

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 such applicant is
7 otherwise qualified; revising professions for
8 licensure eligibility; removing a provision relating
9 to 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 licensure; 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 history records; removing a provision authorizing an
20 applicable board to consider an applicant's criminal
21 history if such history has been found to relate to
22 good moral character; prohibiting the applicable board
23 from denying an application for the licensure of an
24 applicant based solely or in part on a prior felony
25 conviction; providing requirements for determining if

26 such felony conviction directly relates to the
 27 practice of the applicable profession; providing
 28 requirements if the applicable board intends to deny
 29 an application for licensure based solely or in part
 30 on the applicant's prior felony conviction; amending
 31 s. 943.059, F.S.; providing for the court-ordered
 32 sealing of certain records that were automatically
 33 sealed by the Department of Law Enforcement under
 34 specified circumstances; providing an effective date.

35

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

37

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

43 455.213 General licensing provisions.—

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

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

51 1. ~~A barber under chapter 476;~~
 52 2. ~~A cosmetologist or cosmetology specialist under chapter~~
 53 ~~477;~~
 54 3. ~~Any of the following construction professions under~~
 55 ~~chapter 489:~~
 56 a. ~~Air-conditioning contractor;~~
 57 b. ~~Electrical contractor;~~
 58 c. ~~Mechanical contractor;~~
 59 d. ~~Plumbing contractor;~~
 60 e. ~~Pollutant storage systems contractor;~~
 61 f. ~~Roofing contractor;~~
 62 g. ~~Sheet metal contractor;~~
 63 h. ~~Solar contractor;~~
 64 i. ~~Swimming pool and spa contractor;~~
 65 j. ~~Underground utility and excavation contractor; or~~
 66 k. ~~Other specialty contractors; or~~
 67 4. ~~Any other profession for which the department issues a~~
 68 ~~license, provided the profession is offered to inmates in any~~
 69 ~~correctional institution or correctional facility as vocational~~
 70 ~~training or through an industry certification program.~~
 71 (c)~~(b)~~1. A conviction, or any other adjudication, for a
 72 crime ~~more than 5 years~~ before the date the application is
 73 received by the applicable board may not be grounds for denial
 74 of a license ~~specified in paragraph (a)~~. For purposes of this
 75 paragraph, the term "conviction" means a determination of guilt

76 that is the result of a plea or trial, regardless of whether
77 adjudication is withheld. ~~This paragraph does not limit the~~
78 ~~applicable board from considering an applicant's criminal~~
79 ~~history that includes a crime listed in s. 775.21(4)(a)1. or s.~~
80 ~~776.08 at any time, but only if such criminal history has been~~
81 ~~found to relate to the practice of the applicable profession.~~

82 2. Notwithstanding subparagraph 1., the following criminal
83 history may not be used, distributed, or disseminated by the
84 state, its agents, or political subdivisions in connection with
85 an application for licensure:

86 a. An arrest without a valid conviction.

87 b. Convictions that have been sealed, dismissed, or
88 expunged.

89 c. Misdemeanor convictions without incarceration.

90 d. Noncriminal infractions.

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

95 (g) The applicable board may not deny an application for
96 licensure solely or in part on the basis of an applicant's prior
97 felony conviction unless such conviction directly relates to the
98 practice of the applicable profession for which licensure is
99 sought or held.

100 1. In determining if a felony conviction directly relates

101 to the practice of the applicable profession for which licensure
102 is sought or held, the applicable board shall consider:

103 a. The nature and seriousness of the conviction.

104 b. Whether the conviction directly relates to the practice
105 of the applicable profession for which licensure is sought or
106 held.

107 c. Whether the duties and responsibilities of the
108 profession provide the opportunity for the same or a similar
109 offense to occur.

110 d. Whether circumstances that led to the offense for which
111 the applicant was convicted will recur in the profession.

112 e. The age of the applicant at the time the felony was
113 committed.

114 f. The length of time since the conviction.

115 g. All circumstances relative to the felony, including,
116 but not limited to, mitigating circumstances or social
117 conditions surrounding the commission of the felony.

118 h. Evidence of mitigation or rehabilitation and the
119 applicant's current ability to practice the profession
120 competently in accordance with the actual practice of the
121 profession.

122 2. If the applicable board intends to deny an application
123 for licensure solely or in part on the basis of the applicant's
124 prior felony conviction, the board shall notify the applicant in
125 writing of all of the following before making a final decision:

- 126 a. The reasons for the potential denial.
- 127 b. A copy of any criminal history record.
- 128 c. Examples of evidence of mitigation or rehabilitation
 129 and the current ability to practice the profession competently
 130 in accordance with the actual practice of the profession that
 131 the applicant may voluntarily provide.

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

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

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

149 (A) Proof of the applicant's compliance with the terms and
 150 conditions of probation or parole; or

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

153 (IV) If an applicable board denies an application for
 154 licensure solely or in part on the basis of the applicant's
 155 prior felony conviction, the applicable board shall notify the
 156 applicant in writing of all of the following:

157 (A) Final denial.

158 (B) An appeals process.

159 (C) Eligibility for other licenses or professions.

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

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

166 943.059 Court-ordered sealing of criminal history
 167 records.—

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

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

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

182 (b) Notwithstanding paragraph (a), the department shall
183 also issue a certificate of eligibility for sealing to a person
184 who is the subject of a criminal history record that has been
185 sealed by the department pursuant to s. 943.0595. This
186 certificate shall indicate that the record has been sealed by
187 the department and is only valid for court-ordered sealing under
188 subsection (7) of a record already sealed pursuant to s.
189 943.0595.

190 (7) RECORDS SEALED BY DEPARTMENT OF LAW ENFORCEMENT.—

191 (a) If a criminal history record has been automatically
192 sealed pursuant to s. 943.0595, the subject of the record may
193 petition the court by presenting to the court the department
194 record described in paragraph (2) (b).

195 (b) If the subject of the record meets the eligibility
196 criteria in subsection (1) and presents the court with a record
197 of sealing by the department under paragraph (2) (b), the court
198 shall grant the sealing of the criminal history record.

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