

CHAMBER ACTION

1 The Committee on Future of Florida's Families 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; specifying elements
16 that must be considered in assessing whether a person is
17 of good moral character; amending s. 435.04, F.S.;
18 requiring that Department of Juvenile Justice screenings
19 occur annually; requiring that Department of Juvenile
20 Justice employees be of good moral character; prohibiting
21 the Department of Juvenile Justice from removing a
22 disqualification from employment or granting an exemption
23 from disqualification in certain circumstances; amending

HB 713 CS

2004
CS

24 ss. 984.01 and 985.01, F.S.; providing that certain
25 persons who fail to satisfy the requirement of good moral
26 character may be disqualified from employment or denied an
27 exemption from disqualification; specifying elements that
28 must be considered in assessing whether a person is of
29 good moral character; amending s. 985.407, F.S.; providing
30 that certain persons who fail to satisfy the requirement
31 of good moral character may be disqualified from
32 employment or denied an exemption from disqualification;
33 requiring the Department of Juvenile Justice to require
34 employment screening of certain personnel pursuant to
35 level 2, rather than level 1, screening standards of ch.
36 435, F.S.; specifying elements that must be considered in
37 assessing whether a person is of good moral character;
38 reenacting ss. 400.953(3), 943.0585(4)(a), 943.059(4)(a),
39 and 985.05(4)(e), F.S., relating to background screening
40 of home medical equipment provider personnel, court-
41 ordered expunction of criminal history records, court-
42 ordered sealing of criminal history records, and use of
43 juvenile court records as proof of certain
44 disqualification, respectively, for the purpose of
45 incorporating the amendment to s. 985.407, F.S., in
46 references thereto; providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 435.015, Florida Statutes, is created
51 to read:

52 435.015 Incorporation by reference.--The purpose of this
 53 chapter is to provide uniform criteria for employment screening
 54 and, to this end, a reference to this chapter, or to any section
 55 or subdivision within this chapter, constitutes a general
 56 reference under the doctrine of incorporation by reference.

57 Section 2. Section 435.025, Florida Statutes, is created
 58 to read:

59 435.025 Evidence of good moral character.--Any record
 60 concerning the arrest of a person who is required to be of good
 61 moral character as a condition of initial or continued
 62 employment, licensure, or other business with the state, or any
 63 agency or political subdivision thereof, shall be considered in
 64 determining whether such person satisfies the requirement,
 65 notwithstanding the disposition of the arrest. A lack of good
 66 moral character is evidenced by acts and conduct which would
 67 cause a reasonable person to have substantial doubts about an
 68 individual's honesty, fairness, and respect for the rights of
 69 others and for the laws of the state and nation. An assessment
 70 of good moral character must incorporate consideration of
 71 criminal history information documenting arrests or convictions
 72 of the individual.

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

75 435.04 Level 2 screening standards.--

76 (3) The security background investigations conducted under
 77 this section for employees of the Department of Juvenile Justice
 78 shall occur annually and must ensure that no persons subject to
 79 the provisions of this section have been found guilty of,

HB 713 CS

2004
CS

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

84 | (a) Section 784.07, relating to assault or battery of law
85 | enforcement officers, firefighters, emergency medical care
86 | providers, public transit employees or agents, or other
87 | specified officers.

88 | (b) Section 810.02, relating to burglary, if the offense
89 | is a felony.

90 | (c) Section 944.40, relating to escape.

91 |
92 | All Department of Juvenile Justice employees shall be of good
93 | moral character. The Department of Juvenile Justice may not
94 | remove a disqualification from employment or grant an exemption
95 | to any person who is disqualified under this section for any
96 | offense disposed of during the most recent 7-year period. The
97 | Department of Juvenile Justice may not remove a disqualification
98 | from employment or grant an exemption to any person who has been
99 | found guilty of, regardless of adjudication, or entered a plea
100 | of nolo contendere or guilty to, three or more offenses
101 | specified in this subsection or subsection (2), irrespective of
102 | the time at which such offenses were disposed.

103 | Section 4. Subsection (2) of section 984.01, Florida
104 | Statutes, is amended to read:

105 | 984.01 Purposes and intent; personnel standards and
106 | screening.--

107 (2) The Department of Juvenile Justice or the Department
 108 of Children and Family Services, as appropriate, may contract
 109 with the Federal Government, other state departments and
 110 agencies, county and municipal governments and agencies, public
 111 and private agencies, and private individuals and corporations
 112 in carrying out the purposes of, and the responsibilities
 113 established in, this chapter.

114 (a) When the Department of Juvenile Justice or the
 115 Department of Children and Family Services contracts with a
 116 provider for any program for children, all personnel, including
 117 owners, operators, employees, and volunteers, in the facility
 118 must be of good moral character. Each contract entered into by
 119 either department for services delivered on an appointment or
 120 intermittent basis by a provider that does not have regular
 121 custodial responsibility for children and each contract with a
 122 school for before or aftercare services must ensure that the
 123 owners, operators, and all personnel who have direct contact
 124 with children are of good moral character. A volunteer who
 125 assists on an intermittent basis for less than 40 hours per
 126 month need not be screened if the volunteer is under direct and
 127 constant supervision by persons who meet the screening
 128 requirements.

129 (b) The Department of Juvenile Justice and the Department
 130 of Children and Family Services shall require employment
 131 screening pursuant to chapter 435, using the level 2 standards
 132 set forth in that chapter for personnel in programs for children
 133 or youths.

HB 713 CS

2004
CS

134 (c) The Department of Juvenile Justice or the Department
 135 of Children and Family Services may grant exemptions from
 136 disqualification from working with children as provided in s.
 137 435.07.

138 (d) Notwithstanding s. 435.04 or s. 435.07, a person may
 139 be disqualified from employment or denied an exemption from
 140 disqualification if such person fails to satisfy the requirement
 141 of good moral character as evidenced by acts and conduct which
 142 would cause a reasonable person to have substantial doubts about
 143 an individual's honesty, fairness, and respect for the rights of
 144 others and for the laws of the state and nation. An assessment
 145 of good moral character must incorporate consideration of
 146 criminal history information documenting arrests or convictions
 147 of the individual.

148 Section 5. Subsection (2) of section 985.01, Florida
 149 Statutes, is amended to read:

150 985.01 Purposes and intent; personnel standards and
 151 screening.--

152 (2) The Department of Juvenile Justice or the Department
 153 of Children and Family Services, as appropriate, may contract
 154 with the Federal Government, other state departments and
 155 agencies, county and municipal governments and agencies, public
 156 and private agencies, and private individuals and corporations
 157 in carrying out the purposes of, and the responsibilities
 158 established in, this chapter.

159 (a) When the Department of Juvenile Justice or the
 160 Department of Children and Family Services contracts with a
 161 provider for any program for children, all personnel, including

HB 713 CS

2004
CS

162 owners, operators, employees, and volunteers, in the facility
 163 must be of good moral character. Each contract entered into by
 164 either department for services delivered on an appointment or
 165 intermittent basis by a provider that does not have regular
 166 custodial responsibility for children and each contract with a
 167 school for before or aftercare services must ensure that the
 168 owners, operators, and all personnel who have direct contact
 169 with children are of good moral character. A volunteer who
 170 assists on an intermittent basis for less than 40 hours per
 171 month need not be screened if the volunteer is under direct and
 172 constant supervision by persons who meet the screening
 173 requirements.

174 (b) The Department of Juvenile Justice and the Department
 175 of Children and Family Services shall require employment
 176 screening pursuant to chapter 435, using the level 2 standards
 177 set forth in that chapter for personnel in programs for children
 178 or youths.

179 (c) The Department of Juvenile Justice or the Department
 180 of Children and Family Services may grant exemptions from
 181 disqualification from working with children as provided in s.
 182 435.07.

183 (d) Notwithstanding s. 435.04 or s. 435.07, a person may
 184 be disqualified from employment or denied an exemption from
 185 disqualification if such person fails to satisfy the requirement
 186 of good moral character as evidenced by acts and conduct which
 187 would cause a reasonable person to have substantial doubts about
 188 an individual's honesty, fairness, and respect for the rights of
 189 others and for the laws of the state and nation. An assessment

HB 713 CS

2004
CS

190 of good moral character must incorporate consideration of
 191 criminal history information documenting arrests or convictions
 192 of the individual.

193 Section 6. Subsection (4) of section 985.407, Florida
 194 Statutes, is amended, and subsection (6) is added to said
 195 section, to read:

196 985.407 Departmental contracting powers; personnel
 197 standards and screening.--

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

202 (6) Notwithstanding s. 435.04 or s. 435.07, a person may
 203 be disqualified from employment or denied an exemption from
 204 disqualification if such person fails to satisfy the requirement
 205 of good moral character as evidenced by acts and conduct which
 206 would cause a reasonable person to have substantial doubts about
 207 an individual's honesty, fairness, and respect for the rights of
 208 others and for the laws of the state and nation. An assessment
 209 of good moral character must incorporate consideration of
 210 criminal history information documenting arrests or convictions
 211 of the individual.

212 Section 7. For the purpose of incorporating the amendment
 213 to section 985.407, Florida Statutes, in a reference thereto,
 214 subsection (3) of section 400.953, Florida Statutes, is
 215 reenacted to read:

216 400.953 Background screening of home medical equipment
 217 provider personnel.--The agency shall require employment

HB 713 CS

2004
CS

218 screening as provided in chapter 435, using the level 1
 219 standards for screening set forth in that chapter, for home
 220 medical equipment provider personnel.

221 (3) Proof of compliance with the screening requirements of
 222 s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,
 223 s. 402.313, s. 409.175, s. 464.008, or s. 985.407 or this part
 224 must be accepted in lieu of the requirements of this section if
 225 the person has been continuously employed in the same type of
 226 occupation for which he or she is seeking employment without a
 227 breach in service that exceeds 180 days, the proof of compliance
 228 is not more than 2 years old, and the person has been screened
 229 by the Department of Law Enforcement. An employer or contractor
 230 shall directly provide proof of compliance to another employer
 231 or contractor, and a potential employer or contractor may not
 232 accept any proof of compliance directly from the person
 233 requiring screening. Proof of compliance with the screening
 234 requirements of this section shall be provided, upon request, to
 235 the person screened by the home medical equipment provider.

236 Section 8. For the purpose of incorporating the amendment
 237 to section 985.407, Florida Statutes, in a reference thereto,
 238 paragraph (a) of subsection (4) of section 943.0585, Florida
 239 Statutes, is reenacted to read:

240 943.0585 Court-ordered expunction of criminal history
 241 records.--The courts of this state have jurisdiction over their
 242 own procedures, including the maintenance, expunction, and
 243 correction of judicial records containing criminal history
 244 information to the extent such procedures are not inconsistent
 245 with the conditions, responsibilities, and duties established by

HB 713 CS

2004
CS

246 | this section. Any court of competent jurisdiction may order a
247 | criminal justice agency to expunge the criminal history record
248 | of a minor or an adult who complies with the requirements of
249 | this section. The court shall not order a criminal justice
250 | agency to expunge a criminal history record until the person
251 | seeking to expunge a criminal history record has applied for and
252 | received a certificate of eligibility for expunction pursuant to
253 | subsection (2). A criminal history record that relates to a
254 | violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
255 | 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
256 | 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in
257 | s. 907.041 may not be expunged, without regard to whether
258 | adjudication was withheld, if the defendant was found guilty of
259 | or pled guilty or nolo contendere to the offense, or if the
260 | defendant, as a minor, was found to have committed, or pled
261 | guilty or nolo contendere to committing, the offense as a
262 | delinquent act. The court may only order expunction of a
263 | criminal history record pertaining to one arrest or one incident
264 | of alleged criminal activity, except as provided in this
265 | section. The court may, at its sole discretion, order the
266 | expunction of a criminal history record pertaining to more than
267 | one arrest if the additional arrests directly relate to the
268 | original arrest. If the court intends to order the expunction of
269 | records pertaining to such additional arrests, such intent must
270 | be specified in the order. A criminal justice agency may not
271 | expunge any record pertaining to such additional arrests if the
272 | order to expunge does not articulate the intention of the court
273 | to expunge a record pertaining to more than one arrest. This

HB 713 CS

2004
CS

274 section does not prevent the court from ordering the expunction
275 of only a portion of a criminal history record pertaining to one
276 arrest or one incident of alleged criminal activity.

277 Notwithstanding any law to the contrary, a criminal justice
278 agency may comply with laws, court orders, and official requests
279 of other jurisdictions relating to expunction, correction, or
280 confidential handling of criminal history records or information
281 derived therefrom. This section does not confer any right to the
282 expunction of any criminal history record, and any request for
283 expunction of a criminal history record may be denied at the
284 sole discretion of the court.

285 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
286 criminal history record of a minor or an adult which is ordered
287 expunged by a court of competent jurisdiction pursuant to this
288 section must be physically destroyed or obliterated by any
289 criminal justice agency having custody of such record; except
290 that any criminal history record in the custody of the
291 department must be retained in all cases. A criminal history
292 record ordered expunged that is retained by the department is
293 confidential and exempt from the provisions of s. 119.07(1) and
294 s. 24(a), Art. I of the State Constitution and not available to
295 any person or entity except upon order of a court of competent
296 jurisdiction. A criminal justice agency may retain a notation
297 indicating compliance with an order to expunge.

298 (a) The person who is the subject of a criminal history
299 record that is expunged under this section or under other
300 provisions of law, including former s. 893.14, former s. 901.33,
301 and former s. 943.058, may lawfully deny or fail to acknowledge

302 | the arrests covered by the expunged record, except when the
303 | subject of the record:

304 | 1. Is a candidate for employment with a criminal justice
305 | agency;

306 | 2. Is a defendant in a criminal prosecution;

307 | 3. Concurrently or subsequently petitions for relief under
308 | this section or s. 943.059;

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

310 | 5. Is seeking to be employed or licensed by or to contract
311 | with the Department of Children and Family Services or the
312 | Department of Juvenile Justice or to be employed or used by such
313 | contractor or licensee in a sensitive position having direct
314 | contact with children, the developmentally disabled, the aged,
315 | or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
316 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

317 | 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or

318 | 6. Is seeking to be employed or licensed by the Office of
319 | Teacher Education, Certification, Staff Development, and
320 | Professional Practices of the Department of Education, any
321 | district school board, or any local governmental entity that
322 | licenses child care facilities.

323 | Section 9. For the purpose of incorporating the amendment
324 | to section 985.407, Florida Statutes, in a reference thereto,
325 | paragraph (a) of subsection (4) of section 943.059, Florida
326 | Statutes, is reenacted to read:

327 | 943.059 Court-ordered sealing of criminal history
328 | records.--The courts of this state shall continue to have
329 | jurisdiction over their own procedures, including the

HB 713 CS

2004
CS

330 maintenance, sealing, and correction of judicial records
331 containing criminal history information to the extent such
332 procedures are not inconsistent with the conditions,
333 responsibilities, and duties established by this section. Any
334 court of competent jurisdiction may order a criminal justice
335 agency to seal the criminal history record of a minor or an
336 adult who complies with the requirements of this section. The
337 court shall not order a criminal justice agency to seal a
338 criminal history record until the person seeking to seal a
339 criminal history record has applied for and received a
340 certificate of eligibility for sealing pursuant to subsection
341 (2). A criminal history record that relates to a violation of s.
342 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
343 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
344 847.0145, s. 893.135, or a violation enumerated in s. 907.041
345 may not be sealed, without regard to whether adjudication was
346 withheld, if the defendant was found guilty of or pled guilty or
347 nolo contendere to the offense, or if the defendant, as a minor,
348 was found to have committed or pled guilty or nolo contendere to
349 committing the offense as a delinquent act. The court may only
350 order sealing of a criminal history record pertaining to one
351 arrest or one incident of alleged criminal activity, except as
352 provided in this section. The court may, at its sole discretion,
353 order the sealing of a criminal history record pertaining to
354 more than one arrest if the additional arrests directly relate
355 to the original arrest. If the court intends to order the
356 sealing of records pertaining to such additional arrests, such
357 intent must be specified in the order. A criminal justice agency

HB 713 CS

2004
CS

358 | may not seal any record pertaining to such additional arrests if
 359 | the order to seal does not articulate the intention of the court
 360 | to seal records pertaining to more than one arrest. This section
 361 | does not prevent the court from ordering the sealing of only a
 362 | portion of a criminal history record pertaining to one arrest or
 363 | one incident of alleged criminal activity. Notwithstanding any
 364 | law to the contrary, a criminal justice agency may comply with
 365 | laws, court orders, and official requests of other jurisdictions
 366 | relating to sealing, correction, or confidential handling of
 367 | criminal history records or information derived therefrom. This
 368 | section does not confer any right to the sealing of any criminal
 369 | history record, and any request for sealing a criminal history
 370 | record may be denied at the sole discretion of the court.

371 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 372 | history record of a minor or an adult which is ordered sealed by
 373 | a court of competent jurisdiction pursuant to this section is
 374 | confidential and exempt from the provisions of s. 119.07(1) and
 375 | s. 24(a), Art. I of the State Constitution and is available only
 376 | to the person who is the subject of the record, to the subject's
 377 | attorney, to criminal justice agencies for their respective
 378 | criminal justice purposes, or to those entities set forth in
 379 | subparagraphs (a)1., 4., 5., and 6. for their respective
 380 | licensing and employment purposes.

381 | (a) The subject of a criminal history record sealed under
 382 | this section or under other provisions of law, including former
 383 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 384 | deny or fail to acknowledge the arrests covered by the sealed
 385 | record, except when the subject of the record:

HB 713 CS

2004
CS

- 386 1. Is a candidate for employment with a criminal justice
387 agency;
- 388 2. Is a defendant in a criminal prosecution;
- 389 3. Concurrently or subsequently petitions for relief under
390 this section or s. 943.0585;
- 391 4. Is a candidate for admission to The Florida Bar;
- 392 5. Is seeking to be employed or licensed by or to contract
393 with the Department of Children and Family Services or the
394 Department of Juvenile Justice or to be employed or used by such
395 contractor or licensee in a sensitive position having direct
396 contact with children, the developmentally disabled, the aged,
397 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
398 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
399 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter
400 400; or
- 401 6. Is seeking to be employed or licensed by the Office of
402 Teacher Education, Certification, Staff Development, and
403 Professional Practices of the Department of Education, any
404 district school board, or any local governmental entity which
405 licenses child care facilities.

406 Section 10. For the purpose of incorporating the amendment
407 to section 985.407, Florida Statutes, in a reference thereto,
408 paragraph (e) of subsection (4) of section 985.05, Florida
409 Statutes, is reenacted to read:

410 985.05 Court records.--

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

HB 713 CS

2004
CS

414 (e) Records of proceedings under this part may be used to
415 prove disqualification pursuant to ss. 110.1127, 393.0655,
416 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and
417 985.407.

418 Section 11. This act shall take effect upon becoming a
419 law.