

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SSC 08-11

Disqualifications for Employment

SPONSOR(S):

Safety & Security Council

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Safety & Security Council		Cunningham	Havlicak
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The civil rights of a convicted felon, such as the right to vote, the right to serve on a jury, the right to possess a firearm, and the right to hold public office, are suspended until restored by pardon or restoration of civil rights.

Section 112.011(1)(b), F.S., provides that persons whose civil rights have been restored shall not be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. The statute creates an exception in that persons whose civil rights have been restored may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction for a crime if the crime was a felony or 1st degree misdemeanor and directly related to the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

PCB 08-11 amends s. 112.011(1)(b), F.S., to provide that any person may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of a prior conviction for a crime if the crime was a felony or a 1st degree misdemeanor directly related to or relevant to the standards normally associated with, or determined by the regulatory authority to be necessary for the protection of the public or other parties with relationships with, the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

Additionally, the PCB creates s. 112.011(1)(c), F.S., which provides the following:

(c) Notwithstanding any law to the contrary, the status of a person's civil rights may not be considered a disqualification or grounds for denial of a license, permit, or certificate, or public employment. A person is not required to secure the restoration of his or her civil rights or prove that his or her civil rights have been restored in order to be considered for a license, permit, or certificate, or to be considered for public employment.

This bill does not appear to have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty - The PCB provides that a person is not required to secure the restoration of his or her civil rights or prove that his or her civil rights have been restored in order to be considered for a license, permit, or certificate, or to be considered for public employment.

B. EFFECT OF PROPOSED CHANGES:

Restoration of Civil Rights

The civil rights of a convicted felon, such as the right to vote, the right to serve on a jury, the right to possess a firearm, and the right to hold public office, are suspended until restored¹ by pardon or restoration of civil rights.² Convicted felons are eligible for restoration of certain civil rights without a hearing upon completion of sentence or supervision if they meet certain criteria set forth in the Rules of the Clemency Board³. If not eligible for restoration of civil rights without a hearing, the felon may apply for a hearing to determine whether his or her civil rights will be restored. In certain cases, convicted felons must request a waiver of clemency rules to be eligible for consideration. The Florida Parole Commission acts as the agent of the Clemency Board in determining whether offenders and inmates are eligible for restoration of rights without a hearing, investigating applications and conducting hearings when required, and making recommendations to the Board.

In April 2007, the Governor and Cabinet changed the Rules of Executive Clemency to make more convicted felons who have completed their sentences eligible for restoration of civil rights. In the eight months since the change, almost twice as many felons have had their rights restored as in the previous year.

Restoration of Civil Rights – Licensure

Section 112.011(1)(b), F.S., provides that except as provided in s. 775.16, F.S.⁴, a person whose civil rights have been restored shall not be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime.⁵ However, the statute creates an exception in that a person whose civil rights have been restored may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction for a crime if the crime was a felony or 1st degree misdemeanor⁶ and directly related to the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

In recent years, various licensing boards have argued that the effect of s. 112.0911(1)(b), F.S., is to automatically disqualify from licensure those applicants who have not had their civil rights restored.⁷

¹ Restoration of civil rights is a form of executive clemency – a power granted by the Florida Constitution to the Governor with the consent of at least two members of the Cabinet. *See* Art. VI, s. 8(a), Fla. Const.

² Art. VI, s. 4, Fla. Const. *See also*, ss. 40.013 and 790.23, F.S.

³ The Governor and Cabinet are known as the Clemency Board.

⁴ Section 775.16, F.S., disqualifies persons convicted of certain drug offenses from state employment.

⁵ Section 112.011(2), F.S., exempts law enforcement agencies, correctional agencies, fire departments, and counties or municipalities hiring personnel for positions deemed critical to security or public safety from the provisions of subsection s. 112.001(1), F.S.

⁶ A 1st degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. *See* ss. 775.082 and 775.083, F.S.

⁷ Three District Courts of Appeal have overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. *See, e.g., Yeoman v. Construction Industry Licensing Board*, 919 So.2d 542 (Fla. 1st Dist. 2005); *Scherer v. Department of Business and Professional Regulation*, 919 So.2d 662 (Fla. 5th Dist. 2006); and *Vetter v. Department of Business and Professional Regulation, Electrical Contractors' Licensing Board*, 920 So.2d 44 (Fla. 2nd Dist. 2005).

However, courts have disagreed and have held that the statute's function is to remove prohibitions to work – it does not deny licensure to a felon whose civil rights have not been restored.⁸

According to the "Report on the Survey of License and Employment Restrictions in State Agencies, October 2007," prepared by the Public Safety Unit of the Office of Policy and Budget within the Executive Office of the Governor, the majority of licenses that were denied in the last two years were due to statutory restrictions relating to criminal convictions and not for a requirement for civil rights restoration. Last year, over 4,000 licenses were denied, but only 14 were denied due to a lack of restoration of civil rights. These denials were by the Department of Health's (DOH) Board of Nursing (12 denials)⁹ and the Department of Business and Professional Regulation's (DBPR) Construction Industry Licensing Board (2 denials).¹⁰ There is no way to estimate how many persons were deterred from applying for licensing because of an actual or perceived requirement for civil rights restoration. The EOG's review found that DOH and the Department of Highway Safety and Motor Vehicles (DHSMV) restrict some licenses based upon a requirement for restoration of civil rights.¹¹ The Department of Agriculture and Consumer Services and the Department of Financial Services have both statutorily-mandated and non-mandated requirements for restoration of civil rights.

Effect of the Bill

PCB 08-11 amends s. 112.011(1)(b), F.S., to provide that a person may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of a prior conviction for a crime if the crime was a felony or a 1st degree misdemeanor directly related to or relevant to the standards normally associated with, or determined by the regulatory authority to be necessary for the protection of the public or other parties with relationships with, the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

Additionally, the PCB creates s. 112.011(1)(c), F.S., which provides the following:

(c) Notwithstanding any law to the contrary, the status of a person's civil rights may not be considered a disqualification or grounds for denial of a license, permit, or certificate, or public employment. A person is not required to secure the restoration of his or her civil rights or prove that his or her civil rights have been restored in order to be considered for a license, permit, or certificate, or to be considered for public employment.

It should be noted that there are numerous sections of statute that require applicants for job-specific licenses, permits, and certificates to prove that their civil rights have been restored. The PCB does not repeal or remove these provisions.

C. SECTION DIRECTORY:

Section 1. Amends s. 112.011, F.S., relating to felons; removal of disqualifications for employment, exceptions.

⁸ *Scherer v. Department of Business and Professional Regulation*, 919 So.2d 662 (Fla. 5th Dist. 2006).

⁹ The Board of Nursing removed its discretionary requirement of civil rights restoration in November 2007.

¹⁰ Section 489.115, F.S., was amended by Senate Bill 404 in 2007 to provide that the Construction Industry Licensing Board cannot deny a contractor's license based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights. If the applicant was convicted of a felony, licensure denial may be based upon the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The Board is also required to consider the length of time since the commission of the crime and the rehabilitation of the applicant.

¹¹ It appears that there are also statutorily-mandated requirements for civil rights restoration related to the Department of Revenue (s. 206.026, F.S. - terminal supplier, importer, exporter, blender, carrier, terminal operator, or wholesaler fueler license); and DBPR (s. 447.03, F.S. - labor union business agent license; s. 550.1815, F.S. - horseracing, dogracing, or jai alai fronton permit).

Section 2. This bill takes effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

- #### **2. Other:** None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES