

CHAMBER ACTION

1 The Committee on Public Safety & Crime Prevention recommends the
2 following:

3
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to employment screening; creating s.
8 435.015, F.S.; providing for incorporation by reference;
9 providing that the purpose of the chapter is to provide
10 uniform criteria for employment screening; providing that
11 a reference to the chapter, or any section or subdivision,
12 constitutes a general reference; creating s. 435.025,
13 F.S.; requiring consideration of arrest records in
14 determining whether certain persons satisfy the
15 requirement of good moral character; amending s. 435.04,
16 F.S.; requiring that Department of Juvenile Justice
17 screenings occur annually; requiring that Department of
18 Juvenile Justice employees be of good moral character;
19 prohibiting the Department of Juvenile Justice from
20 removing a disqualification from employment or granting an
21 exemption from disqualification in certain circumstances;
22 amending ss. 984.01 and 985.01, F.S.; providing that
23 certain persons who fail to satisfy the requirement of

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24 | good moral character may be disqualified from employment
 25 | or denied an exemption from disqualification; amending s.
 26 | 985.407, F.S.; providing that certain persons who fail to
 27 | satisfy the requirement of good moral character may be
 28 | disqualified from employment or denied an exemption from
 29 | disqualification; requiring the Department of Juvenile
 30 | Justice to require employment screening of certain
 31 | personnel pursuant to level 2, rather than level 1,
 32 | screening standards of ch. 435, F.S.; reenacting ss.
 33 | 400.953(3), 943.0585(4)(a), 943.059(4)(a), and
 34 | 985.05(4)(e), F.S., relating to background screening of
 35 | home medical equipment provider personnel, court-ordered
 36 | expunction of criminal history records, court-ordered
 37 | sealing of criminal history records, and use of juvenile
 38 | court records as proof of certain disqualification,
 39 | respectively, for the purpose of incorporating the
 40 | amendment to s. 985.407, F.S., in references thereto;
 41 | providing an effective date.

43 | Be It Enacted by the Legislature of the State of Florida:

45 | Section 1. Section 435.015, Florida Statutes, is created
 46 | to read:

47 | 435.015 Incorporation by reference.--The purpose of this
 48 | chapter is to provide uniform criteria for employment screening
 49 | and, to this end, a reference to this chapter, or to any section
 50 | or subdivision within this chapter, constitutes a general
 51 | reference under the doctrine of incorporation by reference.

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52 Section 2. Section 435.025, Florida Statutes, is created
53 to read:

54 435.025 Evidence of good moral character.--Any record
55 concerning the arrest of a person who is required to be of good
56 moral character as a condition of initial or continued
57 employment, licensure, or other business with the state, or any
58 agency or political subdivision thereof, shall be considered in
59 determining whether such person satisfies the requirement,
60 notwithstanding the disposition of the arrest.

61 Section 3. Subsection (3) of section 435.04, Florida
62 Statutes, is amended to read:

63 435.04 Level 2 screening standards.--

64 (3) The security background investigations conducted under
65 this section for employees of the Department of Juvenile Justice
66 shall occur annually and must ensure that no persons subject to
67 the provisions of this section have been found guilty of,
68 regardless of adjudication, or entered a plea of nolo contendere
69 or guilty to, any offense prohibited under any of the following
70 provisions of the Florida Statutes or under any similar statute
71 of another jurisdiction:

72 (a) Section 784.07, relating to assault or battery of law
73 enforcement officers, firefighters, emergency medical care
74 providers, public transit employees or agents, or other
75 specified officers.

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

78 (c) Section 944.40, relating to escape.
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80 All Department of Juvenile Justice employees shall be of good
 81 moral character. The Department of Juvenile Justice may not
 82 remove a disqualification from employment or grant an exemption
 83 to any person who is disqualified under this section for any
 84 offense disposed of during the most recent 7-year period. The
 85 Department of Juvenile Justice may not remove a disqualification
 86 from employment or grant an exemption to any person who has been
 87 found guilty of, regardless of adjudication, or entered a plea
 88 of nolo contendere or guilty to, three or more offenses
 89 specified in this subsection or subsection (2), irrespective of
 90 the time at which such offenses were disposed.

91 Section 4. Subsection (2) of section 984.01, Florida
 92 Statutes, is amended to read:

93 984.01 Purposes and intent; personnel standards and
 94 screening.--

95 (2) The Department of Juvenile Justice or the Department
 96 of Children and Family Services, as appropriate, may contract
 97 with the Federal Government, other state departments and
 98 agencies, county and municipal governments and agencies, public
 99 and private agencies, and private individuals and corporations
 100 in carrying out the purposes of, and the responsibilities
 101 established in, this chapter.

102 (a) When the Department of Juvenile Justice or the
 103 Department of Children and Family Services contracts with a
 104 provider for any program for children, all personnel, including
 105 owners, operators, employees, and volunteers, in the facility
 106 must be of good moral character. Each contract entered into by
 107 either department for services delivered on an appointment or

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108 | intermittent basis by a provider that does not have regular
 109 | custodial responsibility for children and each contract with a
 110 | school for before or aftercare services must ensure that the
 111 | owners, operators, and all personnel who have direct contact
 112 | with children are of good moral character. A volunteer who
 113 | assists on an intermittent basis for less than 40 hours per
 114 | month need not be screened if the volunteer is under direct and
 115 | constant supervision by persons who meet the screening
 116 | requirements.

117 | (b) The Department of Juvenile Justice and the Department
 118 | of Children and Family Services shall require employment
 119 | screening pursuant to chapter 435, using the level 2 standards
 120 | set forth in that chapter for personnel in programs for children
 121 | or youths.

122 | (c) The Department of Juvenile Justice or the Department
 123 | of Children and Family Services may grant exemptions from
 124 | disqualification from working with children as provided in s.
 125 | 435.07.

126 | (d) Notwithstanding s. 435.04 or s. 435.07, a person may
 127 | be disqualified from employment or denied an exemption from
 128 | disqualification if such person fails to satisfy the requirement
 129 | of good moral character as evidenced by criminal history
 130 | information documenting multiple arrests or convictions.

131 | Section 5. Subsection (2) of section 985.01, Florida
 132 | Statutes, is amended to read:

133 | 985.01 Purposes and intent; personnel standards and
 134 | screening.--

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135 (2) The Department of Juvenile Justice or the Department
136 of Children and Family Services, as appropriate, may contract
137 with the Federal Government, other state departments and
138 agencies, county and municipal governments and agencies, public
139 and private agencies, and private individuals and corporations
140 in carrying out the purposes of, and the responsibilities
141 established in, this chapter.

142 (a) When the Department of Juvenile Justice or the
143 Department of Children and Family Services contracts with a
144 provider for any program for children, all personnel, including
145 owners, operators, employees, and volunteers, in the facility
146 must be of good moral character. Each contract entered into by
147 either department for services delivered on an appointment or
148 intermittent basis by a provider that does not have regular
149 custodial responsibility for children and each contract with a
150 school for before or aftercare services must ensure that the
151 owners, operators, and all personnel who have direct contact
152 with children are of good moral character. A volunteer who
153 assists on an intermittent basis for less than 40 hours per
154 month need not be screened if the volunteer is under direct and
155 constant supervision by persons who meet the screening
156 requirements.

157 (b) The Department of Juvenile Justice and the Department
158 of Children and Family Services shall require employment
159 screening pursuant to chapter 435, using the level 2 standards
160 set forth in that chapter for personnel in programs for children
161 or youths.

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162 (c) The Department of Juvenile Justice or the Department
 163 of Children and Family Services may grant exemptions from
 164 disqualification from working with children as provided in s.
 165 435.07.

166 (d) Notwithstanding s. 435.04 or s. 435.07, a person may
 167 be disqualified from employment or denied an exemption from
 168 disqualification if such person fails to satisfy the requirement
 169 of good moral character as evidenced by criminal history
 170 information documenting multiple arrests or convictions.

171 Section 6. Subsection(4) of section 985.407, Florida
 172 Statutes, is amended, and subsection (6) is added to said
 173 section, to read:

174 985.407 Departmental contracting powers; personnel
 175 standards and screening.--

176 (4) The department shall require employment screening
 177 pursuant to chapter 435, using the level 2 ~~1~~ standards for
 178 screening set forth in that chapter, for personnel in
 179 delinquency facilities, services, and programs.

180 (6) Notwithstanding s. 435.04 or s. 435.07, a person may
 181 be disqualified from employment or denied an exemption from
 182 disqualification if such person fails to satisfy the requirement
 183 of good moral character as evidenced by criminal history
 184 information documenting multiple arrests or convictions.

185 Section 7. For the purpose of incorporating the amendment
 186 to section 985.407, Florida Statutes, in a reference thereto,
 187 subsection (3) of section 400.953, Florida Statutes, is
 188 reenacted to read:

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189 400.953 Background screening of home medical equipment
190 provider personnel.--The agency shall require employment
191 screening as provided in chapter 435, using the level 1
192 standards for screening set forth in that chapter, for home
193 medical equipment provider personnel.

194 (3) Proof of compliance with the screening requirements of
195 s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,
196 s. 402.313, s. 409.175, s. 464.008, or s. 985.407 or this part
197 must be accepted in lieu of the requirements of this section if
198 the person has been continuously employed in the same type of
199 occupation for which he or she is seeking employment without a
200 breach in service that exceeds 180 days, the proof of compliance
201 is not more than 2 years old, and the person has been screened
202 by the Department of Law Enforcement. An employer or contractor
203 shall directly provide proof of compliance to another employer
204 or contractor, and a potential employer or contractor may not
205 accept any proof of compliance directly from the person
206 requiring screening. Proof of compliance with the screening
207 requirements of this section shall be provided, upon request, to
208 the person screened by the home medical equipment provider.

209 Section 8. For the purpose of incorporating the amendment
210 to section 985.407, Florida Statutes, in a reference thereto,
211 paragraph (a) of subsection (4) of section 943.0585, Florida
212 Statutes, is reenacted to read:

213 943.0585 Court-ordered expunction of criminal history
214 records.--The courts of this state have jurisdiction over their
215 own procedures, including the maintenance, expunction, and
216 correction of judicial records containing criminal history

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217 information to the extent such procedures are not inconsistent
218 with the conditions, responsibilities, and duties established by
219 this section. Any court of competent jurisdiction may order a
220 criminal justice agency to expunge the criminal history record
221 of a minor or an adult who complies with the requirements of
222 this section. The court shall not order a criminal justice
223 agency to expunge a criminal history record until the person
224 seeking to expunge a criminal history record has applied for and
225 received a certificate of eligibility for expunction pursuant to
226 subsection (2). A criminal history record that relates to a
227 violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
228 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
229 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in
230 s. 907.041 may not be expunged, without regard to whether
231 adjudication was withheld, if the defendant was found guilty of
232 or pled guilty or nolo contendere to the offense, or if the
233 defendant, as a minor, was found to have committed, or pled
234 guilty or nolo contendere to committing, the offense as a
235 delinquent act. The court may only order expunction of a
236 criminal history record pertaining to one arrest or one incident
237 of alleged criminal activity, except as provided in this
238 section. The court may, at its sole discretion, order the
239 expunction of a criminal history record pertaining to more than
240 one arrest if the additional arrests directly relate to the
241 original arrest. If the court intends to order the expunction of
242 records pertaining to such additional arrests, such intent must
243 be specified in the order. A criminal justice agency may not
244 expunge any record pertaining to such additional arrests if the

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245 | order to expunge does not articulate the intention of the court
 246 | to expunge a record pertaining to more than one arrest. This
 247 | section does not prevent the court from ordering the expunction
 248 | of only a portion of a criminal history record pertaining to one
 249 | arrest or one incident of alleged criminal activity.

250 | Notwithstanding any law to the contrary, a criminal justice
 251 | agency may comply with laws, court orders, and official requests
 252 | of other jurisdictions relating to expunction, correction, or
 253 | confidential handling of criminal history records or information
 254 | derived therefrom. This section does not confer any right to the
 255 | expunction of any criminal history record, and any request for
 256 | expunction of a criminal history record may be denied at the
 257 | sole discretion of the court.

258 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 259 | criminal history record of a minor or an adult which is ordered
 260 | expunged by a court of competent jurisdiction pursuant to this
 261 | section must be physically destroyed or obliterated by any
 262 | criminal justice agency having custody of such record; except
 263 | that any criminal history record in the custody of the
 264 | department must be retained in all cases. A criminal history
 265 | record ordered expunged that is retained by the department is
 266 | confidential and exempt from the provisions of s. 119.07(1) and
 267 | s. 24(a), Art. I of the State Constitution and not available to
 268 | any person or entity except upon order of a court of competent
 269 | jurisdiction. A criminal justice agency may retain a notation
 270 | indicating compliance with an order to expunge.

271 | (a) The person who is the subject of a criminal history
 272 | record that is expunged under this section or under other

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273 provisions of law, including former s. 893.14, former s. 901.33,
274 and former s. 943.058, may lawfully deny or fail to acknowledge
275 the arrests covered by the expunged record, except when the
276 subject of the record:

277 1. Is a candidate for employment with a criminal justice
278 agency;

279 2. Is a defendant in a criminal prosecution;

280 3. Concurrently or subsequently petitions for relief under
281 this section or s. 943.059;

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

283 5. Is seeking to be employed or licensed by or to contract
284 with the Department of Children and Family Services or the
285 Department of Juvenile Justice or to be employed or used by such
286 contractor or licensee in a sensitive position having direct
287 contact with children, the developmentally disabled, the aged,
288 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
289 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
290 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or

291 6. Is seeking to be employed or licensed by the Office of
292 Teacher Education, Certification, Staff Development, and
293 Professional Practices of the Department of Education, any
294 district school board, or any local governmental entity that
295 licenses child care facilities.

296 Section 9. For the purpose of incorporating the amendment
297 to section 985.407, Florida Statutes, in a reference thereto,
298 paragraph (a) of subsection (4) of section 943.059, Florida
299 Statutes, is reenacted to read:

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300 943.059 Court-ordered sealing of criminal history
 301 records.--The courts of this state shall continue to have
 302 jurisdiction over their own procedures, including the
 303 maintenance, sealing, and correction of judicial records
 304 containing criminal history information to the extent such
 305 procedures are not inconsistent with the conditions,
 306 responsibilities, and duties established by this section. Any
 307 court of competent jurisdiction may order a criminal justice
 308 agency to seal the criminal history record of a minor or an
 309 adult who complies with the requirements of this section. The
 310 court shall not order a criminal justice agency to seal a
 311 criminal history record until the person seeking to seal a
 312 criminal history record has applied for and received a
 313 certificate of eligibility for sealing pursuant to subsection
 314 (2). A criminal history record that relates to a violation of s.
 315 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
 316 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
 317 847.0145, s. 893.135, or a violation enumerated in s. 907.041
 318 may not be sealed, without regard to whether adjudication was
 319 withheld, if the defendant was found guilty of or pled guilty or
 320 nolo contendere to the offense, or if the defendant, as a minor,
 321 was found to have committed or pled guilty or nolo contendere to
 322 committing the offense as a delinquent act. The court may only
 323 order sealing of a criminal history record pertaining to one
 324 arrest or one incident of alleged criminal activity, except as
 325 provided in this section. The court may, at its sole discretion,
 326 order the sealing of a criminal history record pertaining to
 327 more than one arrest if the additional arrests directly relate

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328 | to the original arrest. If the court intends to order the
329 | sealing of records pertaining to such additional arrests, such
330 | intent must be specified in the order. A criminal justice agency
331 | may not seal any record pertaining to such additional arrests if
332 | the order to seal does not articulate the intention of the court
333 | to seal records pertaining to more than one arrest. This section
334 | does not prevent the court from ordering the sealing of only a
335 | portion of a criminal history record pertaining to one arrest or
336 | one incident of alleged criminal activity. Notwithstanding any
337 | law to the contrary, a criminal justice agency may comply with
338 | laws, court orders, and official requests of other jurisdictions
339 | relating to sealing, correction, or confidential handling of
340 | criminal history records or information derived therefrom. This
341 | section does not confer any right to the sealing of any criminal
342 | history record, and any request for sealing a criminal history
343 | record may be denied at the sole discretion of the court.

344 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
345 | history record of a minor or an adult which is ordered sealed by
346 | a court of competent jurisdiction pursuant to this section is
347 | confidential and exempt from the provisions of s. 119.07(1) and
348 | s. 24(a), Art. I of the State Constitution and is available only
349 | to the person who is the subject of the record, to the subject's
350 | attorney, to criminal justice agencies for their respective
351 | criminal justice purposes, or to those entities set forth in
352 | subparagraphs (a)1., 4., 5., and 6. for their respective
353 | licensing and employment purposes.

354 | (a) The subject of a criminal history record sealed under
355 | this section or under other provisions of law, including former

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356 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
357 deny or fail to acknowledge the arrests covered by the sealed
358 record, except when the subject of the record:

- 359 1. Is a candidate for employment with a criminal justice
360 agency;
- 361 2. Is a defendant in a criminal prosecution;
- 362 3. Concurrently or subsequently petitions for relief under
363 this section or s. 943.0585;
- 364 4. Is a candidate for admission to The Florida Bar;
- 365 5. Is seeking to be employed or licensed by or to contract
366 with the Department of Children and Family Services or the
367 Department of Juvenile Justice or to be employed or used by such
368 contractor or licensee in a sensitive position having direct
369 contact with children, the developmentally disabled, the aged,
370 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
371 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
372 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter
373 400; or
- 374 6. Is seeking to be employed or licensed by the Office of
375 Teacher Education, Certification, Staff Development, and
376 Professional Practices of the Department of Education, any
377 district school board, or any local governmental entity which
378 licenses child care facilities.

379 Section 10. For the purpose of incorporating the amendment
380 to section 985.407, Florida Statutes, in a reference thereto,
381 paragraph (e) of subsection (4) of section 985.05, Florida
382 Statutes, is reenacted to read:

383 985.05 Court records.--

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384 (4) A court record of proceedings under this part is not
385 admissible in evidence in any other civil or criminal
386 proceeding, except that:

387 (e) Records of proceedings under this part may be used to
388 prove disqualification pursuant to ss. 110.1127, 393.0655,
389 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and
390 985.407.

391 Section 11. This act shall take effect upon becoming a
392 law.