

**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 Governmental Operations Committee

BILL: SB 922

INTRODUCER: Senator Wilson

SUBJECT: Employment of Ex-Offenders

DATE: February 5, 2008      REVISED: 03/11/08      03/13/08      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	<b>Fav/1 amendment</b>
2.			RI	
3.			CJ	
4.			GA	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input checked="" type="checkbox"/> | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill requires that state agencies submit biennial reports to the Legislature detailing all laws, rules, policies, and practices that disqualify ex-offenders from employment or licensing, to include documentation that such restrictions are in writing and available to applicants. The report must also include proposals for removing non-statutory barriers to the employment of ex-offenders, and proposals for consistent barriers across jobs that are similar and require nearly identical degrees of trustworthiness and responsibility.

This bill creates an unnumbered section of the Florida Statutes.

**II. Present Situation:**

State agencies restrict occupational licenses and employment to ex-offenders based upon statute, administrative rule, or agency policy. The nature and variety of occupational licenses and employment with state agencies dictates that different standards will apply to different types of employees and licensees.

Restrictions based on agency policy that are not adopted as rules could be problematic. Chapter 120, F.S., specifies that a “rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.<sup>1</sup> Rulemaking is not a matter of agency discretion - each agency statement defined as a rule must be adopted by the rulemaking procedure provided in ch. 120, F.S., as soon as feasible and practicable.<sup>2</sup> If agencies are imposing employment or licensing restrictions on applicants that are not based on statute or rules adopted pursuant to statutory authority, those policies amount to unadopted rules.

The Governor’s Ex-Offender Task Force (Task Force) was established in 2005 to “help improve the effectiveness of the State of Florida in facilitating the re-entry of ex-offenders into their communities so as to reduce the incidence of recidivism.”<sup>3</sup> After the Task Force found that many state laws and policies imposed restrictions on the employment of ex-offenders, and that no comprehensive review of those restrictions had been undertaken, executive agencies were instructed to produce for the Task Force a report detailing all employment restrictions and disqualifications based on criminal records.<sup>4</sup> The Task Force released its Final Report to the Governor in November 2006, and recommended that employment restrictions be studied, specifically the “feasibility of a single background check act that would streamline, organize, and cohere employment restrictions based on the nature of the job.”

In October 2007, the Governor’s Office made a presentation to the Senate Criminal Justice Committee addressing licensing and employment restrictions, based on surveys of non-Cabinet agencies. Nine agencies reported licensing restrictions, citing criminal history or restoration of civil rights as the legal basis for the restrictions. The presentation noted that pursuant to s. 112.011, F.S., an agency *may* deny employment by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and *directly related* to the position of employment sought.

### **Statutory Restrictions on Hiring**

Pursuant to s. 112.011(1)(a), F.S., a person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime, except for those drug offenses specified in s. 775.16, F.S. However, a person may be denied employment by those entities by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought. Specific restrictions for licenses and employment are found throughout the Florida Statutes, as detailed in the Governor’s Survey of License and Employment Restrictions in State Agencies, presented to the Senate Criminal Justice Committee in October 2007.

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<sup>1</sup> Section 120.52(15), F.S.

<sup>2</sup> Section 120.54(1)(a), F.S.

<sup>3</sup> Executive Order No. 05-28.

<sup>4</sup> Executive Order No. 06-89.

### **III. Effect of Proposed Changes:**

The bill declares that it is the policy of the state to provide to prospective employees a clear statement of which crimes disqualify ex-offenders from which occupations, and that state agencies clearly state all restrictions applicable to the regulation of professions and occupations.

The bill requires all state agencies, including professional and regulatory boards, to submit by December 31, 2008, to the President of the Senate, Speaker of the House, and appropriate legislative committees, a report that contains the following:

- A list of all laws, rules, policies, and practices used by an agency or board to disqualify an ex-offender from employment.
- Conclusions resulting from a review of the above laws, rules, policies, and procedures, including whether each is stated in writing and available to an applicant, and a statement of less restrictive ways to protect the public while providing employment opportunities to ex-offenders.
- Proposed alternative wording to more precisely describe the basis for a denial of employment, if a restriction is based on a standard of good moral character, crimes or acts of moral turpitude, or crimes related to a specific occupation.
- Proposed ways of removing “unnecessary” barriers to the employment of ex-offenders which are not statutorily mandated.
- Proposed statutory amendments that would reduce “undesirable” barriers to employment, render remaining barriers consistent among jobs with similar characteristics, and improve the clarity of requirements applicable to an ex-offender seeking employment with a state agency or in an occupation regulated by a state board.

The bill requires that state agencies submit the above report biennially by December 31 of each odd-numbered year, beginning in 2011. The bill will take effect July 1, 2008.

### **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:**

None.

**C. Government Sector Impact:**

Indeterminate agency costs associated with compiling the data required by the biennial reporting.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires that agencies identify “unnecessary” and “undesirable” barriers, but does not define those terms. The Legislature sets policy by statute, which the executive branch then executes. The undefined terms may need to be defined to offer sufficient specificity so that they are not unconstitutional delegations of the Legislature’s policy-setting role.

There are a number of uncertainties associated with estimating the effects of this bill. The Task Force report did not report any survey results from the state university system. The eleven institutions which comprise this system are major public employers that were formerly classified as state agencies. Their new status, for funding purposes as non-state agencies budgeted under the category "Aid to Local Governments" for the Division of Universities, makes it unclear whether there would be any uneven effect given to subsequent recommendations flowing from this bill.

This matter is complicated further by litigation attempting to allocate the respective duties between the legislative branch and the Board of Governors on the jurisdiction of each stemming from the enactment of s. 7(c), Art. IX, State Constitution.

Restrictions on public employment are extended to the universities in s. 1001.74 (5)(c), F.S., but in other sections of that chapter only selective application of other statutes are referenced. The ability of non-state agencies, or state agencies, to come into compliance with any subsequent restrictions or forgiveness may be affected by how such employer workforces are recognized in law. Employment would imply the invocation of such restrictions. But engagement through independent contractor relationships or as employees of contract vendors may not. As state government increasingly relies upon the use of indirect workforces, greater precision will have to be devoted to the important nuances of employment restrictions that reference prior behaviors.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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B. Amendments:

**Barcode 823336 by Governmental Operations on March 13, 2008:**

The amendment changes the intent paragraph so that agencies must state all employment restrictions, not just those that apply to persons who have committed crimes and have paid their debt to society. The amendment also deletes the undefined words “unnecessary” and “undesirable” in the reporting provisions.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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