

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.

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

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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.

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, 2022.