

TITLE XXX

LABOR

CHAPTER 435

EMPLOYMENT SCREENING

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435.01 Applicability of this chapter.—Whenever a background screening for employment or a background security check is required by law for employment, unless otherwise provided by law, the provisions of this chapter shall apply.

History.—s. 47, ch. 95-228.

435.02 Definitions.—For the purposes of this chapter:

- (1) "Employee" means any person required by law to be screened pursuant to the provisions of this chapter.
- (2) "Employer" means any person or entity required by law to conduct screening of employees pursuant to this chapter.
- (3) "Licensing agency" means any state or county agency which grants licenses or registration permitting the operation of an employer or is itself an employer. When there is no state licensing agency or the county licensing agency chooses not to conduct employment screening, "licensing agency" means the Department of Health and Rehabilitative Services.

History.—s. 47, ch. 95-228.

435.03 Level 1 screening standards.—

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

(2) Any person for whom employment screening is required by statute must not have been found guilty of,

regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (a) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
 - (b) Section 782.04, relating to murder.
 - (c) Section 782.07, relating to manslaughter.
 - (d) Section 782.071, relating to vehicular homicide.
 - (e) Section 782.09, relating to killing of an unborn child by injury to the mother.
 - (f) Section 784.011, relating to assault, if the victim of the offense was a minor.
 - (g) Section 784.021, relating to aggravated assault.
 - (h) Section 784.03, relating to battery, if the victim of the offense was a minor.
 - (i) Section 784.045, relating to aggravated battery.
 - (j) Section 787.01, relating to kidnapping.
 - (k) Section 787.02, relating to false imprisonment.
 - (l) Section 794.011, relating to sexual battery.
 - (m) Section 794.041, relating to prohibited acts of persons in familial or custodial authority.
 - (n) Chapter 796, relating to prostitution.
 - (o) Section 798.02, relating to lewd and lascivious behavior.
 - (p) Chapter 800, relating to lewdness and indecent exposure.
 - (q) Section 806.01, relating to arson.
 - (r) Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.
 - (s) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
 - (t) Section 826.04, relating to incest.
 - (u) Section 827.03, relating to aggravated child abuse.
 - (v) Section 827.04, relating to child abuse.
 - (w) Section 827.05, relating to negligent treatment of children.
 - (x) Section 827.071, relating to sexual performance by a child.
 - (y) Chapter 847, relating to obscene literature.
 - (z) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- (3) Standards must also ensure that the person:
- (a) For employees and employers licensed or registered pursuant to chapter 400, does not have a confirmed report of abuse, neglect, or exploitation as defined in s. 415.102(5), which has been uncontested or upheld under s. 415.103.

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

History.—s. 47, ch. 95-228.

Note.—Section 64, ch. 95-228, provides that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

1435.04 Level 2 screening standards.—

(1) All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall include, but not be limited to, employment history checks, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

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

- (a) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- (b) Section 782.04, relating to murder.
- (c) Section 782.07, relating to manslaughter.
- (d) Section 782.071, relating to vehicular homicide.
- (e) Section 782.09, relating to killing of an unborn child by injury to the mother.
- (f) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (g) Section 784.021, relating to aggravated assault.
- (h) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (i) Section 784.045, relating to aggravated battery.
- (j) Section 787.01, relating to kidnapping.
- (k) Section 787.02, relating to false imprisonment.
- (l) Section 794.011, relating to sexual battery.
- (m) Section 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (n) Chapter 796, relating to prostitution.
- (o) Section 798.02, relating to lewd and lascivious behavior.
- (p) Chapter 800, relating to lewdness and indecent exposure.
- (q) Section 806.01, relating to arson.
- (r) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (s) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (t) Section 826.04, relating to incest.
- (u) Section 827.03, relating to aggravated child abuse.
- (v) Section 827.04, relating to child abuse.
- (w) Section 827.05, relating to negligent treatment of children.
- (x) Section 827.071, relating to sexual performance by a child.

(y) Chapter 847, relating to obscene literature.

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

(3) Standards must also ensure that the person:

(a) For employees or employers licensed or registered pursuant to chapter 400, does not have a confirmed report of abuse, neglect, or exploitation as defined in s. 415.102(5), which has been uncontested or upheld under s. 415.103.

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

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

History.—s. 47, ch. 95-228.

Note.—Section 64, ch. 95-228, provides that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

1435.05 Requirements for covered employees.—

Except as otherwise provided by law, the following requirements shall apply to covered employees:

(1)(a) Every person employed in a position for which employment screening is required must, within 5 working days after starting to work, submit to the employer a complete set of information necessary to conduct a screening under this section.

(b) For level 1 screening, the employer must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. When required, the employer must at the same time submit sufficient information to the Department of Health and Rehabilitative Services to complete a check of its records relating to the abuse, neglect, and exploitation of vulnerable adults. The Florida Department of Law Enforcement and the Department of Health and Rehabilitative Services will conduct searches of their records and will respond to the employer agency. The employer will inform the employee whether screening has revealed any disqualifying information.

(c) For level 2 screening, the employer or licensing agency must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. When required, the employer or licensing agency must also submit sufficient information to the Department of Health and Rehabilitative Services to complete a check of its records. The Florida Department of Law Enforcement will conduct a search of its criminal and juvenile records and will request that the Federal Bureau of Investigation conduct a search of its records for each employee for whom the request is made. The Florida Department of Law Enforcement and the Department of Health and Rehabilitative Services will respond to the

employer or licensing agency, and the employer or licensing agency will inform the employee whether screening has revealed disqualifying information.

(d) The person whose background is being checked must supply any missing criminal or other necessary information to the employer within 30 days after the employer makes a request for the information or be subject to automatic disqualification.

(2) Unless otherwise prohibited by state or federal law, new employees may be placed on probationary status pending a determination of compliance with minimum standards set forth in this chapter.

(3) Each employer required to conduct level 2 background screening must sign an affidavit annually, under penalty of perjury, stating that all covered employees have been screened or are newly hired and are awaiting the results of the required screening checks.

History.—s. 47, ch. 95-228.

Note.—

A. Section 64, ch. 95-228, provides that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

B. Section 51, ch. 95-228, provides that "[t]he Department of Health and Rehabilitative Services and the Department of Law Enforcement shall develop a joint protocol no later than October 1, 1995, for transferring administrative responsibility for the criminal records checks for employment screening and administrative activities pursuant to chapter 435, Florida Statutes, to the Department of Law Enforcement. This protocol shall assure processing of both state and federal criminal history checks and shall, at the state level, assure the expeditious handling of such checks by any involved state agencies. The transfer may be incremental, but must be completed no later than July 1, 1997. The Department of Law Enforcement shall, at a minimum, immediately assume responsibility for receipt of and accounting for all fees for criminal history checks and assist in the retrieval of dispositional information, when absent, for all disqualifying offenses committed by applicants in this state. The Department of Law Enforcement shall also provide technical support to assist the Department of Health and Rehabilitative Services with automated submission of criminal history check requests."

1435.06 Exclusion from employment.—

(1) When an employer or licensing agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record which indicates noncompliance with the standards in this section. It shall be the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification shall be proof of mistaken identity.

(2) The employer must either terminate the employment of any of its personnel found to be in noncompliance with the minimum standards for good moral character contained in this section or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07.

(3) Any person who is required to undergo employment screening and who refuses to cooperate in such screening or refuses to submit the information necessary to complete the screening, including fingerprints when required, shall be disqualified for employment in such position or, if employed, shall be dismissed.

History.—s. 47, ch. 95-228.

Note.—Section 64, ch. 95-228, provides that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

1435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification.

(1) The appropriate licensing agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

(a) Felonies committed more than 3 years prior to the date of disqualification;

(b) Misdemeanors prohibited under any of the Florida Statutes cited in this chapter or under similar statutes of other jurisdictions;

(c) Offenses that were felonies when committed but are now misdemeanors;

(d) Findings of delinquency;

(e) Commissions of acts of domestic violence as defined in s. 741.30; or

(f) Confirmed reports of abuse, neglect, or exploitation of a vulnerable adult.

For the purposes of this subsection, the term "felonies" means both felonies prohibited under any of the Florida Statutes cited in this chapter or under similar statutes of other jurisdictions.

(2) Persons employed by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this section without the 3-year waiting period.

(3) In order for a licensing department to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if continued employment is allowed. The decision of the licensing department regarding an exemption may be contested through the hearing procedures set forth in chapter 120.

(4) Disqualification from employment under subsection (1) may not be removed from, nor may an exemption be granted to, any personnel who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 solely by reason of any pardon, executive clemency, or restoration of civil rights.

(5) Exemptions granted by one licensing agency shall be considered by subsequent licensing agencies, but are not binding on the subsequent licensing agency.

History.—s. 47, ch. 95-228.

Note.—Section 64, ch. 95-228, provides that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

435.08 Payment for processing of fingerprints, state criminal records checks, and abuse hotline checks.—Either the employer or the employee is responsible for paying the costs of screening. Payment shall be submitted to the Florida Department of Law Enforcement with the request for screening. When a search of the central abuse hotline is required, payment

shall be submitted by separate check to the Department of Health and Rehabilitative Services with the request for screening.

History.—s. 47, ch. 95-228.

1435.09 Confidentiality of personnel background check information.—No criminal, juvenile, or abuse hotline information obtained under this section may be used for any purpose other than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal records and juvenile records obtained by the department or by an employer are exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with ²s. 119.14.

History.—s. 47, ch. 95-228.

1Note.—Section 64, ch. 95-228, provides that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

2Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

435.10 Sharing of personnel information among employers.—Every employer of employees covered by this chapter shall furnish copies of personnel records for employees or former employees to any other employer requesting this information pursuant to this section. Information contained in the records may include, but is not limited to, disciplinary matters and any reason for termination. Any employer releasing such records pursuant to this chapter shall be considered to be acting in good faith and may not be held liable for information

contained in such records, absent a showing that the employer maliciously falsified such records.

History.—s. 47, ch. 95-228.

1435.11 Penalties.—

(1) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(a) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications for a position of special trust.

(b) Use records information for purposes other than screening for employment or release records information to other persons for purposes other than screening for employment. This exemption is subject to the Open Government Sunset Review Act in accordance with ²s. 119.14.

(2) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use juvenile records information for any purposes other than specified in this section or to release such information to other persons for purposes other than specified in this section.

History.—s. 47, ch. 95-228.

1Note.—Section 64, ch. 95-228, provides that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

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