

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 Criminal Justice

BILL: CS/CS/SB 1012

INTRODUCER: Criminal Justice Committee; Regulated Industries Committee; and Senator Calatayud

SUBJECT: Use of Criminal History in Licensing

DATE: February 8, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1012 amends s. 112.011, F.S., to revise the procedures and criteria that state agencies must follow and consider before denying a license, permit, or certification to a person previously convicted of a crime.

The bill includes definitions for the terms conviction and fiduciary duty. The bill specifies that a person may not be denied a license, permit, or certification by reason of the person's arrest if not followed by a conviction. However, if a person has pending criminal charges, that may serve as the basis of a denial of a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business, a state agency may defer its decision on the person's application for a license, permit, or certification pending resolution of the criminal charges.

Section 112.011(2), F.S., specifies that a person may be denied a license, permit, or certification based on a prior conviction if *all* of the following apply:

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

- A felony or first-degree misdemeanor for which the person was not incarcerated, and he or she was convicted less than three years before a state agency began considering his or her application for the license, permit, or certification; or
- A felony or first-degree misdemeanor for which the person was incarcerated, and his or her incarceration ended less than three years before a state agency began considering his or her application for the license, permit, or certification.
- The conviction directly and specifically relates to the duties and responsibilities of the occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought.
- Granting the license, permit, or certification pose a direct and substantial risk to public safety.

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

The bill specifies that a state agency must provide written notice to the applicant on the issuance or denial of a license, permit, or certificate application.

The bill specifies that a person can apply for a license, permit or certification at any time including while in confinement, under supervision, or before obtaining the required qualifications for the license, permit, or certification. The applicant must include a record of his or her prior conviction for a crime and must authorize the state agency to obtain such record.

The bill provides timeframes for a state agency to keep records relating to the review and approval or denial for 7 years unless a longer timeframe is required by law. For a person who submits an application while in confinement or prior to completing the requirements for approval, a fee may be charged by the state agency to offset costs. The bill provides that upon review by the state agency, if the agency determines that a person is not disqualified for a license, permit, or certification, the decision is binding on the state agency in any later ruling on the person's formal application unless the information contained in the petition is found to be inaccurate or incomplete, or the person is subsequently convicted of a crime. If the state agency determines that a person is disqualified for a license, permit, or certification, the bill requires the agency to advise the person of any action that may be taken to remedy disqualification and set a deadline for such remedial measures to be taken.

The bill deletes the criminal record disqualification for:

- Deputy pilot certification by the Board of Pilot Commissioners within the Department of Business and Professional Regulation (DBPR).
- Being employed as a manager, person in charge, or bartender for an alcoholic beverages vendor if the person has been convicted in the past five years of any felony in Florida, any other state, or the United States.
- Licensure issued under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives, and registration as a health insurance exchange navigator.

- Licensure as a bail bond agent's license.

The fiscal impact for potential applicants utilizing this process is indeterminate at this time. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Licensing Determinations and Criminal History

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony¹ or first-degree misdemeanor² 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.³ 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.⁴

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

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

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

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

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

⁴ Section 112.011(1)(c), F.S.

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

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

- Registration as a health insurance exchange navigator;⁷
- Licensure as a bail bond agent;⁸
- A law enforcement or correctional agency;⁹
- The employment practices of any fire department relating to the hiring of firefighters¹⁰; and
- The employment practices of any county or municipality relating to the hiring of personnel for positions deemed to be critical to security or public safety pursuant to ss. 125.5801 and 166.0442, F.S.¹¹

Jim King Keep Florida Working Act 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

Licensure

The Florida Department of Business and Professional Regulation (DBPR), has 11 divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.¹² The DBPR has fifteen boards and programs within the Division of Professions, two boards exist within the Division of Real Estate, and one board exists in the Division of Certified Public Accounting.

Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the

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

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

⁹ Section 112.011(2)(a), F.S.

¹⁰ Section 112.011(2)(b), F.S.

¹¹ Section 112.011(2)(c), F.S.

¹² Section 20.165, F.S.

required revenue to implement the regulatory laws affecting the profession. These professionals include: architects and interior designers, asbestos consultants and contractors, athlete agents, auctioneers, barbers, building code administrators and inspectors, community association managers, the construction industry, cosmetologists, electrical contractors, employee leasing companies, geologists, harbor pilots, home inspectors, landscape architects, mold related services, talent agencies, and veterinarians. 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. 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, 357,039 active licensees in the Division of Real Estate, 786,178 active licensees in the Division of Professions, and 67, 827 active licensees under the Board of Professional Engineers.¹³

Denial of Professional Licensure - DBPR

Chapter 455, F.S., provides procedural and administrative framework for the regulation of professionals by the DBPR, and boards housed in the DBPR, including the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹⁴

The DBPR may regulate professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹⁵ 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.¹⁶

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.¹⁷

The DBPR or a pertinent regulatory board may deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession’s practice act.¹⁸ Specifically, the DBPR or regulatory board may deny a licensure application for any person who was:

¹³ 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*, <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf> (last visited Jan. 30, 2024).

¹⁴ See ss. 455.01(6) and 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹⁵ Section 455.201(2), F.S.

¹⁶ Section 455.201(2), F.S.

¹⁷ Section 455.201(4)(b), F.S.

¹⁸ Section 455.227(2), F.S.

...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.¹⁹ (Emphasis added.)

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

Licensing and Criminal Background for Certain Professions

However, in 2019, the Legislature created a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR.²⁰ The process applies to:

- Barbers;
- Cosmetologists and cosmetology specialists;
- Construction professionals, including:
 - Air-conditioning contractors;
 - Electrical contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Pollutant storage systems contractors;
 - Roofing contractors;
 - Sheet metal contractors;
 - Solar contractors;
 - Swimming pool and spa contractors;
 - Underground utility and excavation contractors; and
 - Other specialty contractors; and
- Any other profession for which the DBPR issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as a vocational training or through an industry certification program.²¹

Under this process, an inmate may apply for a license before he or she is lawfully released from confinement or supervision.²² The application may not be denied solely on the basis of the applicant's current confinement or supervision.

The DBPR may not deny a license for one of the above-listed occupations based on a conviction for a crime more than five years before the date of application.²³ However, a board may deny a license if the applicant's criminal history includes a crime listed in s. 775.21(4)(a)1., F.S., relating to sexual predator crimes, or s. 776.08, F.S., relating to forcible felonies, if such criminal history relates to the practice of the applicable profession.²⁴ A regulatory board may also

¹⁹ Section 455.227(1)(c), F.S.

²⁰ Chapter 2019-167, Laws of Fla., codified at s. 455.213(3), F.S.

²¹ Section 455.213(3)(a), F.S.

²² Section 455.213.(3)(c), F.S.

²³ Section 455.213(3)(b)1., F.S. "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

²⁴ *Id.*

consider the criminal history of an applicant if such criminal history is found to relate to good moral character.²⁵

Additionally, a board must:

- Permit a person to apply for a license while under criminal confinement (incarceration) or supervision;²⁶
- Compile a list of crimes by rule that do not impair a person's qualifications for licensure;²⁷
- Compile a list of crimes that have been used in the past two years as the basis for a license denial;²⁸ and
- Permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.²⁹

The DBPR or a board may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of ch. 455, F.S., or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.³⁰

License Qualifications Based on Moral Character

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

- Boxing, kickboxing and mixed martial arts issued by the Florida Athletic Commission;³¹
- Construction contracting issued by the Construction Industry Licensing Board;³²
- Electrical contracting issued by the Electrical Contractors' Board;³³
- Athlete agents issued by the DBPR;³⁴
- Building code administrators and inspectors issued by the Florida Building Code Administrators and Inspectors Board;³⁵

²⁵ Section 455.213(3)(b)2., F.S.

²⁶ Section 455.213(3)(c), F.S.

²⁷ Section 455.213(3)(d), F.S.

²⁸ Section 455.213(3)(e), F.S.

²⁹ Section 455.213(5), F.S.

³⁰ Section 455.213(4), F.S.

³¹ 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.

³² 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.

³³ Section 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.

³⁴ Section 468.453(2)(b), F.S.

³⁵ Section 468.609(3)(b), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

- Certified public Accountants issued by the Board of Accountancy;³⁶
- Engineer issued by the Board of Professional Engineers;³⁷ and
- Mold-related services issued by the DBPR.³⁸

License Qualifications Based on Criminal History Related to the Profession

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

- Architecture issued by the Board of Architecture and Interior Design;³⁹
- Asbestos contracting and consulting issued by the DBPR;⁴⁰
- Auctioneering issued by the Florida Board of Auctioneers;⁴¹
- Barbering issued by the Barbers' Board;⁴²
- Community association management issued by the Regulatory Council of Community Association Managers;⁴³
- Professional geology issued by the Board of Professional Geologists;⁴⁴
- Home inspection issued by the DBPR;⁴⁵
- Landscape architecture issued by the Board of Landscape Architecture;⁴⁶
- Real estate brokers and agents issued by the Florida Real Estate Commission;⁴⁷ and
- Veterinary medicine issued by the Board of Veterinary Medicine.⁴⁸

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

Section 455.227(1)(c), F.S., authorizes a board, or the DBPR if there is no board for the profession, to take disciplinary action against a licensee if the person is convicted or found guilty 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.⁴⁹

Disciplinary action includes refusal to certify, or to certify with restrictions, an application for a license and suspension or permanent revocation of a license.⁵⁰

³⁶ Section 473.308(5) and (6), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

³⁷ Section 471.013(2)(a), F.S.

³⁸ Section 468.8414(3), F.S.

³⁹ Section 481.225(1)(d), F.S.

⁴⁰ Section 469.009(1)(g), F.S.

⁴¹ Section 468.389(1)(l), F.S.

⁴² Section 476.144(6)(a)2.b., F.S., provides that the qualifications for a barber license include having no disciplinary history related to barbering for five years.

⁴³ Section 468.436(2)(b), F.S.

⁴⁴ Section 492.113(1)(d), F.S.

⁴⁵ Section 468.832(1)(d), F.S.

⁴⁶ Section 481.325(1)(d), F.S.

⁴⁷ Section 475.25(1)(f), F.S.

⁴⁸ Sections 474.214(1)(c), (p) and (2), F.S., authorize the Board of Veterinary Medicine to deny a license application based on criminal history, including conviction on a charge of cruelty to animals.

⁴⁹ Section 455.227(2), F.S.

⁵⁰ *Id.*

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

- Barbers;⁵¹
- Engineers issued by the Board of Professional Engineers;⁵²
- Professional geologists;⁵³
- Home inspectors;⁵⁴
- Mold-related service providers; and⁵⁵
- Real estate brokers and agents.⁵⁶

A license to engage in a regulated activity may require that persons with an interest in the business not have a criminal record or have good moral character. For example, an alcoholic beverages license may not be issued to any person, including persons who have a direct or indirect interest in the license or business, who does not evidence good moral character, and:⁵⁷

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

Persons with certain criminal records are also disqualified from having an occupational license to be employed at a racetrack and jai alai fronton,⁵⁸ and are disqualified from holding a horseracing, greyhound, or jai alai permit.⁵⁹

Department of Health

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been “convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state”⁶⁰ or related to certain types of fraud,⁶¹ or for other reasons in the applicable practice act.

⁵¹ Section 476.204(1)(h), F.S.

⁵² Section 471.033(1)(a), F.S.

⁵³ Section 492.113(1)(d), F.S.

⁵⁴ Section 468.832(1)(a), F.S.

⁵⁵ Section 468.842(1)(a), F.S.

⁵⁶ Section 475.25(1)(f), F.S.

⁵⁷ Sections 561.15, F.S.

⁵⁸ Section 550.105(2), F.S.

⁵⁹ Section 550.1815, F.S.

⁶⁰ Sections 456.024(3)(c); 456.072(1)(c), (x), (ii) and (ll); and 456.071(2)(a), F.S.

⁶¹ Section 456.0635, F.S.

For example, certified nursing assistants may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery,⁶² and pass an employment screening under ch. 435, F.S., which provides a listing of disqualifying crimes.

Other State Licenses

In addition to the licenses referenced above, it is common to disqualify a person from a license to engage in a profession, occupation, or business activity on the basis of a criminal record. For example, a license to engage in the manufacture, compounding, combining, production, or distribution, dealing, or use of explosives may be denied if the person has been convicted of a felony.⁶³

Administrative Procedures Act

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

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

An agency must approve or deny a license application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57, F.S.⁶⁴ Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.

Section 120.60(3), F.S., requires an agency to give a written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived by the applicant, a copy of the notice

⁶² See s. 408.809(4), F.S.

⁶³ Section 552.094, F.S.

⁶⁴ Section 120.569 F.S., provides the administrative process for all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under the mediation process in s. 120.573, F.S., or the summary hearing process in s. 120.574, F.S. Section 120.57, F.S., provides additional procedures for matters involving disputed issues of material fact before an administrative law judge assigned by the Division of Administrative Hearings.

must be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, and inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57, F.S., or judicial review pursuant to s. 120.68, F.S., which may be available. The notice must also indicate the procedure that must be followed, and state the applicable time limits. The issuing agency must certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

III. Effect of Proposed Changes:

Chapter 112, F.S.

The bill revises the basis for disqualifying a person for a license based on a person's criminal history under s. 112.011, F.S. The bill amends s. 112.011(1), F.S., to define "conviction" and "fiduciary duty." The term "conviction" means a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld, under the laws of this state or another state. The term "fiduciary duty" means a duty to act for someone else's benefit while subordinating one's personal interest to that of the other person.

The bill specifies that a person may not be denied a license, permit, or certification by reason of the person's arrest if not followed by a conviction. However, if a person has pending criminal charges, that may serve as the basis of a denial of a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business, a state agency may defer its decision on the person's application for a license, permit, or certification pending resolution of the criminal charges.

Section. 112.011(2), F.S., specifies that a person may be denied a license, permit, or certification based on a prior conviction if all of the following apply:

- The crime was:
 - A forcible felony as defined in s. 776.08, F.S.;
 - An offense involving a breach of fiduciary duty;
 - An offense for a fraudulent practice under ch. 817, F.S., relating to fraudulent practices, or a substantially similar offense under the laws of another state;
 - A felony or first-degree misdemeanor for which the person was not incarcerated, and he or she was convicted less than three years before a state agency began considering his or her application for the license, permit, or certification; or
 - A felony or first-degree misdemeanor for which the person was incarcerated, and his or her incarceration ended less than three years before a state agency began considering his or her application for the license, permit, or certification.
- The conviction directly and specifically relates to the duties and responsibilities of the occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought.
- Granting the license, permit, or certification pose a direct and substantial risk to public safety.

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

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

The bill amends s. 112.011(1), F.S., to allow a person with a prior conviction for a crime to petition a state agency at any time, including while in confinement, while under supervision, or before obtaining any required personal qualifications for a license, permit, or certification, for a decision as to whether the person's prior conviction for a crime would disqualify him or her from obtaining the license, permit, or certification. The petition must include a record of his or her prior conviction for a crime or must authorize the state agency to obtain such record. The bill provides timeframes for a state agency to keep records relating to the review and approval or denial for 7 years unless a longer timeframe is required by law. For a person who submits an application while in confinement or prior to completing the requirements for approval, a fee may be charged by the state agency to offset costs. The cost may be the fee ordinarily required by law to submit an initial application for the license, permit or certification or a portion thereof. If the person subsequently submits a completed application after obtaining the required qualifications, the fee must be credited as a non-refundable deposit toward the fee required by law.

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

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

The bill amends s. 112.0111, F.S., to require agencies that issue licenses, permits, or certifications to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business to, beginning March 1, 2025, post and maintain a report on its public website that includes the number of applicants with all of the following:

- A total number of applications received by the state agency in the previous calendar year for a license, permit or certification from applicants who had a prior conviction, or any other adjudication for a crime.
- Out of the number of applications received, the number of times that the state agency denied, withheld, or refused to grant an application because of an applicant's prior conviction, or any other adjudication, of a crime. The report must also specify the crimes on which each decision to deny, withhold, or refuse to grant an application for a license, permit, or certification was based.
- Out of the number of applications received, the number of times the state granted an application in which the applicant had a prior conviction, or any other adjudication, of a crime. The report must also specify the crimes in such applications which were not used as a basis for denial.

Chapter 120, F.S.

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

- State with particularity the grounds or the basis for the agency's intention to deny the license.
- Inform the recipient that, before the denial becomes final, he or she may provide a rebuttal with additional evidence of circumstances or rehabilitation, including written support provided by character witnesses.
- Allow the applicant at least 30 days to provide a rebuttal before issuing a decision on the application for license.
- Be delivered or mailed to each party's attorney of record, if applicable, and to each person who has made a written request for notice of agency action. The agency must certify the date the notice was delivered or mailed, and the notice and the certification must be filed with the agency clerk.

Within 60 days after the deadline for submitting a rebuttal, the agency must provide written notification of its decision on the application for license. If the agency denies or intends to deny the application for license, the agency must specify the clear and convincing evidence on which the agency based its determination. The state agency's decision is administratively reviewable pursuant to ss. 120.569⁶⁵ and 120.57, F.S.,⁶⁶ and judicially reviewable pursuant to s. 120.68, F.S. The notification must indicate the procedure and applicable time limits that must be followed to seek administrative review, and must state the earliest date that the applicant may submit another application for license. A copy of the notice must be delivered or mailed to each party's attorney

⁶⁵ Section 120.569, F.S., provides the administrative procedures for proceeding in which the substantial interests of a party are determined by an agency.

⁶⁶ Section 120.57, F.S., provides the administrative procedure for hearings before the Division of Administrative Hearings in which there are disputed issues of material fact.

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

The state agency must give the applicant 21 days to withdraw the application from consideration and such action may not be considered as an adverse regulatory action in any future application.

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

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

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

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

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

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, persons with a prior conviction, may petition an agency to determine if their prior conviction is disqualifying for a license, permit, or certification.

C. Government Sector Impact:

State agencies may see costs related to responding to petitions offset by the application fee requirement for those persons with a prior conviction, who petition an agency to determine if their prior conviction is disqualifying for a license, permit, or certification.⁶⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 112.011(1)(g), F.S., permits a person with a prior conviction to petition an agency to determine if their prior conviction is disqualifying for a license, permit, or certification. The FDLE expressed the concern that requiring state agencies to give an advisory opinion on a person's eligibility prior to an application may be binding on the agency and could "result in substantial litigation over what was actually known by the state agency at the time of the advisory opinion." The DFS expressed the concern that a response to the petition may involve giving legal advice to prospective applicants.⁶⁸

The DFS states that it makes license eligibility determination for over 177,000 license applications each year and that approximately 15 percent of those applicants have a criminal record. The DFS also expressed the concern that requiring an agency to determine whether a person with a criminal record has been rehabilitated may produce more subjective licensing decisions than required under current law. Currently, the DFS states, such subject subjective decisions occur in only limited situations.⁶⁹

⁶⁷ *Id.*

⁶⁸ Department of Law Enforcement, *2024 Agency Legislative Bill Analysis for SB 1012* (Jan. 16, 2024) (on file with the Senate Criminal Justice).

⁶⁹ *Supra*, note 68.

VIII. Statutes Affected:

This bill substantially amends section 112.011 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal Justice on February 6, 2024:

The committee substitute:

- Defines terms and provides specific criteria for the denial of a license, permit, or certification.
- Allows individuals to submit an application to a state agency before obtaining the necessary qualifications to determine if they qualify for the license, permit, or certification sought.
- Provides state agencies keep records of applicants for 7 years unless prescribed by law and allows agencies to charge fees for the application.

CS by Regulated Industries on January 22, 2024:

The committee substitute deletes all of the provisions in the bill except for the following provisions. The bill authorizes a convicted person to petition a state agency at any time for a decision as to whether the person's prior conviction would disqualify him or her from obtaining the license, permit, or certification. The record of the prior conviction or authorization to obtain the record must be included in the petition. If the person is qualified for the license, the decision is binding on the state agency determination of the person's formal application. If disqualified, the agency must tell the person how to remedy the disqualification. A person may submit a revised petition before the deadline set by the agency in its final decision on the petition, otherwise, no new petition may be submitted for one year after the final decision.

- B. **Amendments:**

None.