

By Senator Burgess

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1                   A bill to be entitled  
2           An act relating to criminal history information;  
3           amending s. 455.213, F.S.; prohibiting an applicable  
4           board from inquiring into, or considering the  
5           conviction history of, an applicant for licensure  
6           until it is determined that the applicant is otherwise  
7           qualified; revising professions for licensure  
8           eligibility; removing a provision relating to  
9           licensure of other professions offered to certain  
10          inmates under certain circumstances; prohibiting the  
11          use of a conviction, or other adjudication, for a  
12          crime before the date an application is received as  
13          being grounds for denial of a license; authorizing an  
14          applicable board to consider an applicant's criminal  
15          history that includes certain crimes only if such  
16          criminal history directly relates to the practice of  
17          the applicable profession; prohibiting the use,  
18          distribution, and dissemination of specified criminal  
19          records; removing a provision authorizing an  
20          applicable board to consider an applicant's criminal  
21          history if the history has been found to relate to  
22          good moral character; prohibiting the applicable board  
23          from denying an application for license of a person  
24          based solely or in part on a prior felony conviction;  
25          providing an exception; providing requirements for  
26          determining if such felony conviction directly relates  
27          to the practice of the applicable profession;  
28          providing requirements if the applicable board intends  
29          to deny an application for license based solely or in

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30 part on the applicant's prior felony conviction;  
31 amending s. 943.059, F.S.; providing requirements for  
32 court-ordered sealing of certain records that were  
33 automatically sealed by the Department of Law  
34 Enforcement under specified provisions; providing an  
35 effective date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Present paragraphs (b) through (e) of subsection  
40 (3) of section 455.213, Florida Statutes, are redesignated as  
41 paragraphs (c) through (f), respectively, a new paragraph (b)  
42 and paragraph (g) are added to that subsection, and paragraph  
43 (a) and present paragraph (b) of that subsection are amended, to  
44 read:

45 455.213 General licensing provisions.—

46 (3) (a) Notwithstanding any other law, the applicable board  
47 shall use the process in this subsection for review of an  
48 applicant's criminal record to determine his or her eligibility  
49 for licensure. ~~as:~~

50 (b) The applicable board may not inquire into, or consider  
51 the conviction history of, an applicant for licensure until the  
52 applicant is determined to be otherwise qualified for licensure.

53 ~~1. A barber under chapter 476;~~

54 ~~2. A cosmetologist or cosmetology specialist under chapter~~  
55 ~~477;~~

56 ~~3. Any of the following construction professions under~~  
57 ~~chapter 489:~~

58 ~~a. Air-conditioning contractor;~~

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59       ~~b. Electrical contractor;~~  
60       ~~e. Mechanical contractor;~~  
61       ~~d. Plumbing contractor;~~  
62       ~~e. Pollutant storage systems contractor;~~  
63       ~~f. Roofing contractor;~~  
64       ~~g. Sheet metal contractor;~~  
65       ~~h. Solar contractor;~~  
66       ~~i. Swimming pool and spa contractor;~~  
67       ~~j. Underground utility and excavation contractor; or~~  
68       ~~k. Other specialty contractors; or~~  
69       ~~4. Any other profession for which the department issues a~~  
70 ~~license, provided the profession is offered to inmates in any~~  
71 ~~correctional institution or correctional facility as vocational~~  
72 ~~training or through an industry certification program.~~

73       ~~(c)(b)~~1. A conviction, or any other adjudication, for a  
74 crime ~~more than 5 years~~ before the date the application is  
75 received by the applicable board may not be grounds for denial  
76 of a license ~~specified in paragraph (a)~~. For purposes of this  
77 paragraph, the term "conviction" means a determination of guilt  
78 that is the result of a plea or trial, regardless of whether  
79 adjudication is withheld. This ~~subparagraph~~ ~~paragraph~~ does not  
80 limit the applicable board from considering an applicant's  
81 criminal history that includes a crime listed in s.  
82 775.21(4)(a)1. or s. 776.08 at any time, but only if such  
83 criminal history has been found to directly relate to the  
84 practice of the applicable profession.

85       2. Notwithstanding subparagraph 1., the following criminal  
86 history may not be used, distributed, or disseminated by the  
87 state, its agents, or political subdivisions in connection with

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88 an application for licensure:

89 a. An arrest without a valid conviction.

90 b. Convictions that have been sealed, dismissed, or  
91 expunged.

92 c. Misdemeanor convictions without incarceration.

93 d. Noncriminal infractions.

94 ~~2. The applicable board may consider the criminal history~~  
95 ~~of an applicant for licensure under subparagraph (a)3. if such~~  
96 ~~criminal history has been found to relate to good moral~~  
97 ~~character.~~

98 (g) The applicable board may not deny an application for a  
99 license solely or in part on the basis of an applicant's prior  
100 felony conviction unless the conviction directly relates to the  
101 practice of the applicable profession for which the license is  
102 sought or held.

103 1. In determining if a felony conviction directly relates  
104 to the practice of the applicable profession for which the  
105 license is sought or held, the applicable board shall consider:

106 a. The nature and seriousness of the conviction.

107 b. Whether the conviction directly relates to the practice  
108 of the applicable profession for which the license is sought or  
109 held.

110 c. Whether the duties and responsibilities of the  
111 profession provide the opportunity for the same or a similar  
112 offense to occur.

113 d. Whether circumstances leading to the offense for which  
114 the person was convicted will recur in the profession.

115 e. The age of the person at the time the felony was  
116 committed.

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117 f. The length of time since the conviction.

118 g. All circumstances relative to the felony, including  
119 mitigating circumstances or social conditions surrounding the  
120 commission of the felony.

121 h. Evidence of mitigation or rehabilitation and the  
122 applicant's current ability to practice the profession  
123 competently in accordance with the actual practice of the  
124 profession.

125 2. If the applicable board intends to deny an application  
126 for a license solely or in part on the basis of the applicant's  
127 prior felony conviction, the board must notify the applicant in  
128 writing of all of the following before making a final decision:

129 a. Identify the reasons for the potential denial.

130 b. Provide a copy of any criminal history record.

131 c. Provide examples of evidence of mitigation or  
132 rehabilitation and the current ability to practice the  
133 profession competently in accordance with the actual practice of  
134 the profession which the applicant may voluntarily provide.

135 (I) An applicant who has been convicted of an offense that  
136 directly relates to the practice of the applicable profession  
137 for which a license is sought may not be denied the license if  
138 he or she can show evidence of mitigation or rehabilitation and  
139 the current ability to practice the profession competently in  
140 accordance with the actual practice of the profession.

141 (II) The applicant shall have 10 business days after  
142 issuance of the notice to respond with any information,  
143 including challenging the accuracy of the information and  
144 submitting evidence of mitigation or rehabilitation and his or  
145 her current ability to practice the profession competently in

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146 accordance with the actual practice of the profession.

147 (III) Evidence of mitigation or rehabilitation and the  
148 applicant's current ability to practice the profession  
149 competently in accordance with the actual practice of the  
150 profession may be established by:

151 (A) Proof of compliance with the terms and conditions of  
152 probation or parole; or

153 (B) Other evidence, including, but not limited to, letters  
154 of reference or program or education certificates.

155 (IV) If an applicable board denies an application for a  
156 license solely or in part on the basis of the applicant's prior  
157 felony conviction, the applicable board must notify the  
158 applicant in writing of all of the following:

159 (A) Final denial.

160 (B) Appeal process.

161 (C) Eligibility for other licenses or professions.

162 (D) Earliest date the applicant may reapply for a license.

163 Section 2. Present paragraph (b) of subsection (2) of  
164 section 943.059, Florida Statutes, is redesignated as paragraph  
165 (c), and paragraph (f) is added to subsection (1) and a new  
166 paragraph (b) is added to subsection (2) of that section, to  
167 read:

168 943.059 Court-ordered sealing of criminal history records.—

169 (1) ELIGIBILITY.—A person is eligible to petition a court  
170 to seal a criminal history record when:

171 (f) Notwithstanding paragraphs (b) and (e), if a criminal  
172 history record has been automatically sealed pursuant to s.  
173 943.0595 and the subject of the sealed record presents a record  
174 of the sealing by the department described in paragraph (2)(b)

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175 to the court, the court shall grant the sealing of the criminal  
176 history record.

177 (2) CERTIFICATE OF ELIGIBILITY.—Before petitioning the  
178 court to seal a criminal history record, a person seeking to  
179 seal a criminal history record must apply to the department for  
180 a certificate of eligibility for sealing. The department shall  
181 adopt rules relating to the application for and issuance of  
182 certificates of eligibility for sealing.

183 (b) Notwithstanding paragraph (a), the department shall  
184 also issue a certificate of eligibility for sealing to a person  
185 who is the subject of a criminal history record that has been  
186 sealed by the department pursuant to s. 943.0595. This  
187 certificate must indicate that the record has been sealed by the  
188 department and is only valid for court-ordered sealing under  
189 paragraph (1) (f) of a record already sealed pursuant to s.  
190 943.0595.

191 Section 3. This act shall take effect July 1, 2022.