

By Senator Bracy

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1                   A bill to be entitled  
2       An act relating to background screening; creating s.  
3       435.13, F.S.; defining the term "entity"; prohibiting  
4       certain entities that contract for inmate labor from  
5       excluding certain persons from consideration for  
6       employment or from disqualifying certain persons from  
7       employment; specifying conditions that constitute  
8       exclusion from consideration for employment;  
9       prohibiting an entity from inquiring into or  
10      considering an applicant's criminal history before the  
11      applicant has received a conditional offer of  
12      employment; prohibiting an entity from considering  
13      specified information in connection with an  
14      application for employment; requiring an entity to  
15      consider specified factors when determining whether an  
16      applicant may be disqualified from employment;  
17      requiring an entity to provide specified information  
18      to an applicant the entity intends to disqualify from  
19      employment for an offense that directly relates to the  
20      employment position; specifying how an applicant may  
21      establish evidence of mitigation or rehabilitation;  
22      providing requirements relating to establishing such  
23      evidence; providing requirements for making a final  
24      employment decision; requiring entities to retain  
25      certain records for a specified time period and to  
26      make the records available to the Department of  
27      Economic Opportunity upon request; providing a  
28      presumption relating to recordkeeping; authorizing  
29      certain persons to contact the department; requiring

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30 the department to keep a record of such contact and to  
31 investigate and review any complaints; providing  
32 policy relating to contracts for inmate labor;  
33 requiring the department to periodically review  
34 background check policies; requiring that background  
35 check policies and practices be considered among the  
36 performance criteria in evaluating a contract for  
37 inmate labor; providing a civil penalty; providing  
38 applicability; requiring the department to enforce the  
39 act; providing an effective date.

40  
41 Be It Enacted by the Legislature of the State of Florida:

42  
43 Section 1. Section 435.13, Florida Statutes, is created to  
44 read:

45 435.13 Employment practices for entities that contract for  
46 inmate labor.-

47 (1) As used in this section, the term "entity" means an  
48 entity that contracts with the Department of Corrections under  
49 s. 944.10(7) or under chapter 946.

50 (2) An entity may not exclude a person from consideration  
51 for employment or disqualify a person from employment solely or  
52 in part because he or she has been found guilty of, regardless  
53 of adjudication, or entered a plea of nolo contendere or guilty  
54 to, or has been adjudicated delinquent and the record has not  
55 been sealed or expunged for, any offense that is not directly  
56 related to the employment position sought. Conditions that  
57 constitute exclusion from consideration for employment include:

58 (a) Requiring the applicant to disclose on his or her

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59 employment application whether he or she has been found guilty  
60 of, regardless of adjudication, or entered a plea of nolo  
61 contendere or guilty to, or has been adjudicated delinquent and  
62 the record has not been sealed or expunged for, any offense; or

63 (b) Before making a conditional offer of employment:

64 1. Making a verbal or written inquiry to the applicant as  
65 to whether he or she has been found guilty of, regardless of  
66 adjudication, or entered a plea of nolo contendere or guilty to,  
67 or has been adjudicated delinquent and the record has not been  
68 sealed or expunged for, any offense; or

69 2. Making any provision that suggests that the applicant  
70 self-report or voluntarily disclose background check  
71 information.

72 (3) An entity may not inquire into or consider an  
73 applicant's criminal history before the applicant has received a  
74 conditional offer of employment. An entity may not consider any  
75 of the following in connection with an application for  
76 employment:

77 (a) An arrest not followed by a conviction.

78 (b) A conviction that has been sealed, dismissed, or  
79 expunged.

80 (c) An infraction or a misdemeanor conviction for which a  
81 jail sentence may not be imposed.

82 (4) When determining if an applicant may be disqualified  
83 from employment due to an offense that directly relates to the  
84 employment position, all of the following factors must be  
85 considered:

86 (a) Whether the offense is directly related to the duties  
87 and responsibilities of the employment position or occupation.

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88 (b) Whether the employment position or occupation offers  
89 the opportunity for the same or a similar offense to occur.

90 (c) Whether the circumstances leading to the conduct for  
91 which the person was adjudicated will recur in the employment  
92 position or occupation.

93 (d) The length of time since the offense occurred.

94 (5) If an entity intends to disqualify an applicant from  
95 employment because of an applicant's prior conviction, the  
96 entity must provide written notice to the applicant of all of  
97 the following before notifying the applicant of the entity's  
98 final decision:

99 (a) The conviction that is the basis for the potential  
100 disqualification.

101 (b) A copy of the applicant's conviction history report, if  
102 any.

103 (c) Examples of mitigation or rehabilitation evidence the  
104 applicant may provide to the entity.

105 (6) An applicant convicted of an offense that directly  
106 relates to the employment position may not be disqualified from  
107 employment if the applicant can show evidence of mitigation or  
108 rehabilitation and present fitness to perform the duties of the  
109 employment position. Evidence of mitigation or rehabilitation  
110 may be established by doing any of the following:

111 (a) Providing proof of no subsequent convictions since  
112 release and compliance with terms and conditions of probation or  
113 parole, if any.

114 (b) Providing other types of evidence of mitigation or  
115 rehabilitation, including, but not limited to, letters of  
116 reference.

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117       (7) An applicant has 10 business days to respond after  
118 notice is given pursuant to subsection (5) and to rebut the  
119 basis for the potential disqualification, including, but not  
120 limited to, challenging the accuracy of any information in the  
121 notice or submitting mitigation or rehabilitation evidence. The  
122 entity must hold the employment position vacant until the entity  
123 makes a final employment decision based on an individualized  
124 assessment of the information submitted by the applicant in his  
125 or her response and any guidance from the federal Equal  
126 Employment Opportunity Commission on the consideration of arrest  
127 and conviction records in employment decisions.

128       (8) If an entity disqualifies an applicant from employment  
129 because of the applicant's prior conviction, the entity must  
130 provide written notification to the applicant of all of the  
131 following:

132           (a) The disqualification.

133           (b) Information on how to appeal the disqualification.

134           (c) A statement that the applicant may be eligible for  
135 other employment.

136           (d) The earliest date the applicant may reapply for an  
137 employment position with the entity.

138       (9) (a) An entity shall maintain a record of:

139           1. The number of employment positions requiring background  
140 checks, the number of applicants for each position, the number  
141 of applicants who were provided a conditional offer for each  
142 position; the number of applicants who were hired; and

143           2. The number of applicants who

144           a. Had a criminal history;

145           b. Were provided with notice pursuant to subsection (5);

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146 c. Provided evidence of mitigation or rehabilitation; and

147 d. Were provided a final adverse notice; and

148 (b) The entity shall retain application forms, records of  
149 employment, and other pertinent data and records required under  
150 this section, including, but not limited to, communications with  
151 the applicant, for a minimum of 3 years. The entity must allow  
152 the Department of Economic Opportunity to access such data and  
153 records upon request.

154 (10) If an entity does not maintain or retain adequate data  
155 records documenting compliance with this section or does not  
156 allow the Department of Economic Opportunity reasonable access  
157 to such records, it shall be presumed, absent clear and  
158 convincing evidence otherwise, that the entity did not comply  
159 with this section.

160 (11) Any person who is aggrieved by an entity's violation  
161 of this section may contact the Department of Economic  
162 Opportunity and report any problems, concerns, or suggestions  
163 regarding compliance with or the implementation or impact of  
164 this section. The department shall keep a record of all such  
165 contact and shall investigate and review any complaints.

166 (12) (a) It shall be the policy of the state to enter into  
167 contracts for inmate labor only with entities that have adopted  
168 and employ written policies, practices, and standards that are  
169 consistent with the requirements of this section.

170 (b) The Department of Economic Opportunity shall  
171 periodically review entities' background check policies for  
172 compliance with this section. Background check policies and  
173 practices shall be considered among the performance criteria in  
174 evaluating a contract for inmate labor.

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175       (13) An entity that violates this section is subject to a  
176 civil penalty of not more than \$5,000 for each violation.

177       (14) This section does not apply:

178       (a) If federal, state, or local law, including  
179 corresponding rules and regulations, requires the consideration  
180 of a person's criminal history;

181       (b) To a law enforcement agency;

182       (c) To a governmental entity within the criminal justice  
183 system; or

184       (d) To a governmental entity seeking an employee for a  
185 volunteer position.

186       (15) The Department of Economic Opportunity shall enforce  
187 this section.

188       Section 2. This act shall take effect July 1, 2021.