

By the Committee on Regulated Industries; and Senator Burgess

580-02079-22

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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, or the Department of Business and Professional
5 Regulation if there is no such board, from inquiring
6 into or considering the conviction history of an
7 applicant for licensure until it is determined that
8 the applicant is otherwise qualified; revising
9 professions for licensure eligibility; removing a
10 provision relating to licensure of other professions
11 offered to certain inmates under certain
12 circumstances; prohibiting the use of a conviction, or
13 other adjudication, for a crime before the date an
14 application is received as being grounds for denial of
15 a license; authorizing an applicable board, or the
16 department if there is no board, to consider an
17 applicant's criminal history only if such criminal
18 history directly relates to the practice of the
19 applicable profession; prohibiting the use,
20 distribution, and dissemination of specified criminal
21 records; removing a provision authorizing an
22 applicable board to consider an applicant's criminal
23 history if the history has been found to relate to
24 good moral character; prohibiting the applicable
25 board, or the department if there is no board, from
26 denying an application for licensure of a person based
27 solely or in part on an applicant's criminal history;
28 providing an exception; providing requirements for
29 determining if such criminal history directly relates

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30 to the practice of the applicable profession;
31 providing requirements if the applicable board, or the
32 department if there is no board, intends to deny an
33 application for license based solely or in part on the
34 applicant's prior conviction; amending s. 943.059,
35 F.S.; providing requirements for court-ordered sealing
36 of certain records that were automatically sealed by
37 the Department of Law Enforcement under specified
38 provisions; providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

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

48 455.213 General licensing provisions.—

49 (3) (a) Notwithstanding any other law, the applicable board,
50 or the department if there is no board, shall use the process in
51 this subsection for review of an applicant's criminal record to
52 determine his or her eligibility for licensure.

53 (b) The applicable board, or the department if there is no
54 board, may not inquire into or consider the conviction history
55 of an applicant for licensure until the applicant is determined
56 to be otherwise qualified for licensure. as:

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

58 ~~2. A cosmetologist or cosmetology specialist under chapter~~

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59 ~~477;~~60 ~~3. Any of the following construction professions under~~
61 ~~chapter 489:~~62 ~~a. Air-conditioning contractor;~~63 ~~b. Electrical contractor;~~64 ~~e. Mechanical contractor;~~65 ~~d. Plumbing contractor;~~66 ~~e. Pollutant storage systems contractor;~~67 ~~f. Roofing contractor;~~68 ~~g. Sheet metal contractor;~~69 ~~h. Solar contractor;~~70 ~~i. Swimming pool and spa contractor;~~71 ~~j. Underground utility and excavation contractor; or~~72 ~~k. Other specialty contractors; or~~73 ~~4. Any other profession for which the department issues a~~
74 ~~license, provided the profession is offered to inmates in any~~
75 ~~correctional institution or correctional facility as vocational~~
76 ~~training or through an industry certification program.~~77 ~~(c)1.(b)1.~~ A conviction, or any other adjudication, for a
78 crime ~~more than 5 years~~ before the date the application is
79 received by the applicable board, or the department if there is
80 no board, may not be grounds for denial of a license ~~specified~~
81 ~~in paragraph (a).~~ For purposes of this subsection ~~paragraph~~, the
82 term "conviction" means a determination of guilt that is the
83 result of a plea or trial, regardless of whether adjudication is
84 withheld. This subparagraph ~~paragraph~~ does not limit the
85 applicable board, or the department if there is no board, from
86 considering an applicant's criminal history that includes a
87 crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but

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88 only if such criminal history has been found to directly relate
89 to the practice of the applicable profession.

90 2. Notwithstanding subparagraph 1., the following criminal
91 history may not be used, distributed, or disseminated by the
92 department or a board or its agents in connection with an
93 application for licensure:

94 a. An arrest without a valid conviction.

95 b. Convictions that have been sealed, dismissed, or
96 expunged.

97 c. Misdemeanor convictions without incarceration.

98 d. Noncriminal infractions.

99 (g) The applicable board, or the department if there is no
100 board, may not deny an application for a license solely or in
101 part on the basis of an applicant's criminal history unless the
102 criminal history directly relates to the practice of the
103 applicable profession for which the license is sought or held.

104 1. In determining if a criminal history directly relates to
105 the practice of the applicable profession for which the license
106 is sought or held, the applicable board, or the department if
107 there is no board, shall consider:

108 a. The nature and seriousness of the conviction.

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

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

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

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117 e. The age of the person at the time the offense was
118 committed.

119 f. The length of time since the conviction.

120 g. All circumstances relative to the offense, including
121 mitigating circumstances or social conditions surrounding the
122 commission of the offense.

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

127 2. If the applicable board, or the department if there is
128 no board, intends to deny an application for a license solely or
129 in part on the basis of the applicant's criminal history, it
130 must notify the applicant in writing of its intent before making
131 a final decision. Such notice must do all of the following:

132 a. Identify the reasons for the potential denial.

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

134 c. Provide examples of evidence of mitigation or
135 rehabilitation and the current ability to practice the
136 profession competently in accordance with the actual practice of
137 the profession, which the applicant may voluntarily provide.

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

144 (II) The applicant shall have 10 business days after
145 issuance of the notice to respond with any information,

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146 including challenging the accuracy of the information and
147 submitting evidence of mitigation or rehabilitation and his or
148 her current ability to practice the profession competently in
149 accordance with the actual practice of the profession.

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

154 (A) Proof of compliance with the terms and conditions of
155 probation or parole; or

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

158 (IV) If an applicable board, or the department if there is
159 no board, denies an application for a license solely or in part
160 on the basis of the applicant's criminal history, it must notify
161 the applicant in writing of all of the following:

162 (A) Final denial.

163 (B) Appeal process ~~The applicable board may consider the~~
164 ~~criminal history of an applicant for licensure under~~
165 ~~subparagraph (a)3. if such criminal history has been found to~~
166 ~~relate to good moral character.~~

167 Section 2. Present paragraph (b) of subsection (2) of
168 section 943.059, Florida Statutes, is redesignated as paragraph
169 (c), and paragraph (f) is added to subsection (1) and a new
170 paragraph (b) is added to subsection (2) of that section, to
171 read:

172 943.059 Court-ordered sealing of criminal history records.—

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

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175 (f) Notwithstanding paragraphs (b) and (e), if a criminal
176 history record has been automatically sealed pursuant to s.
177 943.0595 and the subject of the sealed record presents a record
178 of the sealing by the department described in paragraph (2) (b)
179 to the court, the court shall grant the sealing of the criminal
180 history record.

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

187 (b) Notwithstanding paragraph (a), the department shall
188 also issue a certificate of eligibility for sealing to a person
189 who is the subject of a criminal history record that has been
190 sealed by the department pursuant to s. 943.0595. This
191 certificate must indicate that the record has been sealed by the
192 department and is only valid for court-ordered sealing under
193 paragraph (1) (f) of a record already sealed pursuant to s.
194 943.0595.

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