

By Senator Villalobos

38-1480-04

See HB 713

1 A bill to be entitled
2 An act relating to employment screening;
3 creating s. 435.015, F.S.; providing for
4 incorporation by reference; providing that the
5 purpose of the chapter is to provide uniform
6 criteria for employment screening; providing
7 that a reference to the chapter, or any section
8 or subdivision, constitutes a general
9 reference; creating s. 435.025, F.S.;
10 authorizing consideration of arrest records in
11 determining whether certain persons satisfy the
12 requirement of good moral character; amending
13 s. 435.04, F.S.; prohibiting the Department of
14 Juvenile Justice from removing a
15 disqualification from employment or granting an
16 exemption from disqualification in certain
17 circumstances; amending ss. 984.01 and 985.01,
18 F.S.; providing that certain persons who fail
19 to satisfy the requirement of good moral
20 character may be disqualified from employment
21 or denied an exemption from disqualification;
22 amending s. 985.407, F.S.; providing that
23 certain persons who fail to satisfy the
24 requirement of good moral character may be
25 disqualified from employment or denied an
26 exemption from disqualification; requiring the
27 Department of Juvenile Justice to require
28 employment screening of certain personnel
29 pursuant to level 2, rather than level 1,
30 screening standards of ch. 435, F.S.;
31 reenacting ss. 400.953(3), 943.0585(4)(a),

1 943.059(4)(a), and 985.05(4)(e), F.S., relating
2 to background screening of home medical
3 equipment provider personnel, court-ordered
4 expunction of criminal history records,
5 court-ordered sealing of criminal history
6 records, and use of juvenile court records as
7 proof of certain disqualification,
8 respectively, for the purpose of incorporating
9 the amendment to s. 985.407, F.S., in
10 references thereto; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Section 435.015, Florida Statutes, is
16 created to read:

17 435.015 Incorporation by reference.--The purpose of
18 this chapter is to provide uniform criteria for employment
19 screening and, to this end, a reference to this chapter, or to
20 any section or subdivision within this chapter, constitutes a
21 general reference under the doctrine of incorporation by
22 reference.

23 Section 2. Section 435.025, Florida Statutes, is
24 created to read:

25 435.025 Evidence of good moral character.--Any record
26 concerning the arrest of a person who is required to be of
27 good moral character as a condition of initial or continued
28 employment, licensure, or other business with the state, or
29 any agency or political subdivision thereof, may be considered
30 in determining whether such person satisfies the requirement,
31 notwithstanding the disposition of the arrest.

1 Section 3. Subsection (3) of section 435.04, Florida
2 Statutes, is amended to read:

3 435.04 Level 2 screening standards.--

4 (3) The security background investigations conducted
5 under this section for employees of the Department of Juvenile
6 Justice must ensure that no persons subject to the provisions
7 of this section have been found guilty of, regardless of
8 adjudication, or entered a plea of nolo contendere or guilty
9 to, any offense prohibited under any of the following
10 provisions of the Florida Statutes or under any similar
11 statute of another jurisdiction:

12 (a) Section 784.07, relating to assault or battery of
13 law enforcement officers, firefighters, emergency medical care
14 providers, public transit employees or agents, or other
15 specified officers.

16 (b) Section 810.02, relating to burglary, if the
17 offense is a felony.

18 (c) Section 944.40, relating to escape.

19
20 The Department of Juvenile Justice may not remove a
21 disqualification from employment or grant an exemption to any
22 person who is disqualified under this section for any offense
23 disposed of during the most recent 7-year period. The
24 Department of Juvenile Justice may not remove a
25 disqualification from employment or grant an exemption to any
26 person who has been found guilty of, regardless of
27 adjudication, or entered a plea of nolo contendere or guilty
28 to, three or more offenses specified in this subsection or
29 subsection (2), irrespective of the time at which such
30 offenses were disposed.

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1 Section 4. Subsection (2) of section 984.01, Florida
2 Statutes, is amended to read:

3 984.01 Purposes and intent; personnel standards and
4 screening.--

5 (2) The Department of Juvenile Justice or the
6 Department of Children and Family Services, as appropriate,
7 may contract with the Federal Government, other state
8 departments and agencies, county and municipal governments and
9 agencies, public and private agencies, and private individuals
10 and corporations in carrying out the purposes of, and the
11 responsibilities established in, this chapter.

12 (a) When the Department of Juvenile Justice or the
13 Department of Children and Family Services contracts with a
14 provider for any program for children, all personnel,
15 including owners, operators, employees, and volunteers, in the
16 facility must be of good moral character. Each contract
17 entered into by either department for services delivered on an
18 appointment or intermittent basis by a provider that does not
19 have regular custodial responsibility for children and each
20 contract with a school for before or aftercare services must
21 ensure that the owners, operators, and all personnel who have
22 direct contact with children are of good moral character. A
23 volunteer who assists on an intermittent basis for less than
24 40 hours per month need not be screened if the volunteer is
25 under direct and constant supervision by persons who meet the
26 screening requirements.

27 (b) The Department of Juvenile Justice and the
28 Department of Children and Family Services shall require
29 employment screening pursuant to chapter 435, using the level
30 2 standards set forth in that chapter for personnel in
31 programs for children or youths.

1 (c) The Department of Juvenile Justice or the
2 Department of Children and Family Services may grant
3 exemptions from disqualification from working with children as
4 provided in s. 435.07.

5 (d) Notwithstanding s. 435.04 or s. 435.07, a person
6 may be disqualified from employment or denied an exemption
7 from disqualification if such person fails to satisfy the
8 requirement of good moral character as evidenced by criminal
9 history information documenting multiple arrests or
10 convictions.

11 Section 5. Subsection (2) of section 985.01, Florida
12 Statutes, is amended to read:

13 985.01 Purposes and intent; personnel standards and
14 screening.--

15 (2) The Department of Juvenile Justice or the
16 Department of Children and Family Services, as appropriate,
17 may contract with the Federal Government, other state
18 departments and agencies, county and municipal governments and
19 agencies, public and private agencies, and private individuals
20 and corporations in carrying out the purposes of, and the
21 responsibilities established in, this chapter.

22 (a) When the Department of Juvenile Justice or the
23 Department of Children and Family Services contracts with a
24 provider for any program for children, all personnel,
25 including owners, operators, employees, and volunteers, in the
26 facility must be of good moral character. Each contract
27 entered into by either department for services delivered on an
28 appointment or intermittent basis by a provider that does not
29 have regular custodial responsibility for children and each
30 contract with a school for before or aftercare services must
31 ensure that the owners, operators, and all personnel who have

1 direct contact with children are of good moral character. A
2 volunteer who assists on an intermittent basis for less than
3 40 hours per month need not be screened if the volunteer is
4 under direct and constant supervision by persons who meet the
5 screening requirements.

6 (b) The Department of Juvenile Justice and the
7 Department of Children and Family Services shall require
8 employment screening pursuant to chapter 435, using the level
9 2 standards set forth in that chapter for personnel in
10 programs for children or youths.

11 (c) The Department of Juvenile Justice or the
12 Department of Children and Family Services may grant
13 exemptions from disqualification from working with children as
14 provided in s. 435.07.

15 (d) Notwithstanding s. 435.04 or s. 435.07, a person
16 may be disqualified from employment or denied an exemption
17 from disqualification if such person fails to satisfy the
18 requirement of good moral character as evidenced by criminal
19 history information documenting multiple arrests or
20 convictions.

21 Section 6. Subsection (4) of section 985.407, Florida
22 Statutes, is amended, and subsection (6) is added to that
23 section, to read:

24 985.407 Departmental contracting powers; personnel
25 standards and screening.--

26 (4) The department shall require employment screening
27 pursuant to chapter 435, using the level 2 ± standards for
28 screening set forth in that chapter, for personnel in
29 delinquency facilities, services, and programs.

30 (6) Notwithstanding s. 435.04 or s. 435.07, a person
31 may be disqualified from employment or denied an exemption

1 from disqualification if such person fails to satisfy the
2 requirement of good moral character as evidenced by criminal
3 history information documenting multiple arrests or
4 convictions.

5 Section 7. For the purpose of incorporating the
6 amendment to section 985.407, Florida Statutes, in a reference
7 thereto, subsection (3) of section 400.953, Florida Statutes,
8 is reenacted to read:

9 400.953 Background screening of home medical equipment
10 provider personnel.--The agency shall require employment
11 screening as provided in chapter 435, using the level 1
12 standards for screening set forth in that chapter, for home
13 medical equipment provider personnel.

14 (3) Proof of compliance with the screening
15 requirements of s. 110.1127, s. 393.0655, s. 394.4572, s.
16 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s.
17 985.407 or this part must be accepted in lieu of the
18 requirements of this section if the person has been
19 continuously employed in the same type of occupation for which
20 he or she is seeking employment without a breach in service
21 that exceeds 180 days, the proof of compliance is not more
22 than 2 years old, and the person has been screened by the
23 Department of Law Enforcement. An employer or contractor shall
24 directly provide proof of compliance to another employer or
25 contractor, and a potential employer or contractor may not
26 accept any proof of compliance directly from the person
27 requiring screening. Proof of compliance with the screening
28 requirements of this section shall be provided, upon request,
29 to the person screened by the home medical equipment provider.

30 Section 8. For the purpose of incorporating the
31 amendment to section 985.407, Florida Statutes, in a reference

1 thereto, paragraph (a) of subsection (4) of section 943.0585,
2 Florida Statutes, is reenacted to read:
3 943.0585 Court-ordered expunction of criminal history
4 records.--The courts of this state have jurisdiction over
5 their own procedures, including the maintenance, expunction,
6 and correction of judicial records containing criminal history
7 information to the extent such procedures are not inconsistent
8 with the conditions, responsibilities, and duties established
9 by this section. Any court of competent jurisdiction may order
10 a criminal justice agency to expunge the criminal history
11 record of a minor or an adult who complies with the
12 requirements of this section. The court shall not order a
13 criminal justice agency to expunge a criminal history record
14 until the person seeking to expunge a criminal history record
15 has applied for and received a certificate of eligibility for
16 expunction pursuant to subsection (2). A criminal history
17 record that relates to a violation of s. 787.025, chapter 794,
18 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
19 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
20 893.135, or a violation enumerated in s. 907.041 may not be
21 expunged, without regard to whether adjudication was withheld,
22 if the defendant was found guilty of or pled guilty or nolo
23 contendere to the offense, or if the defendant, as a minor,
24 was found to have committed, or pled guilty or nolo contendere
25 to committing, the offense as a delinquent act. The court may
26 only order expunction of a criminal history record pertaining
27 to one arrest or one incident of alleged criminal activity,
28 except as provided in this section. The court may, at its sole
29 discretion, order the expunction of a criminal history record
30 pertaining to more than one arrest if the additional arrests
31 directly relate to the original arrest. If the court intends

1 to order the expunction of records pertaining to such
2 additional arrests, such intent must be specified in the
3 order. A criminal justice agency may not expunge any record
4 pertaining to such additional arrests if the order to expunge
5 does not articulate the intention of the court to expunge a
6 record pertaining to more than one arrest. This section does
7 not prevent the court from ordering the expunction of only a
8 portion of a criminal history record pertaining to one arrest
9 or one incident of alleged criminal activity. Notwithstanding
10 any law to the contrary, a criminal justice agency may comply
11 with laws, court orders, and official requests of other
12 jurisdictions relating to expunction, correction, or
13 confidential handling of criminal history records or
14 information derived therefrom. This section does not confer
15 any right to the expunction of any criminal history record,
16 and any request for expunction of a criminal history record
17 may be denied at the sole discretion of the court.

18 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
19 criminal history record of a minor or an adult which is
20 ordered expunged by a court of competent jurisdiction pursuant
21 to this section must be physically destroyed or obliterated by
22 any criminal justice agency having custody of such record;
23 except that any criminal history record in the custody of the
24 department must be retained in all cases. A criminal history
25 record ordered expunged that is retained by the department is
26 confidential and exempt from the provisions of s. 119.07(1)
27 and s. 24(a), Art. I of the State Constitution and not
28 available to any person or entity except upon order of a court
29 of competent jurisdiction. A criminal justice agency may
30 retain a notation indicating compliance with an order to
31 expunge.

1 (a) The person who is the subject of a criminal
2 history record that is expunged under this section or under
3 other provisions of law, including former s. 893.14, former s.
4 901.33, and former s. 943.058, may lawfully deny or fail to
5 acknowledge the arrests covered by the expunged record, except
6 when the subject of the record:

7 1. Is a candidate for employment with a criminal
8 justice agency;

9 2. Is a defendant in a criminal prosecution;

10 3. Concurrently or subsequently petitions for relief
11 under this section or s. 943.059;

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

13 5. Is seeking to be employed or licensed by or to
14 contract with the Department of Children and Family Services
15 or the Department of Juvenile Justice or to be employed or
16 used by such contractor or licensee in a sensitive position
17 having direct contact with children, the developmentally
18 disabled, the aged, or the elderly as provided in s.
19 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
20 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
21 985.407, or chapter 400; or

22 6. Is seeking to be employed or licensed by the Office
23 of Teacher Education, Certification, Staff Development, and
24 Professional Practices of the Department of Education, any
25 district school board, or any local governmental entity that
26 licenses child care facilities.

27 Section 9. For the purpose of incorporating the
28 amendment to section 985.407, Florida Statutes, in a reference
29 thereto, paragraph (a) of subsection (4) of section 943.059,
30 Florida Statutes, is reenacted to read:

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1 943.059 Court-ordered sealing of criminal history
2 records.--The courts of this state shall continue to have
3 jurisdiction over their own procedures, including the
4 maintenance, sealing, and correction of judicial records
5 containing criminal history information to the extent such
6 procedures are not inconsistent with the conditions,
7 responsibilities, and duties established by this section. Any
8 court of competent jurisdiction may order a criminal justice
9 agency to seal the criminal history record of a minor or an
10 adult who complies with the requirements of this section. The
11 court shall not order a criminal justice agency to seal a
12 criminal history record until the person seeking to seal a
13 criminal history record has applied for and received a
14 certificate of eligibility for sealing pursuant to subsection
15 (2). A criminal history record that relates to a violation of
16 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
17 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
18 s. 847.0145, s. 893.135, or a violation enumerated in s.
19 907.041 may not be sealed, without regard to whether
20 adjudication was withheld, if the defendant was found guilty
21 of or pled guilty or nolo contendere to the offense, or if the
22 defendant, as a minor, was found to have committed or pled
23 guilty or nolo contendere to committing the offense as a
24 delinquent act. The court may only order sealing of a criminal
25 history record pertaining to one arrest or one incident of
26 alleged criminal activity, except as provided in this section.
27 The court may, at its sole discretion, order the sealing of a
28 criminal history record pertaining to more than one arrest if
29 the additional arrests directly relate to the original arrest.
30 If the court intends to order the sealing of records
31 pertaining to such additional arrests, such intent must be

1 specified in the order. A criminal justice agency may not seal
2 any record pertaining to such additional arrests if the order
3 to seal does not articulate the intention of the court to seal
4 records pertaining to more than one arrest. This section does
5 not prevent the court from ordering the sealing of only a
6 portion of a criminal history record pertaining to one arrest
7 or one incident of alleged criminal activity. Notwithstanding
8 any law to the contrary, a criminal justice agency may comply
9 with laws, court orders, and official requests of other
10 jurisdictions relating to sealing, correction, or confidential
11 handling of criminal history records or information derived
12 therefrom. This section does not confer any right to the
13 sealing of any criminal history record, and any request for
14 sealing a criminal history record may be denied at the sole
15 discretion of the court.

16 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
17 criminal history record of a minor or an adult which is
18 ordered sealed by a court of competent jurisdiction pursuant
19 to this section is confidential and exempt from the provisions
20 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
21 and is available only to the person who is the subject of the
22 record, to the subject's attorney, to criminal justice
23 agencies for their respective criminal justice purposes, or to
24 those entities set forth in subparagraphs (a)1., 4., 5., and
25 6. for their respective licensing and employment purposes.

26 (a) The subject of a criminal history record sealed
27 under this section or under other provisions of law, including
28 former s. 893.14, former s. 901.33, and former s. 943.058, may
29 lawfully deny or fail to acknowledge the arrests covered by
30 the sealed record, except when the subject of the record:

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1 1. Is a candidate for employment with a criminal
2 justice agency;
3 2. Is a defendant in a criminal prosecution;
4 3. Concurrently or subsequently petitions for relief
5 under this section or s. 943.0585;
6 4. Is a candidate for admission to The Florida Bar;
7 5. Is seeking to be employed or licensed by or to
8 contract with the Department of Children and Family Services
9 or the Department of Juvenile Justice or to be employed or
10 used by such contractor or licensee in a sensitive position
11 having direct contact with children, the developmentally
12 disabled, the aged, or the elderly as provided in s.
13 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
14 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
15 415.103, s. 985.407, or chapter 400; or
16 6. Is seeking to be employed or licensed by the Office
17 of Teacher Education, Certification, Staff Development, and
18 Professional Practices of the Department of Education, any
19 district school board, or any local governmental entity which
20 licenses child care facilities.
21 Section 10. For the purpose of incorporating the
22 amendment to section 985.407, Florida Statutes, in a reference
23 thereto, paragraph (e) of subsection (4) of section 985.05,
24 Florida Statutes, is reenacted to read:
25 985.05 Court records.--
26 (4) A court record of proceedings under this part is
27 not admissible in evidence in any other civil or criminal
28 proceeding, except that:
29 (e) Records of proceedings under this part may be used
30 to prove disqualification pursuant to ss. 110.1127, 393.0655,
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1 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and
2 985.407.
3 Section 11. This act shall take effect upon becoming a
4 law.
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