

1 A bill to be entitled
2 An act relating to disqualification from licensing,
3 permitting, or certification based on criminal
4 conviction; amending s. 112.011, F.S.; providing
5 definitions; prohibiting the denial of an application
6 for a license, permit, or certification because an
7 applicant was arrested, but not convicted, for a
8 crime; providing that an application for a license,
9 permit, or certification may only be denied based on
10 the applicant's prior conviction of a crime under
11 certain circumstances; requiring a state agency to
12 consider certain factors in determining whether an
13 applicant for a license, permit, or certification has
14 been rehabilitated; requiring a state agency to follow
15 certain procedures if it is denying an application for
16 a license, permit, or certification based on the
17 applicant's prior conviction; authorizing a person
18 with a prior conviction to petition a state agency at
19 any time for a determination as to whether the person
20 is disqualified from obtaining a license, permit, or
21 certification; providing requirements for a state
22 agency in making such determination; authorizing a
23 person to submit a new petition after a specified
24 time; prohibiting the use of certain terms by a state
25 agency; amending s. 112.0111, F.S.; revising

26 legislative intent; revising state agency reporting
 27 requirements; amending s. 120.60, F.S.; requiring an
 28 agency to provide certain written notice to an
 29 applicant for licensure; providing requirements for
 30 such written notice; authorizing an applicant to
 31 provide a rebuttal within a certain time period;
 32 requiring an agency to make a decision on an
 33 application for licensure within a certain time frame
 34 and provide certain written notice to the applicant;
 35 providing that an agency decision is administratively
 36 and judicially reviewable; requiring copies of certain
 37 notices to be mailed or delivered to certain persons;
 38 requiring an agency to certify the date certain
 39 notices are mailed or delivered and file the same with
 40 the agency clerk; amending ss. 310.071 455.213,
 41 626.207, 626.9954, and 648.34, F.S.; conforming
 42 provisions to changes made by the act; providing an
 43 effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Subsections (1), (2), and (3) of section
 48 112.011, Florida Statutes, are renumbered as subsections (3),
 49 (4), and (5), respectively, present subsection (1) of that
 50 section is amended, and new subsections (1) and (2) are added to

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51 that section, to read:

52 112.011 Disqualification from licensing, permitting, or
53 certification and public employment based on criminal
54 conviction.—

55 (1) For purposes of this section, the term:

56 (a) "Conviction" means a determination of guilt that is
57 the result of a plea or trial, regardless of whether
58 adjudication is withheld, under either the laws of this state or
59 another jurisdiction.

60 (b) "Fiduciary duty" means a duty to act for someone
61 else's benefit while subordinating one's personal interest to
62 that of the other person.

63 (2) Notwithstanding any other law, a person may not be
64 denied a license, permit, or certification to pursue, practice,
65 or engage in an occupation, trade, vocation, profession, or
66 business by reason of the person's arrest for a crime which is
67 not followed by a conviction. However, if a person has criminal
68 charges pending that may serve as a basis for denial of a
69 license, permit, or certification to pursue, practice, or engage
70 in an occupation, trade, vocation, profession, or business under
71 paragraph (4) (a), a state agency may defer its decision on the
72 person's application for a license, permit, or certification
73 pending the resolution of the criminal charges.

74 (3)-(1)(a) Except as provided in s. 775.16, a person may
75 not be disqualified from employment by the state, any of its

76 agencies or political subdivisions, or any municipality solely
 77 because of a prior conviction for a crime. However, a person may
 78 be denied employment by the state, any of its agencies or
 79 political subdivisions, or any municipality by reason of the
 80 prior conviction for a crime if the crime was a felony or first-
 81 degree misdemeanor and directly related to the position of
 82 employment sought.

83 (4) (a) (b) Notwithstanding any other law ~~Except as provided~~
 84 ~~in s. 775.16,~~ a person may be denied a license, permit, or
 85 certification to pursue, practice, or engage in an occupation,
 86 trade, vocation, profession, or business by reason of the prior
 87 conviction for a crime only if all of the following apply:

88 1. The crime was:

89 a. A felony or first-degree misdemeanor for which the
 90 person was not incarcerated for the offense and was convicted
 91 less than 3 years before a state agency considers his or her
 92 application for a license, permit, or certification;

93 b. A forcible felony as defined in s. 776.08;

94 c. An offense involving a breach of a fiduciary duty;

95 d. An offense for a fraudulent practice under chapter 817
 96 or a substantially similar offense under the laws of another
 97 jurisdiction; or

98 e. A felony or first-degree misdemeanor for which the
 99 person was incarcerated for the offense and his or her
 100 incarceration ended less than 3 years before a state agency

101 considers his or her application for a license, permit, or
 102 certification.

103 2. The conviction directly and specifically relates to the
 104 duties and responsibilities of the occupation, trade, vocation,
 105 profession, or business for which the license, permit, or
 106 certification is sought.

107 3. Granting the license, permit, or certification would
 108 pose a direct and substantial risk to public safety because
 109 there is clear and convincing evidence that the person has not
 110 been rehabilitated to safely perform the duties and
 111 responsibilities of the ~~that is directly related to the~~
 112 ~~standards determined by the regulatory authority to be necessary~~
 113 ~~and reasonably related to the protection of the public health,~~
 114 ~~safety, and welfare for the~~ specific occupation, trade,
 115 vocation, profession, or business for which the license, permit,
 116 or certificate is sought.

117 (b)(e) Notwithstanding any law to the contrary, a state
 118 agency may not deny an application for a license, permit,
 119 certificate, or employment based solely on the applicant's lack
 120 of civil rights. However, this paragraph does not apply to
 121 applications for a license to carry a concealed weapon or
 122 firearm under chapter 790.

123 (c) In determining whether a person has or has not been
 124 rehabilitated as required under paragraph (a) in order to grant
 125 a license, permit, or certification, a state agency must

- 126 consider the person's current circumstances and mitigating
127 factors, including all of the following factors:
- 128 1. The age of the person when he or she committed the
129 offense.
 - 130 2. The amount of time that has elapsed since the person
131 committed the offense.
 - 132 3. The circumstances surrounding and the nature of the
133 offense.
 - 134 4. If the person completed his or her criminal sentence
135 and, if so, the amount of time that has passed since such
136 completion.
 - 137 5. If the person received a certificate of rehabilitation
138 or good conduct.
 - 139 6. If the person completed or is an active participant in
140 a rehabilitative drug or alcohol program.
 - 141 7. Any testimonials or recommendations, including progress
142 reports from the person's probation or parole officer.
 - 143 8. Any education and training the person has received.
 - 144 9. The person's past employment history and his or her
145 aspirations.
 - 146 10. The person's family responsibilities.
 - 147 11. If the occupation, trade, vocation, profession, or
148 business for which the person seeks employment requires him or
149 her to be bonded.
 - 150 12. Any other evidence of rehabilitation or information

151 that the person submits to the state agency.

152 (d) A state agency may deny an application for a license,
153 permit, or certification to pursue, practice, or engage in an
154 occupation, trade, vocation, profession, or business based on a
155 person's prior conviction only if the state agency provides
156 written notification to the person, in accordance with s.
157 120.60(3)(b).

158 (e)1. Notwithstanding any law to the contrary, a person
159 with a prior conviction for a crime may petition a state agency
160 at any time, including while in confinement, under supervision,
161 or before obtaining any required qualifications for a license,
162 permit, or certification, for a decision as to whether the
163 person's prior conviction will disqualify the person from
164 obtaining the license, permit, or certification. The person must
165 include in the petition a record of his or her prior convictions
166 or authorize the state agency to obtain his or her record of
167 prior convictions. In reviewing the petition, the state agency
168 must determine if granting the license, permit, or certification
169 to such person would pose a direct and substantial risk to
170 public safety because there is clear and convincing evidence
171 that the person has not been rehabilitated to safely perform the
172 duties and responsibilities of the specific occupation, trade,
173 vocation, profession, or business for which the license, permit,
174 or certification is sought. The state agency must follow the
175 requirements of s. 120.60(3)(b) when reviewing and making a

176 decision on the petition.

177 2. If a state agency determines under subparagraph 1. that
178 a person is not disqualified for a license, permit, or
179 certification, such decision is binding on the state agency in
180 any later ruling on the person's formal application for a
181 license, permit, or certification unless the information
182 contained in the petition is subsequently found to be inaccurate
183 or incomplete, or the person is subsequently convicted of a
184 crime.

185 3. If a state agency determines under subparagraph 1. that
186 a person is disqualified for a license, permit, or
187 certification, the state agency must advise the person of any
188 actions the person may take to remedy the disqualification. The
189 person may submit a revised petition reflecting completion of
190 the remedial actions before the deadline set by the state agency
191 in its final decision on the petition.

192 4. A person may not submit a new petition to the state
193 agency until at least 1 year after a final decision on the
194 initial petition is rendered or the person obtains the required
195 qualifications for the license, permit, or certification,
196 whichever is earlier.

197 (f) Notwithstanding any law to the contrary, a state
198 agency may not use vague terms such as good moral character,
199 moral turpitude, or character and fitness in its decision to
200 disqualify a person from receiving a license, permit, or

201 certification based on the person's prior conviction for a
 202 crime.

203 Section 2. Section 112.0111, Florida Statutes, is amended
 204 to read:

205 112.0111 Restrictions on the employment of ex-offenders;
 206 legislative intent; state agency reporting requirements.—

207 (1) The Legislature declares that a goal of this state is
 208 ~~to clearly identify the occupations from which ex-offenders are~~
 209 ~~disqualified based on the nature of their offenses. The~~
 210 ~~Legislature seeks to~~ make employment opportunities available to
 211 ex-offenders in a manner that preserves and protects ~~serves to~~
 212 ~~preserve and protect~~ the health, safety, and welfare of the
 213 general public, yet encourages ex-offenders ~~them~~ to become
 214 productive members of society. To this end, state agencies that
 215 exercise regulatory authority are ~~in the best position to~~
 216 ~~identify all restrictions on employment imposed by the agencies~~
 217 ~~or by boards that regulate professions and occupations and are~~
 218 obligated to protect the health, safety, and welfare of the
 219 general public by ~~clearly setting forth those restrictions in~~
 220 keeping with statutory standards and protections determined by
 221 the agencies to be in the least restrictive manner.

222 (2) Annually, each state agency, ~~including, but not~~
 223 ~~limited to,~~ those state agencies responsible for issuing
 224 licenses, permits, or certifications to pursue, practice, or
 225 engage in an occupation, trade, vocation, profession, or

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226 business must ~~professional and occupational regulatory boards,~~
227 ~~shall ensure the appropriate restrictions necessary to protect~~
228 ~~the overall health, safety, and welfare of the general public~~
229 ~~are in place, and by December 31, 2011, and every 4 years~~
230 ~~thereafter,~~ submit to the Governor, the President of the Senate,
231 and the Speaker of the House of Representatives, and post
232 publicly on its website, a report that includes all of the
233 following:

234 (a) The total number of applicants with a prior conviction
235 for a crime for a license, permit, or certification in the
236 previous year and, out of that number, the number of times the
237 state agency granted an application and the number of times it
238 denied, withheld, or refused to grant an application because of
239 the applicant's prior conviction. The report must also specify
240 the offenses for which each decision to deny, withhold, or
241 refuse to grant an application for a license, permit, or
242 certification was based ~~A list of all agency or board statutes~~
243 ~~or rules that disqualify from employment or licensure persons~~
244 ~~who have been convicted of a crime and have completed any~~
245 ~~incarceration and restitution to which they have been sentenced~~
246 ~~for such crime.~~

247 (b) The total number of applicants with a prior conviction
248 for a crime who petitioned the state agency under s.
249 112.011(2)(e) in the previous year and, out of that number, the
250 number of times the state agency approved and denied a petition.

251 The report must also specify the offenses for which each
 252 decision to approve and deny a petition was based A
 253 ~~determination of whether the disqualifying statutes or rules are~~
 254 ~~readily available to prospective employers and licensees.~~

255 (c) Any other data the state agency deems relevant in
 256 fulfilling its purpose under this section ~~The identification and~~
 257 ~~evaluation of alternatives to the disqualifying statutes or~~
 258 ~~rules which protect the health, safety, and welfare of the~~
 259 ~~general public without impeding the gainful employment of ex-~~
 260 ~~offenders.~~

261 Section 3. Subsection (3) of section 120.60, Florida
 262 Statutes, is amended to read:

263 120.60 Licensing.—

264 (3)(a) Except as provided in paragraph (b), each applicant
 265 must ~~shall~~ be given written notice, personally or by mail, that
 266 the agency intends to grant or deny, or has granted or denied,
 267 the application for license. The notice must state with
 268 particularity the grounds or basis for the issuance or denial of
 269 the license, except when issuance is a ministerial act. Unless
 270 waived, a copy of the notice must ~~shall~~ be delivered or mailed
 271 to each party's attorney of record and to each person who has
 272 made a written request for notice of agency action. Each notice
 273 must inform the recipient of the basis for the agency decision,
 274 inform the recipient of any administrative hearing pursuant to
 275 ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68

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276 | which may be available, indicate the procedure that must be
277 | followed, and state the applicable time limits. The issuing
278 | agency shall certify the date the notice was mailed or
279 | delivered, and the notice and the certification must be filed
280 | with the agency clerk.

281 | (b) If an agency intends to deny an application for
282 | licensure based on an applicant's prior conviction for a crime
283 | as provided in s. 112.011, the agency must first provide the
284 | applicant written notice, in person or by mail, of the agency's
285 | intention consistent with this paragraph.

286 | 1.a. The written notice must state with particularity the
287 | grounds or basis for the agency's intention to deny the
288 | application for licensure.

289 | b. The notice must inform the applicant that he or she
290 | may, within 30 days after receipt of such notice, provide a
291 | rebuttal with additional evidence of circumstances or
292 | rehabilitation, including written support provided by character
293 | witnesses, before the denial becomes final.

294 | c. A copy of the written notice must be delivered or
295 | mailed to each party's attorney of record, if applicable, and to
296 | each person who has made a written request for notice of agency
297 | action. The agency shall certify the date the notice was mailed
298 | or delivered and the notice and the certification must be filed
299 | with the agency clerk.

300 | 2. The agency must provide an applicant written notice of

301 its decision on the application for licensure within 60 days
 302 after the deadline for submitting a rebuttal. If the agency
 303 denies or intends to deny the application for licensure, the
 304 agency must specify the clear and convincing evidence on which
 305 the agency based its determination. The agency's decision is
 306 reviewable administratively pursuant to ss. 120.569 and 120.57
 307 and judicially pursuant to s. 120.68. The written notice must
 308 include the procedure and applicable time frames that must be
 309 followed to seek administrative review. The written notice must
 310 also state the earliest date on which the applicant may submit
 311 another application for licensure. A copy of the written notice
 312 must be delivered or mailed to each party's attorney of record,
 313 if applicable, and to each person who has made a written request
 314 for notice of agency action. The agency shall certify the date
 315 the notice was mailed or delivered and the notice and the
 316 certification must be filed with the agency clerk.

317 Section 4. Subsection (4) of section 310.071, Florida
 318 Statutes, is amended to read:

319 310.071 Deputy pilot certification.—

320 (4) The board must follow the requirements in s.
 321 112.011(4) before ~~Notwithstanding s. 112.011 or any other~~
 322 ~~provision of law relating to the restoration of civil rights, an~~
 323 ~~applicant may shall~~ be disqualified from applying for or ~~and~~
 324 ~~shall be denied a deputy pilot certificate if the applicant,~~
 325 ~~regardless of adjudication, has ever been found guilty of, or~~

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326 ~~pled guilty or nolo contendere to, a charge which was:~~

327 ~~(a) A felony or first degree misdemeanor which directly~~
328 ~~related to the navigation or operation of a vessel; or~~

329 ~~(b) A felony involving the sale of or trafficking in, or~~
330 ~~conspiracy to sell or traffic in, a controlled substance as~~
331 ~~defined by chapter 893, or an offense under the laws of any~~
332 ~~state or country which, if committed in this state, would~~
333 ~~constitute the felony of selling or trafficking in, or~~
334 ~~conspiracy to sell or traffic in, such controlled substance.~~

335 Section 5. Paragraphs (c), (d), and (e) of subsection (3)
336 of section 455.213, Florida Statutes, are redesignated as
337 paragraphs (a), (b), and (c), respectively, and present
338 paragraphs (a) and (b) of subsection (3) and subsection (11) of
339 that section are amended, to read:

340 455.213 General licensing provisions.—

341 (3) ~~(a)~~ Notwithstanding any other law, the applicable board
342 shall use the process in s. 112.011(4) ~~this subsection~~ for
343 review of an applicant's criminal record to determine his or her
344 eligibility for a license, permit, or certification. ~~licensure~~
345 ~~as:~~

346 ~~1. A barber under chapter 476;~~

347 ~~2. A cosmetologist or cosmetology specialist under chapter~~
348 ~~477;~~

349 ~~3. Any of the following construction professions under~~
350 ~~chapter 489:~~

- 351 ~~a. Air-conditioning contractor;~~
- 352 ~~b. Electrical contractor;~~
- 353 ~~c. Mechanical contractor;~~
- 354 ~~d. Plumbing contractor;~~
- 355 ~~e. Pollutant storage systems contractor;~~
- 356 ~~f. Roofing contractor;~~
- 357 ~~g. Sheet metal contractor;~~
- 358 ~~h. Solar contractor;~~
- 359 ~~i. Swimming pool and spa contractor;~~
- 360 ~~j. Underground utility and excavation contractor; or~~
- 361 ~~k. Other specialty contractors; or~~
- 362 ~~4. Any other profession for which the department issues a~~
- 363 ~~license, provided the profession is offered to inmates in any~~
- 364 ~~correctional institution or correctional facility as vocational~~
- 365 ~~training or through an industry certification program.~~

366 ~~(b)1. A conviction, or any other adjudication, for a crime~~
 367 ~~more than 5 years before the date the application is received by~~
 368 ~~the applicable board may not be grounds for denial of a license~~
 369 ~~specified in paragraph (a). For purposes of this paragraph, the~~
 370 ~~term "conviction" means a determination of guilt that is the~~
 371 ~~result of a plea or trial, regardless of whether adjudication is~~
 372 ~~withheld. This paragraph does not limit the applicable board~~
 373 ~~from considering an applicant's criminal history that includes a~~
 374 ~~crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but~~
 375 ~~only if such criminal history has been found to relate to the~~

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376 ~~practice of the applicable profession.~~

377 ~~2. The applicable board may consider the criminal history~~
378 ~~of an applicant for licensure under subparagraph (a)3. if such~~
379 ~~criminal history has been found to relate to good moral~~
380 ~~character.~~

381 (11) For any profession requiring fingerprints as part of
382 the registration, certification, or licensure process or for any
383 profession requiring a criminal history record check ~~to~~
384 ~~determine good moral character~~, the fingerprints of the
385 applicant must accompany all applications for registration,
386 certification, or licensure. The fingerprints must ~~shall~~ be
387 forwarded to the Division of Criminal Justice Information
388 Systems within the Department of Law Enforcement for processing
389 to determine whether the applicant has a criminal history
390 record. The fingerprints must ~~shall~~ also be forwarded to the
391 Federal Bureau of Investigation to determine whether the
392 applicant has a criminal history record. The information
393 obtained by the processing of the fingerprints by the Department
394 of Law Enforcement and the Federal Bureau of Investigation must
395 ~~shall~~ be sent to the department to determine whether the
396 applicant is statutorily qualified for registration,
397 certification, or licensure.

398 Section 6. Subsection (9) of section 626.207, Florida
399 Statutes, is amended to read:

400 626.207 Disqualification of applicants and licensees;

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401 penalties against licensees; rulemaking authority.-

402 (9) Section 112.011(4) applies ~~112.011 does not apply~~ to
 403 any applicants for licensure under the Florida Insurance Code,
 404 including, but not limited to, agents, agencies, adjusters,
 405 adjusting firms, or customer representatives.

406 Section 7. Subsection (8) of section 626.9954, Florida
 407 Statutes, is amended to read:

408 626.9954 Disqualification from registration.-

409 (8) Section 112.011(4) applies ~~112.011 does not apply~~ to
 410 an applicant for registration as a navigator.

411 Section 8. Subsection (7) of section 648.34, Florida
 412 Statutes, is amended to read:

413 648.34 Bail bond agents; qualifications.-

414 (7) Section 112.011(4) applies ~~The provisions of s.~~
 415 ~~112.011 do not apply~~ to bail bond agents or to applicants for
 416 licensure as bail bond agents.

417 Section 9. This act shall take effect July 1, 2024.