



HB 1777

2003

1 A bill to be entitled

2 An act relating to educator certification and discipline;
3 amending s. 1012.56, F.S.; requiring an affidavit for
4 educator certification; creating s. 1012.561, F.S.;
5 requiring each certified educator and applicant for
6 certification as an educator to notify the Bureau of
7 Educator Certification in writing of his or her current
8 mailing address; providing a penalty for noncompliance;
9 authorizing service by regular mail for certain purposes;
10 amending s. 1012.79, F.S.; revising the number of members
11 required for certain panels of the Education Practices
12 Commission; amending s. 1012.795, F.S., relating to the
13 Education Practices Commission's authority to discipline;
14 revising grounds for discipline; providing penalties;
15 amending s. 1012.796, F.S.; requiring certain agencies to
16 provide unredacted documents to the Department of
17 Education for purposes of investigating and prosecuting
18 certified educators; providing requirements for an
19 educator who is on probation; revising penalties that the
20 Education Practices Commission may impose; revising
21 criteria for the use of an order to show cause; amending
22 s. 1012.798, F.S.; revising provisions relating to the
23 recovery network program for educators; amending s.
24 943.0585, F.S.; allowing certain employers of educators to
25 have access to expunged records; amending s. 943.059,
26 F.S.; allowing certain employers of educators to have
27 access to sealed records; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30



HB 1777

2003

31 Section 1. Paragraph (b) of subsection (2) of section
 32 1012.56, Florida Statutes, is amended to read:

33 1012.56 Educator certification requirements.--

34 (2) ELIGIBILITY CRITERIA.--To be eligible to seek
 35 certification pursuant to this chapter, a person must:

36 (b) File an affidavit ~~a written statement, under oath,~~
 37 that the applicant subscribes to and will uphold the principles
 38 incorporated in the Constitution of the United States and the
 39 Constitution of the State of Florida and that the information
 40 provided in the application is true, accurate, and complete. The
 41 affidavit shall be in substantially the following form:

42
 43 Under penalty of perjury, I, (name of applicant), do hereby
 44 certify that I subscribe to and will uphold the principles
 45 incorporated in the Constitution of the United States and the
 46 Constitution of the State of Florida and that all information
 47 provided in this application is true, accurate, and complete.

48
 49 Signature or electronic authentication.

50
 51 The affidavit shall include substantially the following warning:

52
 53 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN OR RENEW A
 54 FLORIDA EDUCATOR'S CERTIFICATE IS A CRIMINAL OFFENSE UNDER
 55 FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT
 56 IS SUBJECT TO CRIMINAL PROSECUTION, AS WELL AS DISCIPLINARY
 57 ACTION BY THE EDUCATION PRACTICES COMMISSION.

58
 59 Section 2. Section 1012.561, Florida Statutes, is created
 60 to read:



HB 1777

2003

61 1012.561 Address of record.--

62 (1) Each certified educator or applicant for certification
63 as an educator is solely responsible for notifying the Bureau of
64 Educator Certification in writing of his or her current mailing
65 address and for notifying the bureau of a change of address. A
66 certified educator or applicant for certification who is
67 employed by a district school board must notify his or her
68 employing school district of a change of address in writing
69 within 10 days after the change has occurred. The employing
70 district school board must notify the bureau of the change of
71 address, in the manner prescribed by the Department of
72 Education, within 20 days after the school board receives
73 notification from the certified educator or applicant for
74 certification. A certified educator or applicant for
75 certification who is not employed by a district school board
76 must personally notify the bureau in writing of a change of
77 address within 30 days after the change has occurred. The bureau
78 shall allow electronic notification; however, the certified
79 educator or applicant for certification is responsible for
80 ensuring that the bureau has received the electronic
81 notification. Failure to notify the bureau of a change of
82 address constitutes a violation of this section, and the
83 certified educator or applicant for certification may be
84 disciplined by the Education Practices Commission as provided in
85 s. 1012.795 for such a failure.

86 (2) Notwithstanding any other provision of law to the
87 contrary, effective January 1, 2004, service by regular mail to
88 a certified educator's or applicant's last known address of
89 record with the bureau constitutes adequate and sufficient
90 notice to the certified educator or applicant of any official



HB 1777

2003

91 communication to the educator or applicant by the Department of
 92 Education, the Education Practices Commission, or the Recovery
 93 Network for Educators.

94 Section 3. Paragraph (a) of subsection (8) of section
 95 1012.79, Florida Statutes, is amended to read:

96 1012.79 Education Practices Commission; organization.--

97 (8)(a) The commission shall, from time to time, designate
 98 members of the commission to serve on panels for the purpose of
 99 reviewing and issuing final orders upon cases presented to the
 100 commission. A case concerning a complaint against a teacher
 101 shall be reviewed and a final order thereon shall be entered by
 102 a panel composed of five ~~seven~~ commission members, three ~~four~~ of
 103 whom shall be teachers. A case concerning a complaint against an
 104 administrator shall be reviewed and a final order thereon shall
 105 be entered by a panel composed of five ~~seven~~ commission members,
 106 three ~~four~~ of whom shall be administrators.

107 Section 4. Section 1012.795, Florida Statutes, is amended
 108 to read:

109 1012.795 Education Practices Commission; authority to
 110 discipline.--

111 (1) The Education Practices Commission may suspend the
 112 educator certificate of any person as defined in s. 1012.01(2)
 113 or (3) for a period of time not to exceed 5 ~~3~~ years, thereby
 114 denying that person the privilege ~~right~~ to teach or otherwise be
 115 employed in a public school in any capacity that requires direct
 116 contact with students for that period of time, after which the
 117 holder may return to teaching as provided in subsection (4); may
 118 revoke the educator certificate of any person, thereby denying
 119 that person the privilege ~~right~~ to teach or otherwise be
 120 employed in a public school in any capacity that requires direct



HB 1777

2003

121 contact with students for a period of time not to exceed 10
 122 years, with reinstatement subject to the provisions of
 123 subsection (4); may revoke permanently the educator certificate
 124 of any person, thereby denying that person the privilege to
 125 teach or otherwise be employed in a public school in any
 126 capacity that requires direct contact with students; may suspend
 127 the educator certificate, upon order of the court, of any person
 128 found to have a delinquent child support obligation; or may
 129 impose any other penalty provided by law, if provided it can be
 130 shown that the person:

131 (a) Obtained or attempted to obtain an ~~the~~ educator
 132 certificate by fraudulent means.

133 (b) Has proved to be incompetent to teach or to perform
 134 duties as an employee of the public school system or to teach in
 135 or to operate a private school.

136 (c) Has been guilty of gross immorality or an act
 137 involving moral turpitude.

138 (d) Has had an educator certificate sanctioned by ~~revoked~~
 139 ~~in~~ another state.

140 (e) Has a conviction ~~been convicted~~ of a crime in any
 141 jurisdiction ~~misdemeanor, felony, or any other criminal charge,~~
 142 other than a minor traffic violation. As used in this paragraph,
 143 the term "conviction" means a finding of guilt, a plea of
 144 guilty, a plea of nolo contendere, or entering a pretrial
 145 intervention program, whether or not there is a formal
 146 adjudication of guilt.

147 (f) Upon investigation, has been found guilty of personal
 148 conduct which seriously reduces that person's effectiveness as
 149 an employee of the district school board.

150 (g) Has breached a contract, as provided in s. 1012.33(2).



HB 1777

2003

151 (h) Has been the subject of a court order directing the
 152 Education Practices Commission to suspend the certificate as a
 153 result of a delinquent child support obligation.

154 (i) Has violated the Principles of Professional Conduct
 155 for the Education Profession prescribed by State Board of
 156 Education rules.

157 (j) Has otherwise violated the provisions of law, the
 158 penalty for which is the revocation of the educator certificate.

159 (k) Has violated any order of the Education Practices
 160 Commission.

161 (l) Has failed to maintain a current address with the
 162 Bureau of Educator Certification as required under s. 1012.561.

163 (m) Has been the subject of a court order or plea
 164 agreement in any jurisdiction which requires the
 165 certificateholder to surrender or otherwise relinquish his or
 166 her educator's certificate. Any surrender or relinquishment
 167 constitutes a permanent revocation of the certificate. A person
 168 may not surrender or otherwise relinquish his or her certificate
 169 prior to a finding of probable cause by the commissioner as
 170 provided in s. 1012.796.

171 (2) A finding of guilt, a ~~The~~ plea of guilty, or a plea of
 172 nolo contendere to any crime in any jurisdiction other than a
 173 minor traffic violation, whether or not there is a formal
 174 adjudication of guilt; entering a pretrial intervention program
 175 concerning any crime in any jurisdiction; ~~in any court, the~~
 176 decision of guilty by any court, the forfeiture by the teaching
 177 certificateholder of a bond in any court of law; ~~7~~ or the written
 178 acknowledgment, duly witnessed, of offenses listed in subsection
 179 (1) to the district school superintendent or a duly appointed
 180 representative or to the district school board constitutes ~~shall~~



HB 1777

2003

181 ~~be~~ prima facie proof of grounds for revocation of the
 182 certificate as listed in subsection (1) in the absence of proof
 183 by the certificateholder that the plea of guilty, plea of nolo
 184 contendere, entering a pretrial intervention program, forfeiture
 185 of bond, or admission of guilt was caused by threats, coercion,
 186 or fraudulent means.

187 (3) The revocation by the Education Practices Commission
 188 of an educator certificate of any person automatically revokes
 189 any and all Florida educator certificates held by that person.

190 (4)(a) An educator certificate which has been suspended
 191 under this section is automatically reinstated at the end of the
 192 suspension period, provided the certificate did not expire
 193 during the period of suspension. If the certificate expired
 194 during the period of suspension, the holder of the former
 195 certificate may secure a new certificate by making application
 196 therefor and by meeting the certification requirements of the
 197 state board current at the time of the application for the new
 198 certificate. An educator certificate suspended pursuant to a
 199 court order for a delinquent child support obligation may only
 200 be reinstated upon notice from the court that the party has
 201 complied with the terms of the court order.

202 (b) A person whose educator certificate has been revoked
 203 under this section may apply for a new certificate at the
 204 expiration of that period of ineligibility fixed by the
 205 Education Practices Commission by making application therefor
 206 and by meeting the certification requirements of the state board
 207 current at the time of the application for the new certificate.

208 (5) Each district school superintendent and the governing
 209 authority of each university lab school, state-supported school,
 210 or private school shall report to the department the name of any



HB 1777

2003

211 person certified pursuant to this chapter or employed and
212 qualified pursuant to s. 1012.39:

213 (a) Who has a conviction ~~been convicted~~ of a crime in any
214 jurisdiction, other than a minor traffic violation. As used in
215 this paragraph, the term "conviction" means a finding of guilt,
216 a plea of guilty, a plea of nolo contendere, or entering a
217 pretrial intervention program, whether or not there is a formal
218 adjudication of guilt, ~~or who has pled nolo contendere to, a~~
219 ~~misdemeanor, felony, or any other criminal charge, other than a~~
220 ~~minor traffic infraction;~~

221 (b) Who that official has reason to believe has committed
222 or is found to have committed any act which would be a ground
223 for revocation or suspension under subsection (1); or

224 (c) Who has been dismissed or severed from employment
225 because of conduct involving any immoral, unnatural, or
226 lascivious act.

227 (6)(a) When an individual violates any provision of the
228 ~~provisions of a settlement agreement enforced by~~ a final order
229 of the Education Practices Commission, the Department of
230 Education may request that ~~an order to show cause may be issued~~
231 ~~by~~ the clerk of the commission issue an order to show cause. The
232 order shall require the individual to appear before the
233 commission to show cause why further penalties should not be
234 levied against the individual's certificate pursuant to the
235 authority provided to the Education Practices Commission in
236 subsection (1). The Education Practices Commission may fashion
237 further penalties under the authority of subsection (1) as it
238 deems ~~deemed~~ appropriate upon considering ~~when~~ the show cause
239 order ~~is responded to by the individual~~.

240 (b) The Education Practices Commission shall issue a final



HB 1777

2003

241 order revoking an individual's Florida educator's certificate
242 for a minimum of 1 year if the individual has been the subject
243 of sanctions by the Education Practices Commission on two
244 previous occasions. ~~under the following circumstances:~~

245 1. ~~If the individual:~~

246 a. ~~Has been found to have violated the provisions of this~~
247 ~~section, such that the Education Practices Commission has the~~
248 ~~authority to discipline the individual's Florida educator's~~
249 ~~certificate on two separate occasions;~~

250 b. ~~Has twice entered into a settlement agreement enforced~~
251 ~~by a final order of the Education Practices Commission; or~~

252 e. ~~Has been found to have violated the provisions of this~~
253 ~~section, such that the Education Practices Commission has the~~
254 ~~authority to discipline the individual's Florida educator's~~
255 ~~certificate on one occasion and entered into a settlement~~
256 ~~agreement enforced by a final order of the Education Practices~~
257 ~~Commission on one occasion; and~~

258 2. ~~A third finding of probable cause and a finding that~~
259 ~~the allegations are proven or admitted to is subsequently found~~
260 ~~by the Commissioner of Education.~~

261
262 ~~If, in the third instance, the individual enters into a~~
263 ~~settlement agreement with the Department of Education, that~~
264 ~~agreement shall also include a penalty revoking that~~
265 ~~individual's Florida educator's certificate for a minimum of 1~~
266 ~~year.~~

267 Section 5. Paragraph (d) is added to subsection (1) of
268 section 1012.796, Florida Statutes, and subsections (6), (7),
269 and (8) of said section are amended, to read:

270 1012.796 Complaints against teachers and administrators;



HB 1777

2003

271 procedure; penalties.--

272 (1)

273 (d) Notwithstanding any other provision of law to the
274 contrary, all law enforcement agencies, state attorneys, social
275 service agencies, and district school boards, and the Division
276 of Administrative Hearings, shall fully cooperate with, and upon
277 request shall provide unredacted documents to, the Department of
278 Education to further investigations and prosecutions conducted
279 as authorized by this section. Any such document may not be
280 redisclosed except as authorized by law.

281 (6) Upon the finding of probable cause, the commissioner
282 shall file a formal complaint and prosecute the complaint
283 pursuant to the provisions of chapter 120, except as provided in
284 s. 1012.561. An administrative law judge shall be assigned by
285 the Division of Administrative Hearings of the Department of
286 Management Services to hear the complaint if there are disputed
287 issues of material fact. The administrative law judge shall make
288 recommendations in accordance with the provisions of subsection
289 (7) to the appropriate Education Practices Commission panel
290 which shall conduct a formal review of such recommendations and
291 other pertinent information and issue a final order. The
292 commission shall consult with its legal counsel prior to
293 issuance of a final order.

294 (7) A panel of the commission shall enter a final order
295 either dismissing the complaint or imposing one or more of the
296 following penalties:

297 (a) Denial of an application for a teaching certificate or
298 for an administrative or supervisory endorsement on a teaching
299 certificate. The denial may provide that the applicant may not
300 reapply for certification, and that the department may refuse to



HB 1777

2003

301 consider that applicant's application, for a specified period of
 302 time or permanently.

303 (b) Revocation or suspension of a certificate.

304 (c) Imposition of an administrative fine not to exceed
 305 \$2,000 for each count or separate offense.

306 (d) Placement of the teacher, administrator, or supervisor
 307 on probation for a period of time and subject to such conditions
 308 as the commission may specify, including requiring the certified
 309 teacher, administrator, or supervisor to complete additional
 310 appropriate college courses or work with another certified
 311 educator, with the administrative costs of monitoring the
 312 probation assessed to the educator placed on probation. At a
 313 minimum, an educator who is on probation shall:

314 1. Immediately notify the Bureau of Educator Standards
 315 upon his or her employment or termination of employment in the
 316 state in any public or private position that requires a Florida
 317 educator's certificate.

318 2. Have his or her immediate supervisor submit annual
 319 performance reports to the Bureau of Educator Standards.

320 3. Pay to the commission within the first 6 months of each
 321 probation year the administrative costs of monitoring probation
 322 which have been assessed to him or her.

323 4. Not violate any law, and shall fully comply with all
 324 district school board policies, school rules, and State Board of
 325 Education rules.

326 5. Satisfactorily perform his or her assigned duties in a
 327 competent, professional manner.

328 6. Bear all costs of complying with the terms of a final
 329 order entered by the commission.

330 (e) Restriction of the authorized scope of practice of the



HB 1777

2003

331 teacher, administrator, or supervisor.

332 (f) Reprimand of the teacher, administrator, or supervisor
333 in writing, with a copy to be placed in the certification file
334 of such person.

335 (g) Imposition of an administrative sanction, upon a
336 person whose teaching certificate has expired, for an act or
337 acts committed while that person possessed a teaching
338 certificate or an expired certificate subject to late renewal,
339 which sanction bars that person from applying for a new
340 certificate for a period of 10 years or less, or permanently.

341 (h) Referral of the teacher, administrator, or supervisor
342 to the recovery network program provided in s. 1012.798 under
343 such terms and conditions as the commission specifies.

344 (8) Violations of the provisions of a final order
345 ~~probation~~ shall result in an order to show cause issued by the
346 clerk of the Education Practices Commission when requested by
347 the Department of Education. Upon failure of the educator
348 ~~probationer~~, at the time and place stated in the order, to show
349 cause satisfactorily to the Education Practices Commission why a
350 penalty for violating the provisions of a final order ~~probation~~
351 should not be imposed, the Education Practices Commission shall
352 impose whatever penalty is appropriate as established in s.
353 1012.795(6). Any probation period will be tolled when an order
354 to show cause has been issued until the issue is resolved by the
355 Education Practices Commission.

356 Section 6. Subsections (1) and (3), paragraph (c) of
357 subsection (6), and subsection (10) of section 1012.798, Florida
358 Statutes, are amended to read:

359 1012.798 Recovery network program for educators.--

360 (1) RECOVERY NETWORK ESTABLISHED.--There is created within



HB 1777

2003

361 the Department of Education, a recovery network program to
 362 assist educators who are impaired as a result of alcohol abuse,
 363 drug abuse, or a mental condition in obtaining treatment ~~to~~
 364 ~~permit their continued contribution to the education profession.~~

365 Any person who has applied for or holds certification issued by
 366 the department pursuant to s. 1012.56 is eligible for the
 367 program assistance. The individual may enter the program
 368 voluntarily or may be directed to participate through a deferred
 369 prosecution agreement with the Commissioner of Education or a
 370 final order of the Education Practices Commission pursuant to s.
 371 1012.796.

372 (3) PURPOSE.--The recovery network program shall assist
 373 educators in obtaining treatment and services from approved
 374 treatment providers, but each impaired educator must pay for his
 375 or her treatment under terms and conditions agreed upon by the
 376 impaired educator and the treatment provider. A person who is
 377 admitted to the recovery network program must contract with the
 378 treatment provider and the program. The treatment contract must
 379 prescribe the type of treatment and the responsibilities of the
 380 impaired educator and of the provider and must provide that the
 381 impaired educator's progress will be monitored by the recovery
 382 network program.

383 (6) PARTICIPATION.--The recovery network program shall
 384 operate independently of employee assistance programs operated
 385 by local school districts, and the powers and duties of school
 386 districts to make employment decisions, including disciplinary
 387 decisions, is not affected except as provided in this section:

388 (c) A person ~~who has not previously been under~~
 389 ~~investigation by the department~~ may be enrolled in a treatment
 390 program by the recovery network program after an investigation



HB 1777

2003

391 pursuant to s. 1012.796 has commenced, if the person:

- 392 1. Acknowledges his or her impairment.
- 393 2. Agrees to evaluation, as approved by the recovery
- 394 network.
- 395 3. Agrees to enroll in an appropriate treatment program
- 396 approved by the recovery network.
- 397 4. Executes releases for all medical and treatment records
- 398 regarding his or her impairment and participation in a treatment
- 399 program to the recovery network, pursuant to 42 U.S.C. s. 290dd-
- 400 3 and the federal regulations adopted thereunder.
- 401 5. Enters into a deferred prosecution agreement with the
- 402 commissioner, which provides that no prosecution shall be
- 403 instituted concerning the matters enumerated in the agreement if
- 404 the person is properly enrolled in the treatment program and
- 405 successfully completes the program as certified by the recovery
- 406 network. The commissioner is under no obligation to enter into a
- 407 deferred prosecution agreement with the educator but may do so
- 408 if he or she determines that it is in the best interest of the
- 409 educational program of the state and the educator:-
- 410 ~~a.6.~~ Has not previously entered a substance abuse program.
- 411 ~~b.7.~~ Is not being investigated for any action involving
- 412 commission of a felony or violent act against another person.
- 413 ~~c.8.~~ Has not had multiple arrests for minor drug use,
- 414 possession, or abuse of alcohol.

415 (10) DECLARATION OF INELIGIBILITY.--

416 (a) A person may be declared ineligible for further

417 assistance from the recovery network program if he or she does

418 not progress satisfactorily in a treatment program or leaves a

419 prescribed program or course of treatment without the approval

420 of the treatment provider.



HB 1777

2003

421 (b) The determination of ineligibility must be made by ~~the~~
422 ~~commissioner in cases referred to him or her by~~ the program
423 administrator or his or her designee after review of the
424 circumstances of the case. ~~Before referring a case to the~~
425 ~~commissioner, the administrator must discuss the circumstances~~
426 ~~with the treatment provider. The commissioner may direct the~~
427 ~~Office of Professional Practices Services to investigate the~~
428 ~~case and provide a report.~~

429 (c) If a treatment through contract ~~with~~ the program is a
430 condition of a deferred prosecution agreement, and the program
431 administrator ~~commissioner~~ determines that the person is
432 ineligible for further assistance, the commissioner may agree to
433 modify the terms and conditions of the deferred prosecution
434 agreement or may issue an administrative complaint, pursuant to
435 s. 1012.796, alleging the charges regarding which prosecution
436 was deferred. The person may dispute the determination as an
437 affirmative defense to the administrative complaint by including
438 with his or her request for hearing on the administrative
439 complaint a written statement setting forth the facts and
440 circumstances that show that the determination of ineligibility
441 was erroneous. If administrative proceedings regarding the
442 administrative complaint, pursuant to ss. 120.569 and 120.57,
443 result in a finding that the determination of ineligibility was
444 erroneous, the person is eligible to participate in the program.
445 If the determination of ineligibility was the only reason for
446 setting aside the deferred prosecution agreement and issuing the
447 administrative complaint and the administrative proceedings
448 result in a finding that the determination was erroneous, the
449 complaint shall be dismissed and the deferred prosecution
450 agreement reinstated without prejudice to the commissioner's



HB 1777

2003

451 right to reissue the administrative complaint for other breaches
452 of the agreement.

453 (d) If a treatment through ~~contract~~ with the program is a
454 condition of a final order of the Education Practices
455 Commission, the program administrator's ~~commissioner's~~
456 determination of ineligibility constitutes a finding of ~~probable~~
457 ~~cause~~ that the person failed to comply with the final order.
458 Pursuant to ss. 1012.795 and 1012.796, upon the request of the
459 Department of Education, the clerk of the Education Practices
460 Commission shall issue to the educator an order to show cause,
461 or the commissioner may shall issue an administrative complaint,
462 ~~and the case shall proceed under ss. 1012.795 and 1012.796,~~ in
463 the same manner as in cases based on a failure to comply with an
464 order of the Education Practices Commission.

465 (e) If the person voluntarily entered into a treatment
466 contract with the program, the program administrator
467 ~~commissioner~~ shall issue a written notice stating the reasons
468 for the determination of ineligibility. Within 20 days after the
469 date of such notice, the person may contest the determination of
470 ineligibility pursuant to ss. 120.569 and 120.57.

471 Section 7. Subsection (4) of section 943.0585, Florida
472 Statutes, is amended to read:

473 943.0585 Court-ordered expunction of criminal history
474 records.--The courts of this state have jurisdiction over their
475 own procedures, including the maintenance, expunction, and
476 correction of judicial records containing criminal history
477 information to the extent such procedures are not inconsistent
478 with the conditions, responsibilities, and duties established by
479 this section. Any court of competent jurisdiction may order a
480 criminal justice agency to expunge the criminal history record



HB 1777

2003

481 of a minor or an adult who complies with the requirements of
482 this section. The court shall not order a criminal justice
483 agency to expunge a criminal history record until the person
484 seeking to expunge a criminal history record has applied for and
485 received a certificate of eligibility for expunction pursuant to
486 subsection (2). A criminal history record that relates to a
487 violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
488 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
489 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in
490 s. 907.041 may not be expunged, without regard to whether
491 adjudication was withheld, if the defendant was found guilty of
492 or pled guilty or nolo contendere to the offense, or if the
493 defendant, as a minor, was found to have committed, or pled
494 guilty or nolo contendere to committing, the offense as a
495 delinquent act. The court may only order expunction of a
496 criminal history record pertaining to one arrest or one incident
497 of alleged criminal activity, except as provided in this
498 section. The court may, at its sole discretion, order the
499 expunction of a criminal history record pertaining to more than
500 one arrest if the additional arrests directly relate to the
501 original arrest. If the court intends to order the expunction of
502 records pertaining to such additional arrests, such intent must
503 be specified in the order. A criminal justice agency may not
504 expunge any record pertaining to such additional arrests if the
505 order to expunge does not articulate the intention of the court
506 to expunge a record pertaining to more than one arrest. This
507 section does not prevent the court from ordering the expunction
508 of only a portion of a criminal history record pertaining to one
509 arrest or one incident of alleged criminal activity.

510 Notwithstanding any law to the contrary, a criminal justice



HB 1777

2003

511 agency may comply with laws, court orders, and official requests
512 of other jurisdictions relating to expunction, correction, or
513 confidential handling of criminal history records or information
514 derived therefrom. This section does not confer any right to the
515 expunction of any criminal history record, and any request for
516 expunction of a criminal history record may be denied at the
517 sole discretion of the court.

518 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
519 criminal history record of a minor or an adult which is ordered
520 expunged by a court of competent jurisdiction pursuant to this
521 section must be physically destroyed or obliterated by any
522 criminal justice agency having custody of such record; except
523 that any criminal history record in the custody of the
524 department must be retained in all cases. A criminal history
525 record ordered expunged that is retained by the department is
526 confidential and exempt from the provisions of s. 119.07(1) and
527 s. 24(a), Art. I of the State Constitution and not available to
528 any person or entity except upon order of a court of competent
529 jurisdiction. A criminal justice agency may retain a notation
530 indicating compliance with an order to expunge.

531 (a) The person who is the subject of a criminal history
532 record that is expunged under this section or under other
533 provisions of law, including former s. 893.14, former s. 901.33,
534 and former s. 943.058, may lawfully deny or fail to acknowledge
535 the arrests covered by the expunged record, except when the
536 subject of the record:

- 537 1. Is a candidate for employment with a criminal justice
538 agency;
- 539 2. Is a defendant in a criminal prosecution;
- 540 3. Concurrently or subsequently petitions for relief under



HB 1777

2003

541 this section or s. 943.059;

542 4. Is a candidate for admission to The Florida Bar;

543 5. Is seeking to be employed or licensed by or to contract
544 with the Department of Children and Family Services or the
545 Department of Juvenile Justice or to be employed or used by such
546 contractor or licensee in a sensitive position having direct
547 contact with children, the developmentally disabled, the aged,
548 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
549 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
550 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or

551 6. Is seeking to be employed or licensed by ~~the Office of~~
552 ~~Teacher Education, Certification, Staff Development, and~~
553 ~~Professional Practices of~~ the Department of Education, any
554 district school board, any university laboratory school, any
555 charter school, any private or parochial school, or any local
556 governmental entity that licenses child care facilities.

557 (b) Subject to the exceptions in paragraph (a), a person
558 who has been granted an expunction under this section, former s.
559 893.14, former s. 901.33, or former s. 943.058 may not be held
560 under any provision of law of this state to commit perjury or to
561 be otherwise liable for giving a false statement by reason of
562 such person's failure to recite or acknowledge an expunged
563 criminal history record.

564 (c) Information relating to the existence of an expunged
565 criminal history record which is provided in accordance with
566 paragraph (a) is confidential and exempt from the provisions of
567 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
568 except that the department shall disclose the existence of a
569 criminal history record ordered expunged to the entities set
570 forth in subparagraphs (a)1., 4., 5., and 6. for their



HB 1777

2003

571 respective licensing and employment purposes, and to criminal
572 justice agencies for their respective criminal justice purposes.
573 It is unlawful for any employee of an entity set forth in
574 subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or
575 subparagraph (a)6. to disclose information relating to the
576 existence of an expunged criminal history record of a person
577 seeking employment or licensure with such entity or contractor,
578 except to the person to whom the criminal history record relates
579 or to persons having direct responsibility for employment or
580 licensure decisions. Any person who violates this paragraph
581 commits a misdemeanor of the first degree, punishable as
582 provided in s. 775.082 or s. 775.083.

583 Section 8. Subsection (4) of section 943.059, Florida
584 Statutes, is amended to read:

585 943.059 Court-ordered sealing of criminal history
586 records.--The courts of this state shall continue to have
587 jurisdiction over their own procedures, including the
588 maintenance, sealing, and correction of judicial records
589 containing criminal history information to the extent such
590 procedures are not inconsistent with the conditions,
591 responsibilities, and duties established by this section. Any
592 court of competent jurisdiction may order a criminal justice
593 agency to seal the criminal history record of a minor or an
594 adult who complies with the requirements of this section. The
595 court shall not order a criminal justice agency to seal a
596 criminal history record until the person seeking to seal a
597 criminal history record has applied for and received a
598 certificate of eligibility for sealing pursuant to subsection
599 (2). A criminal history record that relates to a violation of s.
600 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.



HB 1777

2003

601 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
 602 847.0145, s. 893.135, or a violation enumerated in s. 907.041
 603 may not be sealed, without regard to whether adjudication was
 604 withheld, if the defendant was found guilty of or pled guilty or
 605 nolo contendere to the offense, or if the defendant, as a minor,
 606 was found to have committed or pled guilty or nolo contendere to
 607 committing the offense as a delinquent act. The court may only
 608 order sealing of a criminal history record pertaining to one
 609 arrest or one incident of alleged criminal activity, except as
 610 provided in this section. The court may, at its sole discretion,
 611 order the sealing of a criminal history record pertaining to
 612 more than one arrest if the additional arrests directly relate
 613 to the original arrest. If the court intends to order the
 614 sealing of records pertaining to such additional arrests, such
 615 intent must be specified in the order. A criminal justice agency
 616 may not seal any record pertaining to such additional arrests if
 617 the order to seal does not articulate the intention of the court
 618 to seal records pertaining to more than one arrest. This section
 619 does not prevent the court from ordering the sealing of only a
 620 portion of a criminal history record pertaining to one arrest or
 621 one incident of alleged criminal activity. Notwithstanding any
 622 law to the contrary, a criminal justice agency may comply with
 623 laws, court orders, and official requests of other jurisdictions
 624 relating to sealing, correction, or confidential handling of
 625 criminal history records or information derived therefrom. This
 626 section does not confer any right to the sealing of any criminal
 627 history record, and any request for sealing a criminal history
 628 record may be denied at the sole discretion of the court.

629 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 630 history record of a minor or an adult which is ordered sealed by



HB 1777

2003

631 a court of competent jurisdiction pursuant to this section is
632 confidential and exempt from the provisions of s. 119.07(1) and
633 s. 24(a), Art. I of the State Constitution and is available only
634 to the person who is the subject of the record, to the subject's
635 attorney, to criminal justice agencies for their respective
636 criminal justice purposes, or to those entities set forth in
637 subparagraphs (a)1., 4., 5., and 6. for their respective
638 licensing and employment purposes.

639 (a) The subject of a criminal history record sealed under
640 this section or under other provisions of law, including former
641 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
642 deny or fail to acknowledge the arrests covered by the sealed
643 record, except when the subject of the record:

- 644 1. Is a candidate for employment with a criminal justice
645 agency;
- 646 2. Is a defendant in a criminal prosecution;
- 647 3. Concurrently or subsequently petitions for relief under
648 this section or s. 943.0585;
- 649 4. Is a candidate for admission to The Florida Bar;
- 650 5. Is seeking to be employed or licensed by or to contract
651 with the Department of Children and Family Services or the
652 Department of Juvenile Justice or to be employed or used by such
653 contractor or licensee in a sensitive position having direct
654 contact with children, the developmentally disabled, the aged,
655 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
656 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
657 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter
658 400; or
- 659 6. Is seeking to be employed or licensed by ~~the Office of~~
660 ~~Teacher Education, Certification, Staff Development, and~~



HB 1777

2003

661 ~~Professional Practices of~~ the Department of Education, any
662 district school board, any university laboratory school, any
663 charter school, any private or parochial school, or any local
664 governmental entity that ~~which~~ licenses child care facilities.

665 (b) Subject to the exceptions in paragraph (a), a person
666 who has been granted a sealing under this section, former s.
667 893.14, former s. 901.33, or former s. 943.058 may not be held
668 under any provision of law of this state to commit perjury or to
669 be otherwise liable for giving a false statement by reason of
670 such person's failure to recite or acknowledge a sealed criminal
671 history record.

672 (c) Information relating to the existence of a sealed
673 criminal record provided in accordance with the provisions of
674 paragraph (a) is confidential and exempt from the provisions of
675 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
676 except that the department shall disclose the sealed criminal
677 history record to the entities set forth in subparagraphs (a)1.,
678 4., 5., and 6. for their respective licensing and employment
679 purposes. It is unlawful for any employee of an entity set forth
680 in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5.,
681 or subparagraph (a)6. to disclose information relating to the
682 existence of a sealed criminal history record of a person
683 seeking employment or licensure with such entity or contractor,
684 except to the person to whom the criminal history record relates
685 or to persons having direct responsibility for employment or
686 licensure decisions. Any person who violates the provisions of
687 this paragraph commits a misdemeanor of the first degree,
688 punishable as provided in s. 775.082 or s. 775.083.

689 Section 9. This act shall take effect upon becoming a law.