

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 Criminal Justice Committee

BILL: SPB 7048

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Disqualification for Employment

DATE: February 18, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter/Krol	Cannon		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill provides that restoration of civil rights cannot be required as a condition of eligibility for public employment or to obtain a license, permit, or certificate. Conviction of a felony or first degree misdemeanor may still be disqualifying if the offense is directly related to the job, license, permit, or certificate that is sought.

This bill substantially amends section 112.011 of the Florida Statutes.

II. Present Situation:

Section 112.011(1)(a), F.S., provides that a criminal conviction does not automatically disqualify a person from eligibility for public employment. However, a person who has been convicted of a felony or first degree misdemeanor can be denied employment if the crime is directly related to the position sought. This section does not refer to restoration of civil rights.

Section 112.011(1)(b), F.S., relates to the impact of a prior criminal conviction on obtaining a license, permit, or certificate from a public agency to engage in an occupation, trade, vocation, profession, or business. If a person has had his or her civil rights restored, the status of having a prior conviction is not disqualifying in itself. However, the conviction may be disqualifying if the specific crime for which the person was convicted was a felony or first degree misdemeanor that is directly related to the position for which the license, permit, or certificate is required. In

addition, some licensing boards have interpreted this statute to imply a requirement for restoration of civil rights.¹

Section 112.011(2), F.S., exempts counties and municipalities that are hiring for positions deemed to be critical to security or public safety, law enforcement agencies, and correctional agencies from the provisions of subsection (1). Fire departments are also prohibited from hiring firefighters with a prior felony conviction sooner than 4 years after expiration of sentence unless the applicant has been pardoned or had his or her civil rights restored.

According to the “Report on the Survey of License and Employment Restrictions in State Agencies, October 2007,” prepared by the Public Safety Unity of the Office of Policy and Budget within the Executive Office of the Governor (EOG), the overwhelming 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)² and the Department of Business and Professional Regulation’s (DBPR) Construction Industry Licensing Board (2 denials).³ 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.⁴ Outside of the Governor’s agencies, 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.

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction. Other civil rights that are lost in accordance with statute include the right to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.

¹ In the space of two months, three District Courts of Appeal overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. *See 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); *Vetter v. Department of Business and Professional Regulation, Electrical Contractors’ Licensing Board*, 920 So.2d 44 (Fla. 2nd Dist. 2005).

² The Board of Nursing removed its discretionary requirement of civil rights restoration in November 2007.

³ 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.

⁴ 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).

The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, Section 8(a), of the Florida Constitution. 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. Many offenses for which restoration of rights was either excluded or delayed for a period of years are now eligible for restoration after verification that all qualifying conditions have been met.

Eligibility for restoration of civil rights requires that the felon have completed all sentences, that all conditions of supervision have been satisfied or expired, and that there is no outstanding victim restitution. Thereafter, the felons fall into one of three categories based upon the Clemency Board's assessment of the seriousness of the offense:

- Immediately eligible for automatic approval of restoration
- Immediately eligible for restoration without a hearing
- Eligible for restoration without a hearing after 15 years

The Florida Parole Commission acts as the agent of the Clemency Board in verifying eligibility, and has prioritized processing of the automatic approval cases for which it conducts a less extensive review. A more extensive investigation is conducted for those who are immediately eligible for restoration without a hearing. Due to the large numbers of persons who are eligible for automatic approval, persons who are immediately eligible for restoration without a hearing may face a delay of several years before their rights are restored.

The Florida Department of Law Enforcement's criminal history database includes records of approximately 800,000 persons who have been convicted of a felony in Florida. This is not an accurate reflection of the number of Florida residents who have lost their civil rights, because it includes persons who have died or left the state and does not include persons who were convicted in other jurisdictions. However, it illustrates the magnitude of the population that is affected by loss of civil rights.

There were 92,884 inmates in the custody of the Florida Department of Corrections as of June 30, 2007. The Governor's Ex-Offender Task Force estimates that almost ninety percent of these inmates will be released one day, but that over a quarter of them will return to prison within 3 years. In the 2005-2006 fiscal year, 21,336 inmates were released from prison without community supervision afterward.

The Task Force estimated that almost forty percent of the 7.6 million jobs in Florida are subject to criminal background checks or restrictions based on criminal history. The restrictions include requiring restoration of civil rights, disqualification based on commission of specific crimes, or requiring the passing of a background check under Chapter 435, F.S. Less defined restrictions require assessment of whether the applicant has good moral character or has committed an act or crime of moral turpitude. The task force found that convicted felons face significant barriers to employment because of these restrictions.

III. Effect of Proposed Changes:

Section 112.011(1)(b), F.S., is rewritten to exclude any reference to restoration of civil rights. The bill retains the original language that permits a government entity to deny an application for a license, permit, or certificate to engage in an occupation, trade, vocation, profession, or business if the applicant was convicted of a felony or first degree misdemeanor that is directly related to the position for which the license, permit, or certificate is required.

Paragraph (c) is added to expressly preclude disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment on the grounds that his or her civil rights have not been restored. This applies notwithstanding any provision in another section of Florida Statutes. However, the exemptions within the section for county and municipal position deemed to be critical to security or public safety, law enforcement agencies, correctional agencies, and fire departments are retained.

The effect of these revisions to s. 112.011(1), F.S., is that the restoration of civil rights will no longer be used as a measure of fitness for public employment and licensure. This recognizes that restoration of civil rights is dependent upon completion of sentence, not upon a demonstration of rehabilitation or suitability for employment. Public safety will be increased by precluding consideration of restoration of civil rights as a validation that a person is fit for employment regardless of the specifics of his or her criminal background. In addition, otherwise qualified persons will not be blocked from employment if they have a prior conviction for a crime that is not related to the position or permit which they seek. These increased employment opportunities should have some impact in reducing recidivism, thus reducing the direct costs of crime as well as costs of reincarceration.

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:

The bill will make more qualified persons available to employers, and open more jobs and career fields to convicted felons.

C. Government Sector Impact:

It is anticipated that the bill will have minimal or no fiscal impact. Some government agencies and boards may have to reword application forms and websites.

VI. Technical Deficiencies:

On line 38, the word “the” should be stricken and replaced with “a”.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.