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## The 2012 Florida Statutes

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### TITLE XXXI

LABOR

#### CHAPTER 435 EMPLOYMENT SCREENING

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**435.01 Applicability of this chapter; statutory references; rulemaking.—**

(1)(a) Unless otherwise provided by law, whenever a background screening for employment or a background security check is required by law to be conducted pursuant to this chapter, the provisions of this chapter apply.

(b) Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 435 or to any section or sections or portion of a section of chapter 435 includes all subsequent amendments to chapter 435 or to the referenced section or sections or portions of a section. The purpose of this chapter is to facilitate uniform background screening and, to this end, a reference to this chapter, or to any section or subdivision within this chapter, constitutes a general reference under the doctrine of incorporation by reference.

(2) Agencies may adopt rules to administer this chapter.

History.—s. 47, ch. 95-228; s. 35, ch. 2010-114.

**435.02 Definitions.—**For the purposes of this chapter, the term:

(1) "Agency" means any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer or is itself an employer or that otherwise facilitates the screening of employees pursuant to this chapter. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, "agency" means the Department of Children and Family Services.

(2) "Employee" means any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers.

(3) "Employer" means any person or entity required by law to conduct screening of employees pursuant to this chapter.

(4) "Employment" means any activity or service sought to be performed by an employee which requires the employee to be screened pursuant to this chapter.

(5) "Specified agency" means the Department of Health, the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

(6) "Vulnerable person" means a minor as defined in s. 1.01 or a vulnerable adult as defined in s. 415.102.

History.—s. 47, ch. 95-228; s. 207, ch. 99-8; s. 36, ch. 2010-114; s. 9, ch. 2012-73.

#### **435.03 Level 1 screening standards.—**

(1) All employees required by law to be screened pursuant to this section must undergo background screening as a condition of employment and continued employment which includes, but need not be limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

(2) Any person required by law to be screened pursuant to this section must not have an arrest awaiting final disposition, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under s. 435.04(2) or similar law of another jurisdiction.

(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

History.—s. 47, ch. 95-228; s. 15, ch. 96-268; s. 21, ch. 96-322; s. 3, ch. 98-417; s. 87, ch. 2000-153; s. 45, ch. 2000-349; s. 62, ch. 2001-62; s. 50, ch. 2003-1; s. 4, ch. 2004-267; s. 3, ch. 2005-119; s. 89, ch. 2006-197; s. 61, ch. 2006-227; s. 109, ch. 2007-5; s. 16, ch. 2008-244; s. 37, ch. 2010-114; s. 34, ch. 2011-4.

#### **435.04 Level 2 screening standards.—**

(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(b) Fingerprints submitted pursuant to this section on or after July 1, 2012, must be submitted electronically to the Department of Law Enforcement.

(c) An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section. Such contracts must ensure that the owners and personnel of the vendor performing the electronic fingerprinting are qualified and will ensure the integrity and security of all personal information.

(d) An agency may require by rule that fingerprints submitted pursuant to this section must be submitted electronically to the Department of Law Enforcement on a date earlier than July 1, 2012.

(e) Vendors who submit fingerprints on behalf of employers must:

1. Meet the requirements of s. 943.053; and
2. Have the ability to communicate electronically with the state agency accepting screening

results from the Department of Law Enforcement and provide a photograph of the applicant taken at the time the fingerprints are submitted.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 782.04, relating to murder.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.

(f) Section 782.071, relating to vehicular homicide.

(g) Section 782.09, relating to killing of an unborn quick child by injury to the mother.

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

(i) Section 784.011, relating to assault, if the victim of the offense was a minor.

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

(k) Section 787.01, relating to kidnapping.

(l) Section 787.02, relating to false imprisonment.

(m) Section 787.025, relating to luring or enticing a child.

(n) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.

(o) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.

(p) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

(q) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.

(r) Section 794.011, relating to sexual battery.

(s) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

(t) Section 794.05, relating to unlawful sexual activity with certain minors.

(u) Chapter 796, relating to prostitution.

(v) Section 798.02, relating to lewd and lascivious behavior.

(w) Chapter 800, relating to lewdness and indecent exposure.

(x) Section 806.01, relating to arson.

(y) Section 810.02, relating to burglary.

(z) Section 810.14, relating to voyeurism, if the offense is a felony.

(aa) Section 810.145, relating to video voyeurism, if the offense is a felony.

(bb) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

(cc) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.

(dd) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

(ee) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.

(ff) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.

(gg) Section 826.04, relating to incest.

(hh) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(ii) Section 827.04, relating to contributing to the delinquency or dependency of a child.

(jj) Former s. 827.05, relating to negligent treatment of children.

(kk) Section 827.071, relating to sexual performance by a child.

(ll) Section 843.01, relating to resisting arrest with violence.

(mm) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.

(nn) Section 843.12, relating to aiding in an escape.

(oo) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.

(pp) Chapter 847, relating to obscene literature.

(qq) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.

(rr) 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.

(ss) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(tt) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

(uu) Section 944.40, relating to escape.

(vv) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

(ww) Section 944.47, relating to introduction of contraband into a correctional facility.

(xx) Section 985.701, relating to sexual misconduct in juvenile justice programs.

(yy) Section 985.711, relating to contraband introduced into detention facilities.

(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

**History.**—s. 47, ch. 95-228; s. 16, ch. 96-268; s. 22, ch. 96-322; s. 4, ch. 98-417; s. 5, ch. 99-284; s. 88, ch. 2000-153; s. 7, ch. 2001-125; s. 5, ch. 2004-267; s. 4, ch. 2005-119; s. 111, ch. 2006-120; s. 90, ch. 2006-197; s. 110, ch. 2007-5; s. 3, ch. 2007-112; s. 66, ch. 2009-223; s. 6, ch. 2010-31; s. 38, ch. 2010-114; s. 10, ch. 2012-73.

**435.05 Requirements for covered employees and employers.**—Except as otherwise provided by law, the following requirements apply to covered employees and employers:

(1)(a) Every person required by law to be screened pursuant to this chapter must submit a complete set of information necessary to conduct a screening under this chapter.

(b) For level 1 screening, the employer must submit the information necessary for screening to the Department of Law Enforcement within 5 working days after receiving it. The Department of Law Enforcement shall conduct a search of its records and respond to the employer or agency. The employer must inform the employee whether screening has revealed any disqualifying information.

(c) For level 2 screening, the employer or agency must submit the information necessary for screening to the Department of Law Enforcement within 5 working days after receiving it. The Department of Law Enforcement shall perform a criminal history record check of its records and request that the Federal Bureau of Investigation perform a national criminal history record check of its records for each employee for whom the request is made. The Department of Law Enforcement

shall respond to the employer or agency, and the employer or agency must 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 upon request to the requesting employer or agency within 30 days after receiving the request for the information.

(2) Every employee must attest, subject to penalty of perjury, to meeting the requirements for qualifying for employment pursuant to this chapter and agreeing to inform the employer immediately if arrested for any of the disqualifying offenses while employed by the employer.

(3) Each employer licensed or registered with an agency must conduct level 2 background screening and must submit to the agency annually or at the time of license renewal, under penalty of perjury, a signed affidavit attesting to compliance with the provisions of this chapter.

**History.**—s. 47, ch. 95-228; s. 208, ch. 99-8; s. 46, ch. 2000-349; s. 63, ch. 2001-62; s. 21, ch. 2004-267; s. 67, ch. 2009-223; s. 39, ch. 2010-114.

#### **435.06 Exclusion from employment.—**

(1) If an employer or 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 that indicates noncompliance with the standards in this chapter. It is 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 is proof of mistaken identity.

(2)(a) An employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the agency as provided under s. 435.07.

(b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter.

(c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter 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.

(d) An employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of employment.

(3) Any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed.

(4) There is no reemployment assistance or other monetary liability on the part of, and no cause of action for damages against, an employer that, upon notice of a conviction or arrest for a disqualifying offense listed under this chapter, terminates the person against whom the report was issued or who was arrested, regardless of whether or not that person has filed for an exemption

pursuant to this chapter.

History.—s. 47, ch. 95-228; s. 40, ch. 2010-114; s. 65, ch. 2012-30; s. 11, ch. 2012-73.

**435.07 Exemptions from disqualification.**—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

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

(a) Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony;

(b) Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction;

(c) Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction; or

(d) Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense.

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

(2) Persons employed, or applicants for employment, 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 chapter without application of the waiting period in paragraph (1)(a).

(3)(a) In order for the head of an agency 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 clear and convincing 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 employment or continued employment is allowed.

(b) The agency may consider as part of its deliberations of the employee’s rehabilitation the fact that the employee has, subsequent to the conviction for the disqualifying offense for which the exemption is being sought, been arrested for or convicted of another crime, even if that crime is not a disqualifying offense.

(c) The decision of the head of an agency regarding an exemption may be contested through the hearing procedures set forth in chapter 120. The standard of review by the administrative law judge is whether the agency’s intended action is an abuse of discretion.

(4)(a) Disqualification from employment under this chapter 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 or s. 435.04 solely by reason of any pardon, executive clemency, or restoration of civil rights.

(b) Disqualification from employment under this chapter may not be removed from, nor may an

exemption be granted to, any person who is a:

1. Sexual predator as designated pursuant to s. 775.21;
2. Career offender pursuant to s. 775.261; or
3. Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

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

**History.**—s. 47, ch. 95-228; s. 47, ch. 2000-349; s. 64, ch. 2001-62; s. 29, ch. 2004-267; s. 9, ch. 2005-128; s. 41, ch. 2010-114.

**435.08 Payment for processing of fingerprints and state criminal records checks.**—The employer or the employee is responsible for paying the costs of screening. Payment shall be submitted to the Department of Law Enforcement with the request for screening. The appropriate agency is responsible for collecting and paying any fee related to fingerprints retained on its behalf to the Department of Law Enforcement for costs resulting from the fingerprint information retention services. The amount of the annual fee and procedures for the submission and retention of fingerprint information and for the dissemination of search results shall be established by rule of the Department of Law Enforcement.

**History.**—s. 47, ch. 95-228; s. 209, ch. 99-8; s. 48, ch. 2000-349; s. 42, ch. 2010-114.

**435.09 Confidentiality of personnel background check information.**—No criminal or juvenile 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).

**History.**—s. 47, ch. 95-228; s. 282, ch. 96-406; s. 49, ch. 2000-349.

**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.

**435.11 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.

(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; s. 283, ch. 96-406.

**435.12 Care Provider Background Screening Clearinghouse.**—

(1) The Agency for Health Care Administration in consultation with the Department of Law Enforcement shall create a secure web-based system, which shall be known as the "Care Provider Background Screening Clearinghouse" or "clearinghouse," and which shall be implemented to the full extent practicable no later than September 30, 2013, subject to the specified agencies being funded and equipped to participate in such program. The clearinghouse shall allow the results of criminal history checks provided to the specified agencies for screening of persons qualified as care providers under s. 943.0542 to be shared among the specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check. The Agency for Health Care Administration and the Department of Law Enforcement may adopt rules to create forms or implement procedures needed to carry out this section.

(2)(a) To ensure that the information in the clearinghouse is current, the fingerprints of an employee required to be screened by a specified agency and included in the clearinghouse must be:

1. Retained by the Department of Law Enforcement pursuant to s. 943.05(2)(g) and (h) and (3), and the Department of Law Enforcement must report the results of searching those fingerprints against state incoming arrest fingerprint submissions to the Agency for Health Care Administration for inclusion in the clearinghouse.
2. Resubmitted for a Federal Bureau of Investigation national criminal history check every 5 years until such time as the fingerprints are retained by the Federal Bureau of Investigation.
3. Subject to retention on a 5-year renewal basis with fees collected at the time of initial submission or resubmission of fingerprints.

(b) Until such time as the fingerprints are retained at the Federal Bureau of Investigation, an employee with a break in service of more than 90 days from a position that requires screening by a specified agency must submit to a national screening if the person returns to a position that requires screening by a specified agency.

(c) An employer of persons subject to screening by a specified agency must register with the clearinghouse and maintain the employment status of all employees within the clearinghouse. Initial employment status and any changes in status must be reported within 10 business days.

(3) An employee who has undergone a fingerprint-based criminal history check by a specified agency before the clearinghouse is operational is not required to be checked again solely for the purpose of entry in the clearinghouse. Every employee who is or will become subject to fingerprint-based criminal history checks to be eligible to be licensed, have their license renewed, or meet screening or rescreening requirements by a specified agency once the specified agency participates in the clearinghouse shall be subject to the requirements of this section with respect to entry of records in the clearinghouse and retention of fingerprints for reporting the results of searching against state incoming arrest fingerprint submissions.

History.—s. 12, ch. 2012-73.