

By Senator Saunders

37-84-04

1 A bill to be entitled
2 An act relating to employment background
3 screening; amending s. 435.03, F.S.; providing
4 additional criminal offenses and deleting an
5 offense that would disqualify a person subject
6 to level 1 screening standards from employment;
7 amending s. 435.04, F.S.; providing additional
8 criminal offenses and deleting an offense that
9 would disqualify a person subject to level 2
10 screening standards from employment; amending
11 ss. 943.0585 and 943.059, F.S.; adding the
12 Agency for Health Care Administration to the
13 list of agencies permitted to receive expunged
14 criminal history records and sealed criminal
15 history records; providing additional offenses
16 for which a person may not lawfully deny or
17 fail to acknowledge an arrest with respect to
18 an expunged or sealed record; reenacting ss.
19 39.821(1) and 400.414(1)(g), F.S., relating to
20 guardians ad litem and assisted living
21 facilities, to incorporate the amendment to ss.
22 435.03 and 435.04, F.S., in references thereto;
23 providing an effective date.

24

25 Be It Enacted by the Legislature of the State of Florida:

26

27 Section 1. Subsections (2) and (3) of section 435.03,
28 Florida Statutes, are amended to read:

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435.03 Level 1 screening standards.--

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31 (2) Any person for whom employment screening is
required by statute must not have been found guilty of,

1 regardless of adjudication, or entered a plea of nolo
2 contendere or guilty to, any offense prohibited under any of
3 the following provisions of the Florida Statutes or under any
4 similar statute of another jurisdiction:

5 (a) Former section ~~Section~~ 415.111, relating to abuse,
6 neglect, or exploitation of a vulnerable adult.

7 (b) Section 782.04, relating to murder.

8 (c) Section 782.07, relating to manslaughter,
9 aggravated manslaughter of an elderly person or disabled
10 adult, or aggravated manslaughter of a child.

11 (d) Section 782.071, relating to vehicular homicide.

12 (e) Section 782.09, relating to killing of an unborn
13 child by injury to the mother.

14 (f) Section 784.011, relating to assault, if the
15 victim of the offense was a minor.

16 (g) Section 784.021, relating to aggravated assault.

17 (h) Section 784.03, relating to battery, if the victim
18 of the offense was a minor.

19 (i) Section 784.045, relating to aggravated battery.

20 (j) Section 787.01, relating to kidnapping.

21 (k) Section 787.02, relating to false imprisonment.

22 (l) Chapter 794 ~~Section 794.011~~, relating to sexual
23 battery.

24 (m) Former s. 794.041, relating to prohibited acts of
25 persons in familial or custodial authority.

26 (n) Chapter 796, relating to prostitution.

27 ~~(o) Section 798.02, relating to lewd and lascivious~~
28 ~~behavior.~~

29 (o)~~(p)~~ Chapter 800, relating to lewdness and indecent
30 exposure.

31 (p)~~(q)~~ Section 806.01, relating to arson.

1 (q)~~(r)~~ Chapter 812, relating to theft, robbery, and
2 related crimes, if the offense was a felony.
3 (r)~~(s)~~ Section 817.563, relating to fraudulent sale of
4 controlled substances, only if the offense was a felony.
5 (s)~~(t)~~ Section 825.102, relating to abuse, aggravated
6 abuse, or neglect of an elderly person or disabled adult.
7 (t)~~(u)~~ Section 825.1025, relating to lewd or
8 lascivious offenses committed upon or in the presence of an
9 elderly person or disabled adult.
10 (u)~~(v)~~ Section 825.103, relating to exploitation of an
11 elderly person or disabled adult, if the offense was a felony.
12 (v)~~(w)~~ Section 826.04, relating to incest.
13 (w)~~(x)~~ Section 827.03, relating to child abuse,
14 aggravated child abuse, or neglect of a child.
15 (x)~~(y)~~ Section 827.04, relating to contributing to the
16 delinquency or dependency of a child.
17 (y)~~(z)~~ Former s. 827.05, relating to negligent
18 treatment of children.
19 (z)~~(aa)~~ Section 827.071, relating to sexual
20 performance by a child.
21 (aa)~~(bb)~~ Chapter 847, relating to obscene literature.
22 (bb)~~(cc)~~ Chapter 893, relating to drug abuse
23 prevention and control, only if the offense was a felony or if
24 any other person involved in the offense was a minor.
25 (3) Standards must also ensure that the person:
26 (a) For employees and employers licensed or registered
27 pursuant to chapter 400, and for employees and employers of
28 developmental services institutions as defined in s. 393.063,
29 intermediate care facilities for the developmentally disabled
30 as defined in s. 393.063, and mental health treatment
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1 facilities as defined in s. 394.455, meets the requirements of
2 this chapter.

3 (b) Has not committed an act that constitutes domestic
4 violence as defined in s. 741.28(1) or committed a violation
5 of any order for injunction for protection as described in s.
6 741.30 or s. 741.31 ~~s. 741.28~~.

7 Section 2. Subsections (2) and (4) of section 435.04,
8 Florida Statutes, are amended to read:

9 435.04 Level 2 screening standards.--

10 (2) The security background investigations under this
11 section must ensure that no persons subject to the provisions
12 of this section have been found guilty of, regardless of
13 adjudication, or entered a plea of nolo contendere or guilty
14 to, any offense prohibited under any of the following
15 provisions of the Florida Statutes or under any similar
16 statute of another jurisdiction:

17 (a) Former section ~~Section~~ 415.111, relating to adult
18 abuse, neglect, or exploitation of aged persons or disabled
19 adults.

20 (b) Section 782.04, relating to murder.

21 (c) Section 782.07, relating to manslaughter,
22 aggravated manslaughter of an elderly person or disabled
23 adult, or aggravated manslaughter of a child.

24 (d) Section 782.071, relating to vehicular homicide.

25 (e) Section 782.09, relating to killing of an unborn
26 child by injury to the mother.

27 (f) Section 784.011, relating to assault, if the
28 victim of the offense was a minor.

29 (g) Section 784.021, relating to aggravated assault.

30 (h) Section 784.03, relating to battery, if the victim
31 of the offense was a minor.

- 1 (i) Section 784.045, relating to aggravated battery.
2 (j) Section 784.075, relating to battery on a
3 detention or commitment facility staff.
4 (k) Section 787.01, relating to kidnapping.
5 (l) Section 787.02, relating to false imprisonment.
6 (m) Section 787.04(2), relating to taking, enticing,
7 or removing a child beyond the state limits with criminal
8 intent pending custody proceedings.
9 (n) Section 787.04(3), relating to carrying a child
10 beyond the state lines with criminal intent to avoid producing
11 a child at a custody hearing or delivering the child to the
12 designated person.
13 (o) Section 790.115(1), relating to exhibiting
14 firearms or weapons within 1,000 feet of a school.
15 (p) Section 790.115(2)(b), relating to possessing an
16 electric weapon or device, destructive device, or other weapon
17 on school property.
18 (q) Chapter 794 ~~Section 794.011~~, relating to sexual
19 battery.
20 (r) Former s. 794.041, relating to prohibited acts of
21 persons in familial or custodial authority.
22 (s) Chapter 796, relating to prostitution.
23 ~~(t) Section 798.02, relating to lewd and lascivious~~
24 ~~behavior.~~
25 (t)~~(u)~~ Chapter 800, relating to lewdness and indecent
26 exposure.
27 (u)~~(v)~~ Section 806.01, relating to arson.
28 (v)~~(w)~~ Chapter 812, relating to theft, robbery, and
29 related crimes, if the offense is a felony.
30 (w)~~(x)~~ Section 817.563, relating to fraudulent sale of
31 controlled substances, only if the offense was a felony.

1 ~~(x)(y)~~ Section 825.102, relating to abuse, aggravated
2 abuse, or neglect of an elderly person or disabled adult.
3 ~~(y)(z)~~ Section 825.1025, relating to lewd or
4 lascivious offenses committed upon or in the presence of an
5 elderly person or disabled adult.
6 ~~(z)(aa)~~ Section 825.103, relating to exploitation of
7 an elderly person or disabled adult, if the offense was a
8 felony.
9 ~~(aa)(bb)~~ Section 826.04, relating to incest.
10 ~~(bb)(cc)~~ Section 827.03, relating to child abuse,
11 aggravated child abuse, or neglect of a child.
12 ~~(cc)(dd)~~ Section 827.04, relating to contributing to
13 the delinquency or dependency of a child.
14 ~~(dd)(ee)~~ Former s. 827.05, relating to negligent
15 treatment of children.
16 ~~(ee)(ff)~~ Section 827.071, relating to sexual
17 performance by a child.
18 ~~(ff)(gg)~~ Section 843.01, relating to resisting arrest
19 with violence.
20 ~~(gg)(hh)~~ Section 843.025, relating to depriving a law
21 enforcement, correctional, or correctional probation officer
22 means of protection or communication.
23 ~~(hh)(ii)~~ Section 843.12, relating to aiding in an
24 escape.
25 ~~(ii)(jj)~~ Section 843.13, relating to aiding in the
26 escape of juvenile inmates in correctional institutions.
27 ~~(jj)(kk)~~ Chapter 847, relating to obscene literature.
28 ~~(kk)(ll)~~ Section 874.05(1), relating to encouraging or
29 recruiting another to join a criminal gang.
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1 (ll)~~(mm)~~ Chapter 893, relating to drug abuse
2 prevention and control, only if the offense was a felony or if
3 any other person involved in the offense was a minor.

4 (mm)~~(nn)~~ Section 944.35(3), relating to inflicting
5 cruel or inhuman treatment on an inmate resulting in great
6 bodily harm.

7 (nn)~~(oo)~~ Section 944.46, relating to harboring,
8 concealing, or aiding an escaped prisoner.

9 (oo)~~(pp)~~ Section 944.47, relating to introduction of
10 contraband into a correctional facility.

11 (pp)~~(qq)~~ Section 985.4045, relating to sexual
12 misconduct in juvenile justice programs.

13 (qq)~~(rr)~~ Section 985.4046, relating to contraband
14 introduced into detention facilities.

15 (4) Standards must also ensure that the person+

16 ~~(a) For employees or employers licensed or registered
17 pursuant to chapter 400, does not have a confirmed report of
18 abuse, neglect, or exploitation as defined in s. 415.102(6),
19 which has been uncontested or upheld under s. 415.103.~~

20 ~~(b) has not committed an act that constitutes domestic
21 violence as defined in s. 741.28 s. 741.30.~~

22 Section 3. Paragraph (a) of subsection (4) of section
23 943.0585, Florida Statutes, is amended to read:

24 943.0585 Court-ordered expunction of criminal history
25 records.--The courts of this state have jurisdiction over
26 their own procedures, including the maintenance, expunction,
27 and correction of judicial records containing criminal history
28 information to the extent such procedures are not inconsistent
29 with the conditions, responsibilities, and duties established
30 by this section. Any court of competent jurisdiction may order
31 a criminal justice agency to expunge the criminal history

1 record of a minor or an adult who complies with the
2 requirements of this section. The court shall not order a
3 criminal justice agency to expunge a criminal history record
4 until the person seeking to expunge a criminal history record
5 has applied for and received a certificate of eligibility for
6 expunction pursuant to subsection (2). A criminal history
7 record that relates to a violation of s. 787.025, chapter 794,
8 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
9 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
10 893.135, or a violation enumerated in s. 907.041 may not be
11 expunged, without regard to whether adjudication was withheld,
12 if the defendant was found guilty of or pled guilty or nolo
13 contendere to the offense, or if the defendant, as a minor,
14 was found to have committed, or pled guilty or nolo contendere
15 to committing, the offense as a delinquent act. The court may
16 only order expunction of a criminal history record pertaining
17 to one arrest or one incident of alleged criminal activity,
18 except as provided in this section. The court may, at its sole
19 discretion, order the expunction of a criminal history record
20 pertaining to more than one arrest if the additional arrests
21 directly relate to the original arrest. If the court intends
22 to order the expunction of records pertaining to such
23 additional arrests, such intent must be specified in the
24 order. A criminal justice agency may not expunge any record
25 pertaining to such additional arrests if the order to expunge
26 does not articulate the intention of the court to expunge a
27 record pertaining to more than one arrest. This section does
28 not prevent the court from ordering the expunction of only a
29 portion of a criminal history record pertaining to one arrest
30 or one incident of alleged criminal activity. Notwithstanding
31 any law to the contrary, a criminal justice agency may comply

1 with laws, court orders, and official requests of other
2 jurisdictions relating to expunction, correction, or
3 confidential handling of criminal history records or
4 information derived therefrom. This section does not confer
5 any right to the expunction of any criminal history record,
6 and any request for expunction of a criminal history record
7 may be denied at the sole discretion of the court.

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

22 (a) The person who is the subject of a criminal
23 history record that is expunged under this section or under
24 other provisions of law, including former s. 893.14, former s.
25 901.33, and former s. 943.058, may lawfully deny or fail to
26 acknowledge the arrests covered by the expunged record, except
27 when the subject of the record:

28 1. Is a candidate for employment with a criminal
29 justice agency;

30 2. Is a defendant in a criminal prosecution;

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1 3. Concurrently or subsequently petitions for relief
2 under this section or s. 943.059;

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

4 5. Is seeking to be employed or licensed by or to
5 contract with the Agency for Health Care Administration, the
6 Department of Children and Family Services, or the Department
7 of Juvenile Justice or to be employed or used by such
8 contractor or licensee in a position subject to background
9 screening in accordance with chapter 435 or a sensitive
10 position having direct contact with children, the
11 developmentally disabled, the aged, or the elderly as provided
12 in s. 110.1127(3), s. 112.0455, s. 381.60225, s. 383.305, s.
13 390.015, s. 393.063(15), s. 394.4572(1), s. 394.875, s.
14 395.0055, s. 395.0199, s. 397.451, s. 402.302(3), s.
15 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s.
16 483.101, s. 483.30, s. 985.407, or chapter 400; or

17 6. Is seeking to be employed or licensed by the Office
18 of Teacher Education, Certification, Staff Development, and
19 Professional Practices of the Department of Education, any
20 district school board, or any local governmental entity that
21 licenses child care facilities.

22 Section 4. Paragraph (a) of subsection (4) of section
23 943.059, Florida Statutes, is amended to read:

24 943.059 Court-ordered sealing of criminal history
25 records.--The courts of this state shall continue to have
26 jurisdiction over their own procedures, including the
27 maintenance, sealing, and correction of judicial records
28 containing criminal history information to the extent such
29 procedures are not inconsistent with the conditions,
30 responsibilities, and duties established by this section. Any
31 court of competent jurisdiction may order a criminal justice

1 agency to seal the criminal history record of a minor or an
2 adult who complies with the requirements of this section. The
3 court shall not order a criminal justice agency to seal a
4 criminal history record until the person seeking to seal a
5 criminal history record has applied for and received a
6 certificate of eligibility for sealing pursuant to subsection
7 (2). A criminal history record that relates to a violation of
8 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
9 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
10 s. 847.0145, s. 893.135, or a violation enumerated in s.
11 907.041 may not be sealed, without regard to whether
12 adjudication was withheld, if the defendant was found guilty
13 of or pled guilty or nolo contendere to the offense, or if the
14 defendant, as a minor, was found to have committed or pled
15 guilty or nolo contendere to committing the offense as a
16 delinquent act. The court may only order sealing of a criminal
17 history record pertaining to one arrest or one incident of
18 alleged criminal activity, except as provided in this section.
19 The court may, at its sole discretion, order the sealing of a
20 criminal history record pertaining to more than one arrest if
21 the additional arrests directly relate to the original arrest.
22 If the court intends to order the sealing of records
23 pertaining to such additional arrests, such intent must be
24 specified in the order. A criminal justice agency may not seal
25 any record pertaining to such additional arrests if the order
26 to seal does not articulate the intention of the court to seal
27 records pertaining to more than one arrest. This section does
28 not prevent the court from ordering the sealing of only a
29 portion of a criminal history record pertaining to one arrest
30 or one incident of alleged criminal activity. Notwithstanding
31 any law to the contrary, a criminal justice agency may comply

1 with laws, court orders, and official requests of other
2 jurisdictions relating to sealing, correction, or confidential
3 handling of criminal history records or information derived
4 therefrom. This section does not confer any right to the
5 sealing of any criminal history record, and any request for
6 sealing a criminal history record may be denied at the sole
7 discretion of the court.

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

18 (a) The subject of a criminal history record sealed
19 under this section or under other provisions of law, including
20 former s. 893.14, former s. 901.33, and former s. 943.058, may
21 lawfully deny or fail to acknowledge the arrests covered by
22 the sealed record, except when the subject of the record:

- 23 1. Is a candidate for employment with a criminal
24 justice agency;
- 25 2. Is a defendant in a criminal prosecution;
- 26 3. Concurrently or subsequently petitions for relief
27 under this section or s. 943.0585;
- 28 4. Is a candidate for admission to The Florida Bar;
- 29 5. Is seeking to be employed or licensed by or to
30 contract with the Agency for Health Care Administration, the
31 Department of Children and Family Services, or the Department

1 of Juvenile Justice or to be employed or used by such
2 contractor or licensee in a position subject to background
3 screening in accordance with chapter 435 or a sensitive
4 position having direct contact with children, the
5 developmentally disabled, the aged, or the elderly as provided
6 in s. 110.1127(3), s. 112.0455, s. 381.60225, s. 383.305, s.
7 390.015,s. 393.063(15), s. 394.4572(1), s. 394.875, s.
8 395.0055, s. 395.0199,s. 397.451, s. 402.302(3), s.
9 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s.
10 483.101, s. 483.30,s. 985.407, or chapter 400; or

11 6. Is seeking to be employed or licensed by the Office
12 of Teacher Education, Certification, Staff Development, and
13 Professional Practices of the Department of Education, any
14 district school board, or any local governmental entity which
15 licenses child care facilities.

16 Section 5. For the purpose of incorporating the
17 amendment made by this act to section 435.04, Florida
18 Statutes, in references thereto, subsection (1) of section
19 39.821, Florida Statutes, is reenacted to read:

20 39.821 Qualifications of guardians ad litem.--

21 (1) Because of the special trust or responsibility
22 placed in a guardian ad litem, the Guardian Ad Litem Program
23 may use any private funds collected by the program, or any
24 state funds so designated, to conduct a security background
25 investigation before certifying a volunteer to serve. A
26 security background investigation must include, but need not
27 be limited to, employment history checks, checks of
28 references, local criminal records checks through local law
29 enforcement agencies, and statewide criminal records checks
30 through the Department of Law Enforcement. Upon request, an
31 employer shall furnish a copy of the personnel record for the

1 employee or former employee who is the subject of a security
2 background investigation conducted under this section. The
3 information contained in the personnel record may include, but
4 need not be limited to, disciplinary matters and the reason
5 why the employee was terminated from employment. An employer
6 who releases a personnel record for purposes of a security
7 background investigation is presumed to have acted in good
8 faith and is not liable for information contained in the
9 record without a showing that the employer maliciously
10 falsified the record. A security background investigation
11 conducted under this section must ensure that a person is not
12 certified as a guardian ad litem if the person has been
13 convicted of, regardless of adjudication, or entered a plea of
14 nolo contendere or guilty to, any offense prohibited under the
15 provisions of the Florida Statutes specified in s. 435.04(2)
16 or under any similar law in another jurisdiction. Before
17 certifying an applicant to serve as a guardian ad litem, the
18 chief judge of the circuit court may request a federal
19 criminal records check of the applicant through the Federal
20 Bureau of Investigation. In analyzing and evaluating the
21 information obtained in the security background investigation,
22 the program must give particular emphasis to past activities
23 involving children, including, but not limited to,
24 child-related criminal offenses or child abuse. The program
25 has the sole discretion in determining whether to certify a
26 person based on his or her security background investigation.
27 The information collected pursuant to the security background
28 investigation is confidential and exempt from s. 119.07(1).

29 Section 6. For the purpose of incorporating the
30 amendment made by this act to section 435.03, Florida
31 Statutes, in references thereto, paragraph (g) of subsection

1 (1) of section 400.414, Florida Statutes, is reenacted to
2 read:

3 400.414 Denial, revocation, or suspension of license;
4 imposition of administrative fine; grounds.--

5 (1) The agency may deny, revoke, or suspend any
6 license issued under this part, or impose an administrative
7 fine in the manner provided in chapter 120, for any of the
8 following actions by an assisted living facility, for the
9 actions of any person subject to level 2 background screening
10 under s. 400.4174, or for the actions of any facility
11 employee:

12 (g) A determination that an employee, volunteer,
13 administrator, or owner, or person who otherwise has access to
14 the residents of a facility does not meet the criteria
15 specified in s. 435.03(2), and the owner or administrator has
16 not taken action to remove the person. Exemptions from
17 disqualification may be granted as set forth in s. 435.07. No
18 administrative action may be taken against the facility if the
19 person is granted an exemption.

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21 Administrative proceedings challenging agency action under
22 this subsection shall be reviewed on the basis of the facts
23 and conditions that resulted in the agency action.

24 Section 7. This act shall take effect upon becoming a
25 law.

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SENATE SUMMARY

Provides additional criminal offenses and deletes an offense that would disqualify a person subject to level 1 and level 2 screening standards from employment. Includes the Agency for Health Care Administration to the list of agencies permitted to receive expunged criminal history records and sealed criminal history records. Provides additional offenses for which a person may not lawfully deny or fail to acknowledge an arrest with respect to an expunged or sealed record.