

1 A bill to be entitled
 2 An act relating to employment screening; creating s.
 3 435.015, F.S.; providing for incorporation by reference;
 4 providing that the purpose of the chapter is to provide
 5 uniform criteria for employment screening; providing that
 6 a reference to the chapter, or any section or subdivision,
 7 constitutes a general reference; creating s. 435.025,
 8 F.S.; authorizing consideration of arrest records in
 9 determining whether certain persons satisfy the
 10 requirement of good moral character; amending s. 435.04,
 11 F.S.; prohibiting the Department of Juvenile Justice from
 12 removing a disqualification from employment or granting an
 13 exemption from disqualification in certain circumstances;
 14 amending ss. 984.01 and 985.01, F.S.; providing that
 15 certain persons who fail to satisfy the requirement of
 16 good moral character may be disqualified from employment
 17 or denied an exemption from disqualification; amending s.
 18 985.407, F.S.; providing that certain persons who fail to
 19 satisfy the requirement of good moral character may be
 20 disqualified from employment or denied an exemption from
 21 disqualification; requiring the Department of Juvenile
 22 Justice to require employment screening of certain
 23 personnel pursuant to level 2, rather than level 1,
 24 screening standards of ch. 435, F.S.; reenacting ss.
 25 400.953(3), 943.0585(4)(a), 943.059(4)(a), and
 26 985.05(4)(e), F.S., relating to background screening of
 27 home medical equipment provider personnel, court-ordered
 28 expunction of criminal history records, court-ordered
 29 sealing of criminal history records, and use of juvenile

HB 0713

2004

30 court records as proof of certain disqualification,
 31 respectively, for the purpose of incorporating the
 32 amendment to s. 985.407, F.S., in references thereto;
 33 providing an effective date.

34
 35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. Section 435.015, Florida Statutes, is created
 38 to read:

39 435.015 Incorporation by reference.--The purpose of this
 40 chapter is to provide uniform criteria for employment screening
 41 and, to this end, a reference to this chapter, or to any section
 42 or subdivision within this chapter, constitutes a general
 43 reference under the doctrine of incorporation by reference.

44 Section 2. Section 435.025, Florida Statutes, is created
 45 to read:

46 435.025 Evidence of good moral character.--Any record
 47 concerning the arrest of a person who is required to be of good
 48 moral character as a condition of initial or continued
 49 employment, licensure, or other business with the state, or any
 50 agency or political subdivision thereof, may be considered in
 51 determining whether such person satisfies the requirement,
 52 notwithstanding the disposition of the arrest.

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

55 435.04 Level 2 screening standards.--

56 (3) The security background investigations conducted under
 57 this section for employees of the Department of Juvenile Justice
 58 must ensure that no persons subject to the provisions of this

HB 0713

2004

59 section have been found guilty of, regardless of adjudication,
 60 or entered a plea of nolo contendere or guilty to, any offense
 61 prohibited under any of the following provisions of the Florida
 62 Statutes or under any similar statute of another jurisdiction:

63 (a) Section 784.07, relating to assault or battery of law
 64 enforcement officers, firefighters, emergency medical care
 65 providers, public transit employees or agents, or other
 66 specified officers.

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

69 (c) Section 944.40, relating to escape.

70
 71 The Department of Juvenile Justice may not remove a
 72 disqualification from employment or grant an exemption to any
 73 person who is disqualified under this section for any offense
 74 disposed of during the most recent 7-year period. The Department
 75 of Juvenile Justice may not remove a disqualification from
 76 employment or grant an exemption to any person who has been
 77 found guilty of, regardless of adjudication, or entered a plea
 78 of nolo contendere or guilty to, three or more offenses
 79 specified in this subsection or subsection (2), irrespective of
 80 the time at which such offenses were disposed.

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

83 984.01 Purposes and intent; personnel standards and
 84 screening.--

85 (2) The Department of Juvenile Justice or the Department
 86 of Children and Family Services, as appropriate, may contract
 87 with the Federal Government, other state departments and

HB 0713

2004

88 agencies, county and municipal governments and agencies, public
89 and private agencies, and private individuals and corporations
90 in carrying out the purposes of, and the responsibilities
91 established in, this chapter.

92 (a) When the Department of Juvenile Justice or the
93 Department of Children and Family Services contracts with a
94 provider for any program for children, all personnel, including
95 owners, operators, employees, and volunteers, in the facility
96 must be of good moral character. Each contract entered into by
97 either department for services delivered on an appointment or
98 intermittent basis by a provider that does not have regular
99 custodial responsibility for children and each contract with a
100 school for before or aftercare services must ensure that the
101 owners, operators, and all personnel who have direct contact
102 with children are of good moral character. A volunteer who
103 assists on an intermittent basis for less than 40 hours per
104 month need not be screened if the volunteer is under direct and
105 constant supervision by persons who meet the screening
106 requirements.

107 (b) The Department of Juvenile Justice and the Department
108 of Children and Family Services shall require employment
109 screening pursuant to chapter 435, using the level 2 standards
110 set forth in that chapter for personnel in programs for children
111 or youths.

112 (c) The Department of Juvenile Justice or the Department
113 of Children and Family Services may grant exemptions from
114 disqualification from working with children as provided in s.
115 435.07.

HB 0713

2004

116 (d) Notwithstanding s. 435.04 or s. 435.07, a person may
 117 be disqualified from employment or denied an exemption from
 118 disqualification if such person fails to satisfy the requirement
 119 of good moral character as evidenced by criminal history
 120 information documenting multiple arrests or convictions.

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

123 985.01 Purposes and intent; personnel standards and
 124 screening.--

125 (2) The Department of Juvenile Justice or the Department
 126 of Children and Family Services, as appropriate, may contract
 127 with the Federal Government, other state departments and
 128 agencies, county and municipal governments and agencies, public
 129 and private agencies, and private individuals and corporations
 130 in carrying out the purposes of, and the responsibilities
 131 established in, this chapter.

132 (a) When the Department of Juvenile Justice or the
 133 Department of Children and Family Services contracts with a
 134 provider for any program for children, all personnel, including
 135 owners, operators, employees, and volunteers, in the facility
 136 must be of good moral character. Each contract entered into by
 137 either department for services delivered on an appointment or
 138 intermittent basis by a provider that does not have regular
 139 custodial responsibility for children and each contract with a
 140 school for before or aftercare services must ensure that the
 141 owners, operators, and all personnel who have direct contact
 142 with children are of good moral character. A volunteer who
 143 assists on an intermittent basis for less than 40 hours per
 144 month need not be screened if the volunteer is under direct and

HB 0713

2004

145 constant supervision by persons who meet the screening
 146 requirements.

147 (b) The Department of Juvenile Justice and the Department
 148 of Children and Family Services shall require employment
 149 screening pursuant to chapter 435, using the level 2 standards
 150 set forth in that chapter for personnel in programs for children
 151 or youths.

152 (c) The Department of Juvenile Justice or the Department
 153 of Children and Family Services may grant exemptions from
 154 disqualification from working with children as provided in s.
 155 435.07.

156 (d) Notwithstanding s. 435.04 or s. 435.07, a person may
 157 be disqualified from employment or denied an exemption from
 158 disqualification if such person fails to satisfy the requirement
 159 of good moral character as evidenced by criminal history
 160 information documenting multiple arrests or convictions.

161 Section 6. Subsection(4) of section 985.407, Florida
 162 Statutes, is amended, and subsection (6) is added to said
 163 section, to read:

164 985.407 Departmental contracting powers; personnel
 165 standards and screening.--

166 (4) The department shall require employment screening
 167 pursuant to chapter 435, using the level 2 ~~1~~ standards for
 168 screening set forth in that chapter, for personnel in
 169 delinquency facilities, services, and programs.

170 (6) Notwithstanding s. 435.04 or s. 435.07, a person may
 171 be disqualified from employment or denied an exemption from
 172 disqualification if such person fails to satisfy the requirement

HB 0713

2004

173 of good moral character as evidenced by criminal history
 174 information documenting multiple arrests or convictions.

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

179 400.953 Background screening of home medical equipment
 180 provider personnel.--The agency shall require employment
 181 screening as provided in chapter 435, using the level 1
 182 standards for screening set forth in that chapter, for home
 183 medical equipment provider personnel.

184 (3) Proof of compliance with the screening requirements of
 185 s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,
 186 s. 402.313, s. 409.175, s. 464.008, or s. 985.407 or this part
 187 must be accepted in lieu of the requirements of this section if
 188 the person has been continuously employed in the same type of
 189 occupation for which he or she is seeking employment without a
 190 breach in service that exceeds 180 days, the proof of compliance
 191 is not more than 2 years old, and the person has been screened
 192 by the Department of Law Enforcement. An employer or contractor
 193 shall directly provide proof of compliance to another employer
 194 or contractor, and a potential employer or contractor may not
 195 accept any proof of compliance directly from the person
 196 requiring screening. Proof of compliance with the screening
 197 requirements of this section shall be provided, upon request, to
 198 the person screened by the home medical equipment provider.

199 Section 8. For the purpose of incorporating the amendment
 200 to section 985.407, Florida Statutes, in a reference thereto,

HB 0713

2004

201 paragraph (a) of subsection (4) of section 943.0585, Florida
 202 Statutes, is reenacted to read:

203 943.0585 Court-ordered expunction of criminal history
 204 records.--The courts of this state have jurisdiction over their
 205 own procedures, including the maintenance, expunction, and
 206 correction of judicial records containing criminal history
 207 information to the extent such procedures are not inconsistent
 208 with the conditions, responsibilities, and duties established by
 209 this section. Any court of competent jurisdiction may order a
 210 criminal justice agency to expunge the criminal history record
 211 of a minor or an adult who complies with the requirements of
 212 this section. The court shall not order a criminal justice
 213 agency to expunge a criminal history record until the person
 214 seeking to expunge a criminal history record has applied for and
 215 received a certificate of eligibility for expunction pursuant to
 216 subsection (2). A criminal history record that relates to a
 217 violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
 218 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
 219 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in
 220 s. 907.041 may not be expunged, without regard to whether
 221 adjudication was withheld, if the defendant was found guilty of
 222 or pled guilty or nolo contendere to the offense, or if the
 223 defendant, as a minor, was found to have committed, or pled
 224 guilty or nolo contendere to committing, the offense as a
 225 delinquent act. The court may only order expunction of a
 226 criminal history record pertaining to one arrest or one incident
 227 of alleged criminal activity, except as provided in this
 228 section. The court may, at its sole discretion, order the
 229 expunction of a criminal history record pertaining to more than

HB 0713

2004

230 one arrest if the additional arrests directly relate to the
 231 original arrest. If the court intends to order the expunction of
 232 records pertaining to such additional arrests, such intent must
 233 be specified in the order. A criminal justice agency may not
 234 expunge any record pertaining to such additional arrests if the
 235 order to expunge does not articulate the intention of the court
 236 to expunge a record pertaining to more than one arrest. This
 237 section does not prevent the court from ordering the expunction
 238 of only a portion of a criminal history record pertaining to one
 239 arrest or one incident of alleged criminal activity.

240 Notwithstanding any law to the contrary, a criminal justice
 241 agency may comply with laws, court orders, and official requests
 242 of other jurisdictions relating to expunction, correction, or
 243 confidential handling of criminal history records or information
 244 derived therefrom. This section does not confer any right to the
 245 expunction of any criminal history record, and any request for
 246 expunction of a criminal history record may be denied at the
 247 sole discretion of the court.

248 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 249 criminal history record of a minor or an adult which is ordered
 250 expunged by a court of competent jurisdiction pursuant to this
 251 section must be physically destroyed or obliterated by any
 252 criminal justice agency having custody of such record; except
 253 that any criminal history record in the custody of the
 254 department must be retained in all cases. A criminal history
 255 record ordered expunged that is retained by the department is
 256 confidential and exempt from the provisions of s. 119.07(1) and
 257 s. 24(a), Art. I of the State Constitution and not available to
 258 any person or entity except upon order of a court of competent

HB 0713

2004

259 jurisdiction. A criminal justice agency may retain a notation
 260 indicating compliance with an order to expunge.

261 (a) The person who is the subject of a criminal history
 262 record that is expunged under this section or under other
 263 provisions of law, including former s. 893.14, former s. 901.33,
 264 and former s. 943.058, may lawfully deny or fail to acknowledge
 265 the arrests covered by the expunged record, except when the
 266 subject of the record:

267 1. Is a candidate for employment with a criminal justice
 268 agency;

269 2. Is a defendant in a criminal prosecution;

270 3. Concurrently or subsequently petitions for relief under
 271 this section or s. 943.059;

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

273 5. Is seeking to be employed or licensed by or to contract
 274 with the Department of Children and Family Services or the
 275 Department of Juvenile Justice or to be employed or used by such
 276 contractor or licensee in a sensitive position having direct
 277 contact with children, the developmentally disabled, the aged,
 278 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
 279 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 280 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or

281 6. Is seeking to be employed or licensed by the Office of
 282 Teacher Education, Certification, Staff Development, and
 283 Professional Practices of the Department of Education, any
 284 district school board, or any local governmental entity that
 285 licenses child care facilities.

286 Section 9. For the purpose of incorporating the amendment
 287 to section 985.407, Florida Statutes, in a reference thereto,

HB 0713

2004

288 paragraph (a) of subsection (4) of section 943.059, Florida
 289 Statutes, is reenacted to read:

290 943.059 Court-ordered sealing of criminal history
 291 records.--The courts of this state shall continue to have
 292 jurisdiction over their own procedures, including the
 293 maintenance, sealing, and correction of judicial records
 294 containing criminal history information to the extent such
 295 procedures are not inconsistent with the conditions,
 296 responsibilities, and duties established by this section. Any
 297 court of competent jurisdiction may order a criminal justice
 298 agency to seal the criminal history record of a minor or an
 299 adult who complies with the requirements of this section. The
 300 court shall not order a criminal justice agency to seal a
 301 criminal history record until the person seeking to seal a
 302 criminal history record has applied for and received a
 303 certificate of eligibility for sealing pursuant to subsection
 304 (2). A criminal history record that relates to a violation of s.
 305 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
 306 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
 307 847.0145, s. 893.135, or a violation enumerated in s. 907.041
 308 may not be sealed, without regard to whether adjudication was
 309 withheld, if the defendant was found guilty of or pled guilty or
 310 nolo contendere to the offense, or if the defendant, as a minor,
 311 was found to have committed or pled guilty or nolo contendere to
 312 committing the offense as a delinquent act. The court may only
 313 order sealing of a criminal history record pertaining to one
 314 arrest or one incident of alleged criminal activity, except as
 315 provided in this section. The court may, at its sole discretion,
 316 order the sealing of a criminal history record pertaining to

HB 0713

2004

317 more than one arrest if the additional arrests directly relate
 318 to the original arrest. If the court intends to order the
 319 sealing of records pertaining to such additional arrests, such
 320 intent must be specified in the order. A criminal justice agency
 321 may not seal any record pertaining to such additional arrests if
 322 the order to seal does not articulate the intention of the court
 323 to seal records pertaining to more than one arrest. This section
 324 does not prevent the court from ordering the sealing of only a
 325 portion of a criminal history record pertaining to one arrest or
 326 one incident of alleged criminal activity. Notwithstanding any
 327 law to the contrary, a criminal justice agency may comply with
 328 laws, court orders, and official requests of other jurisdictions
 329 relating to sealing, correction, or confidential handling of
 330 criminal history records or information derived therefrom. This
 331 section does not confer any right to the sealing of any criminal
 332 history record, and any request for sealing a criminal history
 333 record may be denied at the sole discretion of the court.

334 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 335 history record of a minor or an adult which is ordered sealed by
 336 a court of competent jurisdiction pursuant to this section is
 337 confidential and exempt from the provisions of s. 119.07(1) and
 338 s. 24(a), Art. I of the State Constitution and is available only
 339 to the person who is the subject of the record, to the subject's
 340 attorney, to criminal justice agencies for their respective
 341 criminal justice purposes, or to those entities set forth in
 342 subparagraphs (a)1., 4., 5., and 6. for their respective
 343 licensing and employment purposes.

344 (a) The subject of a criminal history record sealed under
 345 this section or under other provisions of law, including former

HB 0713

2004

346 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 347 deny or fail to acknowledge the arrests covered by the sealed
 348 record, except when the subject of the record:

349 1. Is a candidate for employment with a criminal justice
 350 agency;

351 2. Is a defendant in a criminal prosecution;

352 3. Concurrently or subsequently petitions for relief under
 353 this section or s. 943.0585;

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

355 5. Is seeking to be employed or licensed by or to contract
 356 with the Department of Children and Family Services or the
 357 Department of Juvenile Justice or to be employed or used by such
 358 contractor or licensee in a sensitive position having direct
 359 contact with children, the developmentally disabled, the aged,
 360 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
 361 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 362 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter
 363 400; or

364 6. Is seeking to be employed or licensed by the Office of
 365 Teacher Education, Certification, Staff Development, and
 366 Professional Practices of the Department of Education, any
 367 district school board, or any local governmental entity which
 368 licenses child care facilities.

369 Section 10. For the purpose of incorporating the amendment
 370 to section 985.407, Florida Statutes, in a reference thereto,
 371 paragraph (e) of subsection (4) of section 985.05, Florida
 372 Statutes, is reenacted to read:

373 985.05 Court records.--

HB 0713

2004

374 (4) A court record of proceedings under this part is not
375 admissible in evidence in any other civil or criminal
376 proceeding, except that:

377 (e) Records of proceedings under this part may be used to
378 prove disqualification pursuant to ss. 110.1127, 393.0655,
379 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and
380 985.407.

381 Section 11. This act shall take effect upon becoming a
382 law.