

By Senator Saunders

37-1088-03

1 A bill to be entitled
2 An act relating to employment background
3 screening; amending s. 64 of chapter 95-228,
4 Laws of Florida; providing that chapter 435,
5 F.S., applies to all offenses, regardless of
6 the date committed; repealing s. 400.980(4)(h),
7 relating to health care services pools;
8 deleting obsolete provisions; amending s.
9 435.03, F.S.; providing additional criminal
10 offenses that would disqualify a person subject
11 to level 1 screening standards from employment;
12 amending s. 435.04, F.S.; providing additional
13 criminal offenses that would disqualify a
14 person subject to level 2 screening standards
15 from employment; creating s. 435.12, F.S.;
16 specifying the period during which a screening
17 conducted under chapter 435, F.S., is valid;
18 providing requirements for rescreening;
19 providing for certain exceptions; amending ss.
20 943.0585 and 943.059, F.S.; adding the Agency
21 for Health Care Administration to the list of
22 agencies permitted to receive expunged criminal
23 history records and sealed criminal history
24 records; providing additional offenses for
25 which a person may not lawfully deny or fail to
26 acknowledge an arrest with respect to an
27 expunged or sealed record; reenacting ss.
28 39.821(1) and 400.414(1)(g), F.S., relating to
29 guardians ad litem and assisted living
30 facilities, to incorporate the amendment to ss.
31

1 435.03 and 435.04, F.S., in references thereto;
2 providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 64 of chapter 95-228, Laws of
7 Florida, is amended to read:

8 Section 64. Except as otherwise provided herein, this
9 act shall take effect October 1, 1995, and shall apply to
10 offenses committed on or after that date, except that section
11 47 of this act, which creates chapter 435, Florida Statutes,
12 shall apply to all offenses, regardless of the date committed.

13 Section 2. Paragraph (h) of subsection (4) of section
14 400.980, Florida Statutes, is repealed.

15 Section 3. Section 435.03, Florida Statutes, is
16 amended to read:

17 435.03 Level 1 screening standards.--

18 (1) All employees required by law to be screened shall
19 be required to undergo background screening as a condition of
20 employment and continued employment. For the purposes of this
21 subsection, level 1 screenings shall include, but not be
22 limited to, employment history checks and statewide criminal
23 correspondence checks through the Florida Department of Law
24 Enforcement, and may include local criminal records checks
25 through local law enforcement agencies.

26 (2) Any person for whom employment screening is
27 required by statute must not have been found guilty of,
28 regardless of adjudication, or entered a plea of nolo
29 contendere or guilty to, any offense prohibited under any of
30 the following provisions of the Florida Statutes or under any
31 similar statute of another jurisdiction:

- 1 (a) Former section 415.111, relating to abuse,
2 neglect, or exploitation of a vulnerable adult.
- 3 (b) Section 782.04, relating to murder.
- 4 (c) Section 782.07, relating to manslaughter,
5 aggravated manslaughter of an elderly person or disabled
6 adult, or aggravated manslaughter of a child.
- 7 (d) Section 782.071, relating to vehicular homicide.
- 8 (e) Section 782.09, relating to killing of an unborn
9 child by injury to the mother.
- 10 (f) Chapter 784, relating to assault, battery, and
11 culpable negligence, if the offense was a felony.
- 12 ~~(g)(f)~~ Section 784.011, relating to assault, if the
13 victim of the offense was a minor.
- 14 ~~(g)~~ ~~Section 784.021, relating to aggravated assault.~~
- 15 (h) Section 784.03, relating to battery, if the victim
16 of the offense was a minor.
- 17 ~~(i)~~ ~~Section 784.045, relating to aggravated battery.~~
- 18 ~~(i)(j)~~ Section 787.01, relating to kidnapping.
- 19 ~~(j)(k)~~ Section 787.02, relating to false imprisonment.
- 20 (k) Section 790.115(1), relating to exhibiting
21 firearms or weapons within 1,000 feet of a school.
- 22 (l) Section 790.115(2)(b), relating to possessing an
23 electric weapon or device, destructive device, or other weapon
24 on school property.
- 25 (m) Section 790.15, relating to discharging a firearm
26 in public, if the offense was a felony.
- 27 (n) Section 790.19, relating to the shooting into or
28 throwing deadly missiles into dwellings.
- 29 ~~(o)(l)~~ Chapter 794 ~~Section 794.011~~, relating to sexual
30 battery.
- 31

1

(p)~~(m)~~ Former s. 794.041, relating to prohibited acts
2 of persons in familial or custodial authority.
3

(q)~~(n)~~ Chapter 796, relating to prostitution, if the
4 offense occurred within the previous 10 years.
5

~~(o) Section 798.02, relating to lewd and lascivious~~
6 ~~behavior.~~
7

(r)~~(p)~~ Chapter 800, relating to lewdness and indecent
8 exposure.
9

(s)~~(q)~~ Section 806.01, relating to arson.
10

(t) Section 806.031, relating to arson resulting in
11 injury to another.
12

(u) Section 810.14, relating to voyeurism, if the
13 offense was a felony.
14

(v)~~(r)~~ Chapter 812, relating to theft, robbery, and
15 related crimes, if the offense was a felony.
16

(w)~~(s)~~ Section 817.563, relating to fraudulent sale of
17 controlled substances, only if the offense was a felony.
18

(x)~~(t)~~ Section 825.102, relating to abuse, aggravated
19 abuse, or neglect of an elderly person or disabled adult.
20

(y)~~(u)~~ Section 825.1025, relating to lewd or
21 lascivious offenses committed upon or in the presence of an
22 elderly person or disabled adult.
23

(z)~~(v)~~ Section 825.103, relating to exploitation of an
24 elderly person or disabled adult, if the offense was a felony.
25

(aa)~~(w)~~ Section 826.04, relating to incest.
26

(bb)~~(x)~~ Section 827.03, relating to child abuse,
27 aggravated child abuse, or neglect of a child.
28

(cc)~~(y)~~ Section 827.04, relating to contributing to
29 the delinquency or dependency of a child.
30

(dd)~~(z)~~ Former s. 827.05, relating to negligent
31 treatment of children.

1 ~~(ee)(aa)~~ Section 827.071, relating to sexual
2 performance by a child.

3 (ff) Section 843.01, relating to resisting arrest with
4 violence.

5 ~~(gg)(bb)~~ Chapter 847, relating to obscene literature.

6 (hh)(cc) Chapter 893, relating to drug abuse
7 prevention and control, only if the offense was a felony or if
8 any other person involved in the offense was a minor.

9 (3) Standards must also ensure that the person has not
10 committed an act that constitutes domestic violence as defined
11 in s. 741.28(1), or committed a violation of any order for
12 injunction for protection as described in s. 741.30 or s.
13 741.31.+

14 ~~(a) For employees and employers licensed or registered~~
15 ~~pursuant to chapter 400, and for employees and employers of~~
16 ~~developmental services institutions as defined in s. 393.063,~~
17 ~~intermediate care facilities for the developmentally disabled~~
18 ~~as defined in s. 393.063, and mental health treatment~~
19 ~~facilities as defined in s. 394.455, meets the requirements of~~
20 ~~this chapter.~~

21 ~~(b) Has not committed an act that constitutes domestic~~
22 ~~violence as defined in s. 741.30.~~

23 (4) Any person employed in a health care facility
24 licensed or registered by the Agency for Health Care
25 Administration and any individual seeking professional
26 licensure or certification by the Department of Health who is
27 designated by law to undergo background screening must not
28 have been found guilty of, regardless of adjudication, or
29 entered a plea of nolo contendere or guilty to, any offense
30 prohibited under subsection (2), subsection (3), this
31 subsection, or any similar statute of another jurisdiction:

- 1 (a) Section 810.02, relating to burglary.
2 (b) Section 817.034, relating to fraudulent acts
3 through mail, wire, radio, electromagnetic, photoelectronic,
4 or photooptical systems.
5 (c) Section 817.505, relating to patient brokering.
6 (d) Section 817.568, relating to personal
7 identification theft.
8 (e) Section 817.61, relating to fraudulent use of
9 credit cards, if the offense was a felony.
10 (f) Section 831.01, relating to forgery.
11 (g) Section 831.02, relating to uttering forged
12 instruments.
13 (h) Section 831.07, relating to forging bank bills or
14 promissory notes.
15 (i) Section 831.09, relating to uttering forged bills.
16 (j) Section 831.31, relating to the sale, manufacture,
17 delivery, or possession with the intent to sell any
18 counterfeit controlled substance, if the offense was a felony.
19 Section 4. Section 435.04, Florida Statutes, is
20 amended to read:
21 435.04 Level 2 screening standards.--
22 (1) All employees in positions designated by law as
23 positions of trust or responsibility shall be required to
24 undergo security background investigations as a condition of
25 employment and continued employment. For the purposes of this
26 subsection, security background investigations shall include,
27 but not be limited to, fingerprinting for all purposes and
28 checks in this subsection, statewide criminal and juvenile
29 records checks through the Florida Department of Law
30 Enforcement, and federal criminal records checks through the
31 Federal Bureau of Investigation, and may include local

1 criminal records checks through local law enforcement
2 agencies.

3 (2) The security background investigations under this
4 section must ensure that no persons subject to the provisions
5 of this section have been found guilty of, regardless of
6 adjudication, or entered a plea of nolo contendere or guilty
7 to, any offense prohibited under any of the following
8 provisions of the Florida Statutes or under any similar
9 statute of another jurisdiction:

10 (a) Former s. 415.111, relating to adult abuse,
11 neglect, or exploitation of aged persons or disabled adults.

12 (b) Section 782.04, relating to murder.

13 (c) Section 782.07, relating to manslaughter,
14 aggravated manslaughter of an elderly person or disabled
15 adult, or aggravated manslaughter of a child.

16 (d) Section 782.071, relating to vehicular homicide.

17 (e) Section 782.09, relating to killing of an unborn
18 child by injury to the mother.

19 (f) Chapter 784, relating to assault, battery, and
20 culpable negligence, if the offense was a felony.

21 (g)(f) Section 784.011, relating to assault, if the
22 victim of the offense was a minor.

23 ~~(g) Section 784.021, relating to aggravated assault.~~

24 (h) Section 784.03, relating to battery, if the victim
25 of the offense was a minor.

26 ~~(i) Section 784.045, relating to aggravated battery.~~

27 (i)(j) Section 784.075, relating to battery on a
28 detention or commitment facility staff.

29 (j)(k) Section 787.01, relating to kidnapping.

30 (k)(l) Section 787.02, relating to false imprisonment.

31

- 1 (l)~~(m)~~ Section 787.04(2), relating to taking,
2 enticing, or removing a child beyond the state limits with
3 criminal intent pending custody proceedings.
- 4 (m)~~(n)~~ Section 787.04(3), relating to carrying a child
5 beyond the state lines with criminal intent to avoid producing
6 a child at a custody hearing or delivering the child to the
7 designated person.
- 8 (n)~~(o)~~ Section 790.115(1), relating to exhibiting
9 firearms or weapons within 1,000 feet of a school.
- 10 (o)~~(p)~~ Section 790.115(2)(b), relating to possessing
11 an electric weapon or device, destructive device, or other
12 weapon on school property.
- 13 (p) Section 790.15, relating to discharging a firearm
14 in public, if the offense was a felony.
- 15 (q) Section 790.19, relating to the shooting into or
16 throwing deadly missiles into dwellings.
- 17 (r)~~(q)~~ Chapter 794 ~~Section 794.011~~, relating to sexual
18 battery.
- 19 (s)~~(r)~~ Former s. 794.041, relating to prohibited acts
20 of persons in familial or custodial authority.
- 21 (t)~~(s)~~ Chapter 796, relating to prostitution, if the
22 offense occurred within the previous 10 years.
- 23 ~~(t) Section 798.02, relating to lewd and lascivious~~
24 ~~behavior.~~
- 25 (u) Chapter 800, relating to lewdness and indecent
26 exposure.
- 27 (v) Section 806.01, relating to arson.
- 28 (w) Section 806.031, relating to arson resulting in
29 injury to another.
- 30 (x) Section 810.14, relating to voyeurism, if the
31 offense was a felony.

1 (y)~~(w)~~ Chapter 812, relating to theft, robbery, and
2 related crimes, if the offense is a felony.
3 (z)~~(x)~~ Section 817.563, relating to fraudulent sale of
4 controlled substances, only if the offense was a felony.
5 (aa)~~(y)~~ Section 825.102, relating to abuse, aggravated
6 abuse, or neglect of an elderly person or disabled adult.
7 (bb)~~(z)~~ Section 825.1025, relating to lewd or
8 lascivious offenses committed upon or in the presence of an
9 elderly person or disabled adult.
10 (cc)~~(aa)~~ Section 825.103, relating to exploitation of
11 an elderly person or disabled adult, if the offense was a
12 felony.
13 (dd)~~(bb)~~ Section 826.04, relating to incest.
14 (ee)~~(cc)~~ Section 827.03, relating to child abuse,
15 aggravated child abuse, or neglect of a child.
16 (ff)~~(dd)~~ Section 827.04, relating to contributing to
17 the delinquency or dependency of a child.
18 (gg)~~(ee)~~ Former s. 827.05, relating to negligent
19 treatment of children.
20 (hh)~~(ff)~~ Section 827.071, relating to sexual
21 performance by a child.
22 (ii)~~(gg)~~ Section 843.01, relating to resisting arrest
23 with violence.
24 (jj)~~(hh)~~ Section 843.025, relating to depriving a law
25 enforcement, correctional, or correctional probation officer
26 means of protection or communication.
27 (kk)~~(ii)~~ Section 843.12, relating to aiding in an
28 escape.
29 (ll)~~(jj)~~ Section 843.13, relating to aiding in the
30 escape of juvenile inmates in correctional institutions.
31 (mm)~~(kk)~~ Chapter 847, relating to obscene literature.

1 (nn)~~(ll)~~ Section 874.05(1), relating to encouraging or
2 recruiting another to join a criminal gang.

3 (oo)~~(mm)~~ Chapter 893, relating to drug abuse
4 prevention and control, only if the offense was a felony or if
5 any other person involved in the offense was a minor.

6 (pp)~~(nn)~~ Section 944.35(3), relating to inflicting
7 cruel or inhuman treatment on an inmate resulting in great
8 bodily harm.

9 (qq)~~(oo)~~ Section 944.46, relating to harboring,
10 concealing, or aiding an escaped prisoner.

11 (rr)~~(pp)~~ Section 944.47, relating to introduction of
12 contraband into a correctional facility.

13 (ss)~~(qq)~~ Section 985.4045, relating to sexual
14 misconduct in juvenile justice programs.

15 (tt)~~(rr)~~ Section 985.4046, relating to contraband
16 introduced into detention facilities.

17 (3) The security background investigations conducted
18 under this section for employees of the Department of Juvenile
19 Justice must ensure that no persons subject to the provisions
20 of this section have been found guilty of, regardless of
21 adjudication, or entered a plea of nolo contendere or guilty
22 to, any offense prohibited under any of the following
23 provisions of the Florida Statutes or under any similar
24 statute of another jurisdiction:

25 (a) Section 784.07, relating to assault or battery of
26 law enforcement officers, firefighters, emergency medical care
27 providers, public transit employees or agents, or other
28 specified officers.

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

31 (c) Section 944.40, relating to escape.

1
2 The Department of Juvenile Justice may not remove a
3 disqualification from employment or grant an exemption to any
4 person who is disqualified under this section for any offense
5 disposed of during the most recent 7-year period.

6 (4) Any person employed in a health care facility
7 licensed or registered by the Agency for Health Care
8 Administration and any individual seeking professional
9 licensure or certification by the Department of Health who is
10 designated by law to undergo background screening must not
11 have been found guilty of, regardless of adjudication, or
12 entered a plea of nolo contendere or guilty to, any offense
13 prohibited under subsection (2), subsection (3), this
14 subsection, or any similar statute of another jurisdiction:

15 (a) Section 810.02, relating to burglary.

16 (b) Section 817.034, relating to fraudulent acts
17 through mail, wire, radio, electromagnetic, photoelectronic,
18 or photooptical systems.

19 (c) Section 817.505, relating to patient brokering.

20 (d) Section 817.568, relating to personal
21 identification theft.

22 (e) Section 817.61, relating to fraudulent use of
23 credit cards, if the offense was a felony.

24 (f) Section 831.01, relating to forgery.

25 (g) Section 831.02, relating to uttering forged
26 instruments.

27 (h) Section 831.07, relating to forging bank bills or
28 promissory notes.

29 (i) Section 831.09, relating to uttering forged bills.
30
31

1 (j) Section 831.31, relating to the sale, manufacture,
2 delivery or possession with the intent to sell any counterfeit
3 controlled substance, if the offense was a felony.

4
5 Any employee of the Department of Children and Family Services
6 who is screened pursuant to s. 110.1127 is not subject to this
7 subsection.

8 (5)(4) Standards must also ensure that the person has
9 not committed an act that constitutes domestic violence as
10 defined in s. 741.28(1), or committed a violation of any order
11 for injunction for protection as described in s. 741.30 or s.
12 741.31.

13 ~~(a) For employees or employers licensed or registered~~
14 ~~pursuant to chapter 400, does not have a confirmed report of~~
15 ~~abuse, neglect, or exploitation as defined in s. 415.102(6),~~
16 ~~which has been uncontested or upheld under s. 415.103.~~

17 ~~(b) Has not committed an act that constitutes domestic~~
18 ~~violence as defined in s. 741.30.~~

19 (6)(5) Under penalty of perjury, all employees in such
20 positions of trust or responsibility shall attest to meeting
21 the requirements for qualifying for employment and agreeing to
22 inform the employer immediately if convicted of any of the
23 disqualifying offenses while employed by the employer. Each
24 employer of employees in such positions of trust or
25 responsibilities which is licensed or registered by a state
26 agency shall submit to the licensing agency annually, under
27 penalty of perjury, an affidavit of compliance with the
28 provisions of this section.

29 Section 5. Section 435.12, Florida Statutes, is
30 created to read:

31 435.12 Requirements for rescreening.--

1 (1) A screening conducted under this chapter is valid
2 for 5 years, at which time a statewide rescreening shall be
3 conducted. The rescreening shall include, at a minimum, a
4 statewide criminal check through the Department of Law
5 Enforcement.

6 (2) Rescreening shall also be required if there is a
7 break in service which exceeds 90 days, in which case the same
8 screening that was required prior to the break in service must
9 be repeated.

10 (3) The employer or licensing agency may grant a leave
11 of absence for military leave, maternity leave, or medical
12 leave, including family sickness leave, for up to 6 months.
13 Rescreening is not required under such circumstances if the
14 leave is preapproved.

15 (4) Personnel who have been fingerprinted pursuant to
16 this chapter and teachers and noninstructional personnel who
17 have been fingerprinted pursuant to chapter 1012, who have not
18 been unemployed for more than 90 days thereafter, and who
19 attest to the completion of such fingerprinting and to
20 compliance with the provisions of this section shall not be
21 required to be refingerprinted in order to comply with any
22 screening or fingerprinting required for caretakers.

23 Section 6. Subsection (4) of section 943.0585, Florida
24 Statutes, is amended to read:

25 943.0585 Court-ordered expunction of criminal history
26 records.--The courts of this state have jurisdiction over
27 their own procedures, including the maintenance, expunction,
28 and correction of judicial records containing criminal history
29 information to the extent such procedures are not inconsistent
30 with the conditions, responsibilities, and duties established
31 by this section. Any court of competent jurisdiction may order

1 a criminal justice agency to expunge the criminal history
2 record of a minor or an adult who complies with the
3 requirements of this section. The court shall not order a
4 criminal justice agency to expunge a criminal history record
5 until the person seeking to expunge a criminal history record
6 has applied for and received a certificate of eligibility for
7 expunction pursuant to subsection (2). A criminal history
8 record that relates to a violation of s. 787.025, chapter 794,
9 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
10 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
11 893.135, or a violation enumerated in s. 907.041 may not be
12 expunged, without regard to whether adjudication was withheld,
13 if the defendant was found guilty of or pled guilty or nolo
14 contendere to the offense, or if the defendant, as a minor,
15 was found to have committed, or pled guilty or nolo contendere
16 to committing, the offense as a delinquent act. The court may
17 only order expunction of a criminal history record pertaining
18 to one arrest or one incident of alleged criminal activity,
19 except as provided in this section. The court may, at its sole
20 discretion, order the expunction of a criminal history record
21 pertaining to more than one arrest if the additional arrests
22 directly relate to the original arrest. If the court intends
23 to order the expunction of records pertaining to such
24 additional arrests, such intent must be specified in the
25 order. A criminal justice agency may not expunge any record
26 pertaining to such additional arrests if the order to expunge
27 does not articulate the intention of the court to expunge a
28 record pertaining to more than one arrest. This section does
29 not prevent the court from ordering the expunction of only a
30 portion of a criminal history record pertaining to one arrest
31 or one incident of alleged criminal activity. Notwithstanding

1 any law to the contrary, a criminal justice agency may comply
2 with laws, court orders, and official requests of other
3 jurisdictions relating to expunction, correction, or
4 confidential handling of criminal history records or
5 information derived therefrom. This section does not confer
6 any right to the expunction of any criminal history record,
7 and any request for expunction of a criminal history record
8 may be denied at the sole discretion of the court.

9 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
10 criminal history record of a minor or an adult which is
11 ordered expunged by a court of competent jurisdiction pursuant
12 to this section must be physically destroyed or obliterated by
13 any criminal justice agency having custody of such record;
14 except that any criminal history record in the custody of the
15 department must be retained in all cases. A criminal history
16 record ordered expunged that is retained by the department is
17 confidential and exempt from the provisions of s. 119.07(1)
18 and s. 24(a), Art. I of the State Constitution and not
19 available to any person or entity except upon order of a court
20 of competent jurisdiction. A criminal justice agency may
21 retain a notation indicating compliance with an order to
22 expunge.

23 (a) The person who is the subject of a criminal
24 history record that is expunged under this section or under
25 other provisions of law, including former s. 893.14, former s.
26 901.33, and former s. 943.058, may lawfully deny or fail to
27 acknowledge the arrests covered by the expunged record, except
28 when the subject of the record:

- 29 1. Is a candidate for employment with a criminal
30 justice agency;
31 2. Is a defendant in a criminal prosecution;

1 3. Concurrently or subsequently petitions for relief
2 under this section or s. 943.059;

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

4 5. Is seeking to be employed or licensed by or to
5 contract with the Agency for Health Care Administration, the
6 Department of Children and Family Services, or the Department
7 of Juvenile Justice or to be employed or used by such
8 contractor or licensee in a position subject to background
9 screening in accordance with chapter 435 or a sensitive
10 position having direct contact with children, the
11 developmentally disabled, the aged, or the elderly as provided
12 in s. 110.1127(3), s. 112.0455, s. 381.60225, s. 383.305, s.
13 390.015, s. 393.063(15), s. 394.4572(1), s. 394.875, s.
14 395.0055, s. 395.0199, s. 397.451, s. 402.302(3), s.
15 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s.
16 483.101, s. 483.30, s. 985.407, or chapter 400; or

17 6. Is seeking to be employed or licensed by the Office
18 of Teacher Education, Certification, Staff Development, and
19 Professional Practices of the Department of Education, any
20 district school board, or any local governmental entity that
21 licenses child care facilities.

22 (b) Subject to the exceptions in paragraph (a), a
23 person who has been granted an expunction under this section,
24 former s. 893.14, former s. 901.33, or former s. 943.058 may
25 not be held under any provision of law of this state to commit
26 perjury or to be otherwise liable for giving a false statement
27 by reason of such person's failure to recite or acknowledge an
28 expunged criminal history record.

29 (c) Information relating to the existence of an
30 expunged criminal history record which is provided in
31 accordance with paragraph (a) is confidential and exempt from

1 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
2 State Constitution, except that the department shall disclose
3 the existence of a criminal history record ordered expunged to
4 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
5 for their respective licensing and employment purposes, and to
6 criminal justice agencies for their respective criminal
7 justice purposes. It is unlawful for any employee of an entity
8 set forth in subparagraph (a)1., subparagraph (a)4.,
9 subparagraph (a)5., or subparagraph (a)6. to disclose
10 information relating to the existence of an expunged criminal
11 history record of a person seeking employment or licensure
12 with such entity or contractor, except to the person to whom
13 the criminal history record relates or to persons having
14 direct responsibility for employment or licensure decisions.
15 Any person who violates this paragraph commits a misdemeanor
16 of the first degree, punishable as provided in s. 775.082 or
17 s. 775.083.

18 Section 7. Subsection (4) of section 943.059, Florida
19 Statutes, is amended to read:

20 943.059 Court-ordered sealing of criminal history
21 records.--The courts of this state shall continue to have
22 jurisdiction over their own procedures, including the
23 maintenance, sealing, and correction of judicial records
24 containing criminal history information to the extent such
25 procedures are not inconsistent with the conditions,
26 responsibilities, and duties established by this section. Any
27 court of competent jurisdiction may order a criminal justice
28 agency to seal the criminal history record of a minor or an
29 adult who complies with the requirements of this section. The
30 court shall not order a criminal justice agency to seal a
31 criminal history record until the person seeking to seal a

1 criminal history record has applied for and received a
2 certificate of eligibility for sealing pursuant to subsection
3 (2). A criminal history record that relates to a violation of
4 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
5 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
6 s. 847.0145, s. 893.135, or a violation enumerated in s.
7 907.041 may not be sealed, without regard to whether
8 adjudication was withheld, if the defendant was found guilty
9 of or pled guilty or nolo contendere to the offense, or if the
10 defendant, as a minor, was found to have committed or pled
11 guilty or nolo contendere to committing the offense as a
12 delinquent act. The court may only order sealing of a criminal
13 history record pertaining to one arrest or one incident of
14 alleged criminal activity, except as provided in this section.
15 The court may, at its sole discretion, order the sealing of a
16 criminal history record pertaining to more than one arrest if
17 the additional arrests directly relate to the original arrest.
18 If the court intends to order the sealing of records
19 pertaining to such additional arrests, such intent must be
20 specified in the order. A criminal justice agency may not seal
21 any record pertaining to such additional arrests if the order
22 to seal does not articulate the intention of the court to seal
23 records pertaining to more than one arrest. This section does
24 not prevent the court from ordering the sealing of only a
25 portion of a criminal history record pertaining to one arrest
26 or one incident of alleged criminal activity. Notwithstanding
27 any law to the contrary, a criminal justice agency may comply
28 with laws, court orders, and official requests of other
29 jurisdictions relating to sealing, correction, or confidential
30 handling of criminal history records or information derived
31 therefrom. This section does not confer any right to the

1 sealing of any criminal history record, and any request for
2 sealing a criminal history record may be denied at the sole
3 discretion of the court.

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

14 (a) The subject of a criminal history record sealed
15 under this section or under other provisions of law, including
16 former s. 893.14, former s. 901.33, and former s. 943.058, may
17 lawfully deny or fail to acknowledge the arrests covered by
18 the sealed record, except when the subject of the record:

- 19 1. Is a candidate for employment with a criminal
20 justice agency;
- 21 2. Is a defendant in a criminal prosecution;
- 22 3. Concurrently or subsequently petitions for relief
23 under this section or s. 943.0585;
- 24 4. Is a candidate for admission to The Florida Bar;
- 25 5. Is seeking to be employed or licensed by or to
26 contract with the Agency for Health Care Administration, the
27 Department of Children and Family Services, or the Department
28 of Juvenile Justice or to be employed or used by such
29 contractor or licensee in a position subject to background
30 screening in accordance with chapter 435 or a sensitive
31 position having direct contact with children, the

1 | developmentally disabled, the aged, or the elderly as provided
2 | in s. 110.1127(3), s. 112.0455, s. 381.60225, s. 383.305, s.
3 | 390.015,s. 393.063(15), s. 394.4572(1), s. 394.875, s.
4 | 395.0055, s. 395.0199,s. 397.451, s. 402.302(3), s.
5 | 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s.
6 | 483.101, s. 483.30,s. 985.407, or chapter 400; or

7 | 6. Is seeking to be employed or licensed by the Office
8 | of Teacher Education, Certification, Staff Development, and
9 | Professional Practices of the Department of Education, any
10 | district school board, or any local governmental entity which
11 | licenses child care facilities.

12 | (b) Subject to the exceptions in paragraph (a), a
13 | person who has been granted a sealing under this section,
14 | former s. 893.14, former s. 901.33, or former s. 943.058 may
15 | not be held under any provision of law of this state to commit
16 | perjury or to be otherwise liable for giving a false statement
17 | by reason of such person's failure to recite or acknowledge a
18 | sealed criminal history record.

19 | (c) Information relating to the existence of a sealed
20 | criminal record provided in accordance with the provisions of
21 | paragraph (a) is confidential and exempt from the provisions
22 | of s. 119.07(1) and s. 24(a), Art. I of the State
23 | Constitution, except that the department shall disclose the
24 | sealed criminal history record to the entities set forth in
25 | subparagraphs (a)1., 4., 5., and 6. for their respective
26 | licensing and employment purposes. It is unlawful for any
27 | employee of an entity set forth in subparagraph (a)1.,
28 | subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
29 | to disclose information relating to the existence of a sealed
30 | criminal history record of a person seeking employment or
31 | licensure with such entity or contractor, except to the person

1 to whom the criminal history record relates or to persons
2 having direct responsibility for employment or licensure
3 decisions. Any person who violates the provisions of this
4 paragraph commits a misdemeanor of the first degree,
5 punishable as provided in s. 775.082 or s. 775.083.

6 Section 8. For the purpose of incorporating the
7 amendment made by this act to section 435.04, Florida
8 Statutes, in references thereto, subsection (1) of section
9 39.821, Florida Statutes, is reenacted to read:

10 39.821 Qualifications of guardians ad litem.--

11 (1) Because of the special trust or responsibility
12 placed in a guardian ad litem, the Guardian Ad Litem Program
13 may use any private funds collected by the program, or any
14 state funds so designated, to conduct a security background
15 investigation before certifying a volunteer to serve. A
16 security background investigation must include, but need not
17 be limited to, employment history checks, checks of
18 references, local criminal records checks through local law
19 enforcement agencies, and statewide criminal records checks
20 through the Department of Law Enforcement. Upon request, an
21 employer shall furnish a copy of the personnel record for the
22 employee or former employee who is the subject of a security
23 background investigation conducted under this section. The
24 information contained in the personnel record may include, but
25 need not be limited to, disciplinary matters and the reason
26 why the employee was terminated from employment. An employer
27 who releases a personnel record for purposes of a security
28 background investigation is presumed to have acted in good
29 faith and is not liable for information contained in the
30 record without a showing that the employer maliciously
31 falsified the record. A security background investigation

1 conducted under this section must ensure that a person is not
2 certified as a guardian ad litem if the person has been
3 convicted of, regardless of adjudication, or entered a plea of
4 nolo contendere or guilty to, any offense prohibited under the
5 provisions of the Florida Statutes specified in s. 435.04(2)
6 or under any similar law in another jurisdiction. Before
7 certifying an applicant to serve as a guardian ad litem, the
8 chief judge of the circuit court may request a federal
9 criminal records check of the applicant through the Federal
10 Bureau of Investigation. In analyzing and evaluating the
11 information obtained in the security background investigation,
12 the program must give particular emphasis to past activities
13 involving children, including, but not limited to,
14 child-related criminal offenses or child abuse. The program
15 has the sole discretion in determining whether to certify a
16 person based on his or her security background investigation.
17 The information collected pursuant to the security background
18 investigation is confidential and exempt from s. 119.07(1).

19 Section 9. For the purpose of incorporating the
20 amendment made by this act to section 435.03, Florida
21 Statutes, in references thereto, paragraph (g) of subsection
22 (1) of section 400.414, Florida Statutes, is reenacted to
23 read:

24 400.414 Denial, revocation, or suspension of license;
25 imposition of administrative fine; grounds.--

26 (1) The agency may deny, revoke, or suspend any
27 license issued under this part, or impose an administrative
28 fine in the manner provided in chapter 120, for any of the
29 following actions by an assisted living facility, any person
30 subject to level 2 background screening under s. 400.4174, or
31 any facility employee:

1 (g) A determination that an employee, volunteer,
2 administrator, or owner, or person who otherwise has access to
3 the residents of a facility does not meet the criteria
4 specified in s. 435.03(2), and the owner or administrator has
5 not taken action to remove the person. Exemptions from
6 disqualification may be granted as set forth in s. 435.07. No
7 administrative action may be taken against the facility if the
8 person is granted an exemption.

9
10 Administrative proceedings challenging agency action under
11 this subsection shall be reviewed on the basis of the facts
12 and conditions that resulted in the agency action.

13 Section 10. This act shall take effect upon becoming a
14 law.

15
16 *****

17 SENATE SUMMARY

18 Revises the effective date of ch. 95-228, Laws of
19 Florida, to provide that ch. 435, F.S., relating to
20 employment background screening applies to all offenses,
21 regardless of the date committed. Adds additional
22 disqualifying criminal offenses to the level 1 and level
23 2 screening standards. Provides for the Agency for Health
24 Care Administration to receive expunged criminal history
25 records and sealed criminal history records. (See bill
26 for details.)
27
28
29
30
31