

By Senator Brandes

24-01276A-18

20181114__

1 A bill to be entitled
2 An act relating to professional regulation; amending
3 s. 120.565, F.S.; authorizing a person to seek a
4 declaratory statement from an agency as to the effect
5 of the person's criminal background on his or her
6 eligibility for certain licenses, registrations, or
7 certificates; specifying that a person may seek a
8 declaratory statement before meeting any prerequisites
9 for the license, registration, or certification;
10 requiring that an agency's conclusion in the
11 declaratory statement contain certain statements;
12 providing that the agency's conclusion is binding
13 except under certain circumstances; requiring a person
14 seeking a declaratory statement to submit certain
15 items to the agency and pay certain fees and costs;
16 providing requirements for the processing of the
17 fingerprints; requiring the petitioner to pay the
18 actual cost of processing the fingerprints; amending
19 s. 455.213, F.S.; conforming a cross-reference;
20 requiring the board to use a specified process for the
21 review of an applicant's criminal record to determine
22 the applicant's eligibility for certain licenses;
23 prohibiting the conviction of a crime before a
24 specified date from being grounds for the denial of
25 certain licenses; defining the term "conviction";
26 authorizing a person to apply for a license before his
27 or her lawful release from confinement or supervision;
28 prohibiting additional fees for an applicant confined
29 or under supervision; prohibiting the board from

24-01276A-18

20181114__

30 basing a denial of a license application solely on the
31 applicant's current confinement or supervision;
32 authorizing the board to stay the issuance of an
33 approved license under certain circumstances;
34 requiring the board to verify an applicant's release
35 with the Department of Corrections; providing
36 requirements for the appearance of certain applicants
37 at certain meetings; requiring the board to adopt
38 rules specifying how certain crimes affect an
39 applicant's eligibility for licensure; amending s.
40 464.203, F.S.; prohibiting the conviction of a crime
41 before a specified date from being grounds for the
42 denial of a certification under certain circumstances;
43 prohibiting the conviction of a crime before a
44 specified date from being grounds for the failure of a
45 background screening; defining the term "conviction";
46 authorizing a person to apply for certification before
47 his or her lawful release from confinement or
48 supervision; prohibiting additional fees for an
49 applicant confined or under supervision; prohibiting
50 the board from basing the denial of a certification
51 solely on the applicant's current confinement or
52 supervision; authorizing the board to stay the
53 issuance of an approved certificate under certain
54 circumstances; requiring the board to verify an
55 applicant's release with the Department of
56 Corrections; providing requirements for the appearance
57 of certain applicants at certain meetings; requiring
58 the board to adopt rules specifying how certain crimes

24-01276A-18

20181114__

59 may affect an applicant's eligibility for
60 certification; amending s. 400.211, F.S.; conforming a
61 cross-reference; providing an effective date.
62

63 Be It Enacted by the Legislature of the State of Florida:
64

65 Section 1. Subsection (4) is added to section 120.565,
66 Florida Statutes, to read:

67 120.565 Declaratory statement by agencies.-

68 (4) (a) Any person may seek a declaratory statement
69 regarding an agency's opinion as to the effect of the
70 petitioner's criminal background on his or her eligibility for a
71 specific occupational or professional license, registration, or
72 certificate issued by the agency based on the applicable
73 statutes and rules for the occupation or profession. The
74 petition may include mitigating factors or other information the
75 petitioner believes relevant to establish the petitioner's
76 eligibility, including, but not limited to, the time elapsed
77 since completion of or lawful release from confinement,
78 supervision, or nonmonetary condition imposed by the court for a
79 disqualifying offense, and the petitioner's standing in his or
80 her community. A person may seek a declaratory statement under
81 this subsection before attaining any education, training,
82 experience, or other prerequisites for the license,
83 registration, or certification.

84 (b) The agency's conclusion in the declaratory statement
85 must indicate whether:

86 1. The petitioner is disqualified from obtaining the
87 license, registration, or certification due to the petitioner's

24-01276A-18

20181114__

88 criminal background, regardless of the petitioner's education,
89 training, experience, or other prerequisites required for the
90 license, registration, or certification.

91 2. The petitioner is not eligible for a specified
92 occupational or professional license, registration, or
93 certification because of his or her criminal background, but
94 that the conclusion may be reversed upon the petitioner's
95 presentation of evidence of rehabilitation or mitigation
96 identified by the agency in the declaratory statement at any
97 time subsequent to the issuance of the declaratory statement.

98 3. Federal laws or regulations may impede the petitioner's
99 licensure, registration, or certification in the profession or
100 occupation.

101 4. Conditions or restrictions imposed by the court on the
102 petitioner for a disqualifying offense may impede the
103 petitioner's licensure, registration, or certification in the
104 profession or occupation.

105 (c) The agency's conclusion in the declaratory statement
106 shall be binding on the agency as to the petitioner, unless the
107 petitioner's subsequent criminal history constitutes an
108 independent basis for denial of the petitioner's application for
109 a license, registration, or certification in the profession or
110 occupation. The agency's conclusion is subject to judicial
111 review pursuant to s. 120.68.

112 (d) A person seeking a declaratory statement under this
113 subsection must submit to the agency, in addition to the
114 petition for a declaratory statement:

- 115 1. A fee set by the agency not to exceed \$100;
116 2. A certified copy of each criminal judgment rendered

24-01276A-18

20181114__

117 against the petitioner; and

118 3. A complete set of electronic fingerprints.

119 (e) The agency shall submit the fingerprints to the
120 Department of Law Enforcement for a state criminal history
121 record check and the Department of Law Enforcement shall forward
122 them to the Federal Bureau of Investigation for a national
123 criminal history record check. The agency shall review the
124 criminal history record results to determine if the petitioner
125 meets licensure, registration, or certification requirements.
126 The petitioner shall pay the actual cost of state and federal
127 processing in addition to the fee in subparagraph (d)1.

128 Section 2. Present subsections (3) through (12) of section
129 455.213, Florida Statutes, are redesignated as subsections (4)
130 through (13), respectively, subsection (2) of that section is
131 amended, and a new subsection (3) is added to that section, to
132 read:

133 455.213 General licensing provisions.—

134 (2) Before the issuance of any license, the department may
135 charge an initial license fee as determined by rule of the
136 applicable board or, if no such board exists, by rule of the
137 department. Upon receipt of the appropriate license fee, except
138 as provided in subsection (4) ~~(3)~~, the department shall issue a
139 license to any person certified by the appropriate board, or its
140 designee, or the department when there is no board, as having
141 met the applicable requirements imposed by law or rule. However,
142 an applicant who is not otherwise qualified for licensure is not
143 entitled to licensure solely based on a passing score on a
144 required examination. Upon a determination by the department
145 that it erroneously issued a license, or upon the revocation of

24-01276A-18

20181114__

146 a license by the applicable board, or by the department when
147 there is no board, the licensee must surrender his or her
148 license to the department.

149 (3) (a) Notwithstanding any other provision of law, the
150 board shall use the process in this subsection for review of an
151 applicant's criminal record to determine his or her eligibility
152 for licensure as a:

153 1. Barber under chapter 476;

154 2. Cosmetologist or cosmetology specialist under chapter
155 477; or

156 3. Any of the following construction professions under
157 chapter 489:

158 a. Air-conditioning contractor;

159 b. Electrical contractor;

160 c. Mechanical contractor;

161 d. Plumbing contractor;

162 e. Pollutant storage systems contractor;

163 f. Roofing contractor;

164 g. Septic tank contractor;

165 h. Sheet metal contractor;

166 i. Solar contractor;

167 j. Swimming pool and spa contractor;

168 k. Underground utility and excavation contractor; and

169 l. Other specialty contractors.

170 (b) A conviction for a crime more than 5 years before the
171 date of the application may not be grounds for denial of a
172 license specified in paragraph (a). For purposes of this
173 paragraph, the term "conviction" means a determination of guilt
174 that is the result of a plea or trial, regardless of whether

24-01276A-18

20181114__

175 adjudication is withheld.

176 (c)1. A person may apply for a license before his or her
177 lawful release from confinement or supervision. The department
178 may not charge an applicant an additional fee for being confined
179 or under supervision. The board may not deny an application for
180 a license solely on the basis of the applicant's current
181 confinement or supervision.

182 2. After a license application is approved, the board may
183 stay the issuance of a license until the applicant is lawfully
184 released from confinement or supervision and the applicant
185 notifies the board of such release. The board must verify the
186 applicant's release with the Department of Corrections before it
187 issues a license.

188 3. If an applicant is unable to appear in person due to his
189 or her confinement or supervision, the board must permit the
190 applicant to appear by teleconference or video conference, as
191 appropriate, at any meeting of the board or other hearing by the
192 agency concerning his or her application.

193 4. If an applicant is confined or under supervision, the
194 Department of Corrections and the board shall cooperate and
195 coordinate to facilitate the appearance of the applicant at a
196 board meeting or agency hearing in person, by teleconference, or
197 by video conference, as appropriate.

198 (d) The board shall adopt rules specifying the crimes that,
199 if committed, and regardless of adjudication, do not relate to
200 the practice of the profession or the ability to practice the
201 profession and do not constitute grounds for denial of a
202 license.

203 (e) The board shall adopt rules specifying the crimes that,

24-01276A-18

20181114__

204 if committed, and regardless of adjudication, relate to the
205 practice of the profession or the ability to practice the
206 profession and may constitute grounds for denial of a license.

207 Section 3. Present subsections (2) through (8) of section
208 464.203, Florida Statutes, are redesignated as subsections (3)
209 through (9), respectively, and a new subsection (2) is added to
210 that section, to read:

211 464.203 Certified nursing assistants; certification
212 requirement.—

213 (2) (a) 1. Except as provided in s. 435.07(4), a conviction
214 for a crime more than 7 years before the date of the application
215 may not be grounds for denial of a certificate to practice as a
216 certified nursing assistant.

217 2. Except as provided in s. 435.07(4), a conviction for a
218 crime more than 7 years before the date of the application may
219 not be grounds for failure of a required background screening.

220 3. For purposes of this paragraph, the term "conviction"
221 means a determination of guilt that is the result of a plea or
222 trial, regardless of whether adjudication is withheld.

223 (b) 1. A person may apply for a certificate to practice as a
224 certified nursing assistant before his or her lawful release
225 from confinement or supervision. The department may not charge
226 an applicant an additional fee for being confined or under
227 supervision. The board may not deny an application for a
228 certificate solely on the basis of the person's current
229 confinement or supervision.

230 2. After a certification application is approved, the board
231 may stay the issuance of a certificate until the applicant
232 notifies the board of his or her lawful release from confinement

24-01276A-18

20181114__

233 or supervision. The board must verify the applicant's release
234 with the Department of Corrections before it issues a license.

235 3. If an applicant is unable to appear in person due to his
236 or her confinement or supervision, the board must permit the
237 applicant to appear by teleconference or video conference, as
238 appropriate, at any meeting of the board or other hearing by the
239 agency concerning his or her application.

240 4. If an applicant is confined or under supervision, the
241 Department of Corrections and the board shall cooperate and
242 coordinate to facilitate the appearance of the applicant at a
243 board meeting or agency hearing in person, by teleconference, or
244 by video conference, as appropriate.

245 (d) The board shall adopt rules specifying the crimes that,
246 if committed, and regardless of adjudication, do not relate to
247 the practice of the profession or the ability to practice the
248 profession and do not constitute grounds for denial of a
249 certification.

250 (e) The board shall adopt rules specifying the crimes that,
251 if committed, and regardless of adjudication, relate to the
252 practice of the profession or the ability to practice the
253 profession and may constitute grounds for denial of a
254 certification.

255 Section 4. Subsection (4) of section 400.211, Florida
256 Statutes, is amended to read:

257 400.211 Persons employed as nursing assistants;
258 certification requirement.—

259 (4) When employed by a nursing home facility for a 12-month
260 period or longer, a nursing assistant, to maintain
261 certification, shall submit to a performance review every 12

24-01276A-18

20181114__

262 months and must receive regular inservice education based on the
263 outcome of such reviews. The inservice training must meet all of
264 the following requirements:

265 (a) Be sufficient to ensure the continuing competence of
266 nursing assistants and must meet the standard specified in s.
267 464.203(8). ~~s. 464.203(7);~~

268 (b) Include, at a minimum:

269 1. Techniques for assisting with eating and proper feeding;

270 2. Principles of adequate nutrition and hydration;

271 3. Techniques for assisting and responding to the
272 cognitively impaired resident or the resident with difficult
273 behaviors;

274 4. Techniques for caring for the resident at the end-of-
275 life; and

276 5. Recognizing changes that place a resident at risk for
277 pressure ulcers and falls. ~~;~~ ~~and~~

278 (c) Address areas of weakness as determined in nursing
279 assistant performance reviews and may address the special needs
280 of residents as determined by the nursing home facility staff.

281

282 Costs associated with this training may not be reimbursed from
283 additional Medicaid funding through interim rate adjustments.

284 Section 5. This act shall take effect July 1, 2018.