requires background screening.⁵⁶

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the

⁵⁰ See s. 489.107, F.S.

⁵¹ See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited January 18, 2018) at page 13. Of the total 193,637 certified nursing assistants, 42,209 are in-state delinquent, 2,019 are out-of-state delinquent, and are active military.

⁵² Section 464.201(5), F.S.

⁵³ *Id.*

⁵⁴ Section 464.203, F.S.

⁵⁵ Section 408.809(1), F.S.

⁵⁶ Section 408.809(2), F.S.

record has not been sealed or expunged for, any of the 52 prohibited offenses.⁵⁷ The prohibited offenses include violent crimes, property crimes, and sexual offenses.⁵⁸

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.⁵⁹

A level two background screening includes fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. The DOH determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.⁶⁰

However, if the disqualifying crime committed while the applicant was a delinquent would be considered a felony if committed by an adult, and the record has not been sealed or expunged, the DOH may not grant an exemption until at least 3 years have elapsed since the applicant's completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense.⁶¹

An applicant who seeks an exemption must first pay any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.⁶²

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of *nolo contendere* or guilty to, any felony

⁵⁷ Section 435.04, F.S.

⁵⁸ See 435.04(2), F.S.

⁵⁹ See 408.809(4), F.S.

⁶⁰ Section 435.07(1)(a), F.S.

⁶¹ *Id.*

⁶² Section 435.07(1)(b), F.S.

covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.⁶³

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).⁶⁴ The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.⁶⁵

III. Effect of Proposed Changes:

Declaratory Statements

The bill amends s. 120.565, F.S., to create a new declaratory statement process that permits a person who desires to become licensed in a state-regulated profession or occupation to obtain a binding determination of whether his or her criminal conviction or sanction will prevent such licensure, registration, or certification in the profession or occupation.

A person may seek the agency's opinion prior to the person possessing the training or education required for the license, registration, or certificate in the profession or occupation.

The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to:

- The time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; and
- The petitioner's standing in his or her community.

A person may request the agency's determination while under criminal confinement or supervision.

If the agency concludes that the petitioner's criminal background is disqualifying, the declaratory statement must state whether the agency's conclusion may be reversed upon the petitioner's presentation of evidence of rehabilitation or mitigation identified by the agency in the declaratory statement at any time subsequent to the issuance of the declaratory statement.

The declaratory statement must also indicate whether any federal laws or regulations or any conditions or restrictions imposed by the court on the petitioner may impede the petitioner's licensure, registration, or certification in the profession or occupation.

Although the agency's conclusion is binding on the agency as to the petitioner, the petitioner's subsequent criminal history may form an independent basis for denial of an application for a license, registration, or certificate.

⁶³ See s. 435.07(4)(a), F.S.

⁶⁴ See s. 435.07(4)(b), F.S.

⁶⁵ See s. 435.07(4)(c), F.S.

In addition to his or her petition for declaratory statement, an agency may require the petitioner to submit a fee of not more than \$100, a certified copy of each criminal judgment rendered against the petitioner, and a complete set of fingerprints. The agency must submit the fingerprints to the FDLE for a state criminal history record check and the FDLE must forward the fingerprints to the FBI for a national criminal history record check. The petitioner is responsible for the actual cost of state and federal fingerprint processing in addition to the fee for the declaratory statement.

Licensing and Criminal Background

The bill creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the DOH.

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Certified Nursing Assistants.
- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals:
 - Electrical contractors;
 - Alarm system contractors;
 - Septic tank contractors;
 - Swimming pool and spa contractors;
 - Sheet metal contractors;
 - Roofing contractors;
 - Air-conditioning contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Underground utility and excavation contractors;
 - Solar contractors;
 - Pollutant storage systems contractor; and
 - Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The process created in the bill:

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to 7 years from the date of the criminal conviction.
- Requires each agency to identify by rule the crimes that do not impair a person's qualifications for licensure.

- Requires each agency to identify by rule the crimes that do impair a person's qualifications for licensure.
- Does not change license qualifications in current law for any of the professions, including any disqualifications in current law based on the applicant's criminal history or moral character.
- Requires the licensing agency to 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.
- Requires the Department of Corrections to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the license applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

However, as required under current law, the DOH must deny a certified nursing assistant application, if the applicant has a criminal history of more than seven years from the date of the application and the criminal history includes a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S.

Effective Date

The bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a license, registration, or certificate, must pay a filing fee not to exceed \$100 for the petition and the actual cost of state and federal processing related to the criminal background check.

However, such individuals may also forego certain unnecessary schooling, training, or application costs, depending on the agency's determination.

C. Government Sector Impact:

Government agencies that provide occupational or professional licenses may see an increase in workload related to an increase in submissions of petitions for declaratory statements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear how an agency should proceed if presented with a petition for declaratory statement as described in the bill by a petitioner whose criminal charges have not yet been resolved by a court action, settlement, or other action. It would be difficult for an agency to render an opinion based on hypothetical information.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.565, 455.213, 464.203, and 400.211.

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.