

CHAMBER ACTION

1 The Committee on State Administration recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

24 | from employment or denied an exemption from
25 | disqualification; specifying elements that must be
26 | considered in assessing whether a person is of good moral
27 | character; amending s. 985.01, F.S.; providing that
28 | certain persons who fail to satisfy the requirement of
29 | good moral character may be disqualified from employment
30 | or denied an exemption from disqualification; specifying
31 | elements that must be considered in assessing whether a
32 | person is of good moral character; requiring the
33 | Department of Juvenile Justice to submit fingerprint
34 | information of certain employees and contracted personnel
35 | to the Department of Law Enforcement; providing for
36 | submission of fingerprint information by all department
37 | employees and personnel by a time certain; authorizing
38 | such information to be retained in the statewide automated
39 | fingerprint identification system; providing for arrest
40 | records to be compared against such fingerprint
41 | information; providing for notice to the Department of
42 | Juvenile Justice concerning fingerprint information in
43 | certain circumstances; authorizing the Department of Law
44 | Enforcement to promulgate rules for specified purposes;
45 | authorizing the Department of Law Enforcement to collect a
46 | fee from the Department of Juvenile Justice for certain
47 | services; specifying the maximum amount of such fee;
48 | specifying parties who may be responsible for such fee;
49 | amending s. 985.407, F.S.; requiring fingerprinting and
50 | background screening for all personnel of delinquency
51 | facilities, services, and programs; providing that certain

52 persons who fail to satisfy the requirement of good moral
 53 character may be disqualified from employment or denied an
 54 exemption from disqualification; requiring the Department
 55 of Juvenile Justice to require employment screening of
 56 certain personnel pursuant to level 2, rather than level
 57 1, screening standards of ch. 435, F.S.; specifying
 58 elements that must be considered in assessing whether a
 59 person is of good moral character; reenacting s.
 60 400.215(2)(a), F.S., relating to background screening of
 61 nursing home employees; reenacting ss. 400.953(3),
 62 943.0585(4)(a), 943.059(4)(a), and 985.05(4)(e), F.S.,
 63 relating to background screening of home medical equipment
 64 provider personnel, court-ordered expunction of criminal
 65 history records, court-ordered sealing of criminal history
 66 records, and use of juvenile court records as proof of
 67 certain disqualification, respectively, for the purpose of
 68 incorporating the amendment to s. 985.407, F.S., in
 69 references thereto; providing an effective date.

70
 71 Be It Enacted by the Legislature of the State of Florida:

72
 73 Section 1. Section 435.015, Florida Statutes, is created
 74 to read:

75 435.015 Incorporation by reference.--The purpose of this
 76 chapter is to provide uniform criteria for employment screening
 77 and, to this end, a reference to this chapter, or to any section
 78 or subdivision within this chapter, constitutes a general
 79 reference under the doctrine of incorporation by reference.

CODING: Words **stricken** are deletions; words **underlined** are additions.

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80 Section 2. Section 435.025, Florida Statutes, is created
81 to read:

82 435.025 Evidence of good moral character.--Any record
83 concerning the arrest of a person who is required to be of good
84 moral character as a condition of initial or continued
85 employment, licensure, or other business with the state, or any
86 agency or political subdivision thereof, shall be considered in
87 determining whether such person satisfies the requirement,
88 notwithstanding the disposition of the arrest. A lack of good
89 moral character is evidenced by acts and conduct which would
90 cause a reasonable person to have substantial doubts about an
91 individual's honesty, fairness, and respect for the rights of
92 others and for the laws of the state and nation. An assessment
93 of good moral character must incorporate consideration of
94 criminal history information documenting arrests or convictions
95 of the individual.

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

98 435.04 Level 2 screening standards.--

99 (3) The security background investigations conducted under
100 this section for employees of the Department of Juvenile Justice
101 must ensure that no persons subject to the provisions of this
102 section have been found guilty of, regardless of adjudication,
103 or entered a plea of nolo contendere or guilty to, any offense
104 prohibited under any of the following provisions of the Florida
105 Statutes or under any similar statute of another jurisdiction:

106 (a) Section 784.07, relating to assault or battery of law
107 enforcement officers, firefighters, emergency medical care

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108 providers, public transit employees or agents, or other
109 specified officers.

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

112 (c) Section 944.40, relating to escape.
113

114 All Department of Juvenile Justice employees shall be of good
115 moral character. The Department of Juvenile Justice may not
116 remove a disqualification from employment or grant an exemption
117 to any person who is disqualified under this section for any
118 offense disposed of during the most recent 7-year period. The
119 Department of Juvenile Justice may not remove a disqualification
120 from employment or grant an exemption to any person who has been
121 found guilty of, regardless of adjudication, or entered a plea
122 of nolo contendere or guilty to, three or more offenses
123 specified in this subsection or subsection (2) which occurred on
124 three or more separate occasions.

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

127 984.01 Purposes and intent; personnel standards and
128 screening.--

129 (2) The Department of Juvenile Justice or the Department
130 of Children and Family Services, as appropriate, may contract
131 with the Federal Government, other state departments and
132 agencies, county and municipal governments and agencies, public
133 and private agencies, and private individuals and corporations
134 in carrying out the purposes of, and the responsibilities
135 established in, this chapter.

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

151 (b) The Department of Juvenile Justice and the Department
 152 of Children and Family Services shall require employment
 153 screening pursuant to chapter 435, using the level 2 standards
 154 set forth in that chapter for personnel in programs for children
 155 or youths.

156 (c) The Department of Juvenile Justice or the Department
 157 of Children and Family Services may grant exemptions from
 158 disqualification from working with children as provided in s.
 159 435.07.

160 (d) Notwithstanding s. 435.04 or s. 435.07, a person may
 161 be disqualified from employment or denied an exemption from
 162 disqualification if such person fails to satisfy the requirement
 163 of good moral character as evidenced by acts and conduct which

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164 would cause a reasonable person to have substantial doubts about
165 an individual's honesty, fairness, and respect for the rights of
166 others and for the laws of the state and nation. An assessment
167 of good moral character must incorporate consideration of
168 criminal history information documenting arrests or convictions
169 of the individual.

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

172 985.01 Purposes and intent; personnel standards and
173 screening.--

174 (2) The Department of Juvenile Justice or the Department
175 of Children and Family Services, as appropriate, may contract
176 with the Federal Government, other state departments and
177 agencies, county and municipal governments and agencies, public
178 and private agencies, and private individuals and corporations
179 in carrying out the purposes of, and the responsibilities
180 established in, this chapter.

181 (a) When the Department of Juvenile Justice or the
182 Department of Children and Family Services contracts with a
183 provider for any program for children, all personnel, including
184 owners, operators, employees, and volunteers, in the facility
185 must be of good moral character. Each contract entered into by
186 either department for services delivered on an appointment or
187 intermittent basis by a provider that does not have regular
188 custodial responsibility for children and each contract with a
189 school for before or aftercare services must ensure that the
190 owners, operators, and all personnel who have direct contact
191 with children are of good moral character. A volunteer who

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192 assists on an intermittent basis for less than 40 hours per
193 month need not be screened if the volunteer is under direct and
194 constant supervision by persons who meet the screening
195 requirements.

196 (b) The Department of Juvenile Justice and the Department
197 of Children and Family Services shall require employment
198 screening pursuant to chapter 435, using the level 2 standards
199 set forth in that chapter for personnel in programs for children
200 or youths.

201 (c) The Department of Juvenile Justice or the Department
202 of Children and Family Services may grant exemptions from
203 disqualification from working with children as provided in s.
204 435.07.

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

215 (e) Beginning December 15, 2004, all fingerprint
216 information submitted to the Department of Law Enforcement by
217 the Department of Juvenile Justice as required under this
218 section, shall be retained by the Department and entered in the
219 statewide automated fingerprint identification system specified

220 under s. 943.05(2)(b). Such fingerprint information shall
 221 thereafter be available for all purposes and uses authorized for
 222 fingerprint information entered in the statewide automated
 223 fingerprint identification system pursuant to s. 943.051.

224 (f) Beginning December 15, 2004, the Department of Law
 225 Enforcement shall search all arrest fingerprint cards received
 226 pursuant to s. 943.051 against the fingerprint information
 227 retained in the statewide automated fingerprint identification
 228 system pursuant to this section. Any arrest records which are
 229 thus identified with the retained employee fingerprint
 230 information shall be reported to the Department of Juvenile
 231 Justice.

232 (g) By January 1, 2005, Department of Juvenile Justice
 233 personnel whose fingerprints are not retained by the Department
 234 of Law Enforcement pursuant to this section are required to be
 235 refingerprinted pursuant to chapter 435, using the level 2
 236 standards.

237 (h) The Department of Juvenile Justice shall pay an annual
 238 fee to the Department of Law Enforcement and shall inform the
 239 Department of Law Enforcement of any change in the employment or
 240 contractual status of the personnel whose fingerprint
 241 information is retained under this section, as well as any
 242 change in the place of employment of such personnel or change in
 243 the place where contractual services are provided by such
 244 personnel. The Department of Law Enforcement shall establish the
 245 following by administrative rule, in accordance with the
 246 requirements of chapter 120:

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247 1. The amount of the annual fee to be remitted by the
 248 Department of Juvenile Justice to the Department of Law
 249 Enforcement for performing searches under this section.

250 2. Procedures for the retention of the fingerprint
 251 information concerning employees or contractual personnel.

252 3. Procedures for the dissemination of the results of
 253 searches conducted under this section.

254
 255 The amount of the fee shall not exceed \$10.00 per person per
 256 year. Responsibility for payment of the fee may be borne by the
 257 Department of Juvenile Justice, an employee, or a person under
 258 contract to the Department of Juvenile Justice.

259 Section 6. Subsection (4) of section 985.407, Florida
 260 Statutes, is amended, and subsection (6) is added to said
 261 section, to read:

262 985.407 Departmental contracting powers; personnel
 263 standards and screening.--

264 ~~(4) The department shall require employment screening~~
 265 ~~pursuant to chapter 435, using the level 1 standards for~~
 266 ~~screening set forth in that chapter, for Personnel in~~
 267 ~~delinquency facilities, services, and programs~~ must abide by all
 268 of the provisions of s. 985.01(2) that provide for
 269 fingerprinting, background investigations, and other screening
 270 requirements for such personnel.

271 (6) Notwithstanding s. 435.04 or s. 435.07, a person may
 272 be disqualified from employment or denied an exemption from
 273 disqualification if such person fails to satisfy the requirement
 274 of good moral character as evidenced by acts and conduct which

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275 would cause a reasonable person to have substantial doubts about
276 an individual's honesty, fairness, and respect for the rights of
277 others and for the laws of the state and nation. An assessment
278 of good moral character must incorporate consideration of
279 criminal history information documenting arrests or convictions
280 of the individual.

281 Section 7. Paragraph (a) of subsection (2) of section
282 400.215, Florida Statutes, is reenacted to read:

283 400.215 Personnel screening requirement.--

284 (2) Employers and employees shall comply with the
285 requirements of s. 435.05.

286 (a) Notwithstanding the provisions of s. 435.05(1),
287 facilities must have in their possession evidence that level 1
288 screening has been completed before allowing an employee to
289 begin working with patients as provided in subsection (1). All
290 information necessary for conducting background screening using
291 level 1 standards as specified in s. 435.03(1) shall be
292 submitted by the nursing facility to the agency. Results of the
293 background screening shall be provided by the agency to the
294 requesting nursing facility.

295 Section 8. For the purpose of incorporating the amendment
296 to section 985.407, Florida Statutes, in a reference thereto,
297 subsection (3) of section 400.953, Florida Statutes, is
298 reenacted to read:

299 400.953 Background screening of home medical equipment
300 provider personnel.--The agency shall require employment
301 screening as provided in chapter 435, using the level 1

302 standards for screening set forth in that chapter, for home
303 medical equipment provider personnel.

304 (3) Proof of compliance with the screening requirements of
305 s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,
306 s. 402.313, s. 409.175, s. 464.008, or s. 985.407 or this part
307 must be accepted in lieu of the requirements of this section if
308 the person has been continuously employed in the same type of
309 occupation for which he or she is seeking employment without a
310 breach in service that exceeds 180 days, the proof of compliance
311 is not more than 2 years old, and the person has been screened
312 by the Department of Law Enforcement. An employer or contractor
313 shall directly provide proof of compliance to another employer
314 or contractor, and a potential employer or contractor may not
315 accept any proof of compliance directly from the person
316 requiring screening. Proof of compliance with the screening
317 requirements of this section shall be provided, upon request, to
318 the person screened by the home medical equipment provider.

319 Section 9. For the purpose of incorporating the amendment
320 to section 985.407, Florida Statutes, in a reference thereto,
321 paragraph (a) of subsection (4) of section 943.0585, Florida
322 Statutes, is reenacted to read:

323 943.0585 Court-ordered expunction of criminal history
324 records.--The courts of this state have jurisdiction over their
325 own procedures, including the maintenance, expunction, and
326 correction of judicial records containing criminal history
327 information to the extent such procedures are not inconsistent
328 with the conditions, responsibilities, and duties established by
329 this section. Any court of competent jurisdiction may order a

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

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358 | of only a portion of a criminal history record pertaining to one
359 | arrest or one incident of alleged criminal activity.

360 | Notwithstanding any law to the contrary, a criminal justice
361 | agency may comply with laws, court orders, and official requests
362 | of other jurisdictions relating to expunction, correction, or
363 | confidential handling of criminal history records or information
364 | derived therefrom. This section does not confer any right to the
365 | expunction of any criminal history record, and any request for
366 | expunction of a criminal history record may be denied at the
367 | sole discretion of the court.

368 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
369 | criminal history record of a minor or an adult which is ordered
370 | expunged by a court of competent jurisdiction pursuant to this
371 | section must be physically destroyed or obliterated by any
372 | criminal justice agency having custody of such record; except
373 | that any criminal history record in the custody of the
374 | department must be retained in all cases. A criminal history
375 | record ordered expunged that is retained by the department is
376 | confidential and exempt from the provisions of s. 119.07(1) and
377 | s. 24(a), Art. I of the State Constitution and not available to
378 | any person or entity except upon order of a court of competent
379 | jurisdiction. A criminal justice agency may retain a notation
380 | indicating compliance with an order to expunge.

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

385 | the arrests covered by the expunged record, except when the
386 | subject of the record:

387 | 1. Is a candidate for employment with a criminal justice
388 | agency;

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

390 | 3. Concurrently or subsequently petitions for relief under
391 | this section or s. 943.059;

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

393 | 5. Is seeking to be employed or licensed by or to contract
394 | with the Department of Children and Family Services or the
395 | Department of Juvenile Justice or to be employed or used by such
396 | contractor or licensee in a sensitive position having direct
397 | contact with children, the developmentally disabled, the aged,
398 | or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
399 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

400 | 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 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 that
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 (a) of subsection (4) of section 943.059, Florida
409 | Statutes, is reenacted to read:

410 | 943.059 Court-ordered sealing of criminal history
411 | records.--The courts of this state shall continue to have
412 | jurisdiction over their own procedures, including the

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413 maintenance, sealing, and correction of judicial records
 414 containing criminal history information to the extent such
 415 procedures are not inconsistent with the conditions,
 416 responsibilities, and duties established by this section. Any
 417 court of competent jurisdiction may order a criminal justice
 418 agency to seal the criminal history record of a minor or an
 419 adult who complies with the requirements of this section. The
 420 court shall not order a criminal justice agency to seal a
 421 criminal history record until the person seeking to seal a
 422 criminal history record has applied for and received a
 423 certificate of eligibility for sealing pursuant to subsection
 424 (2). A criminal history record that relates to a violation of s.
 425 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
 426 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
 427 847.0145, s. 893.135, or a violation enumerated in s. 907.041
 428 may not be sealed, without regard to whether adjudication was
 429 withheld, if the defendant was found guilty of or pled guilty or
 430 nolo contendere to the offense, or if the defendant, as a minor,
 431 was found to have committed or pled guilty or nolo contendere to
 432 committing the offense as a delinquent act. The court may only
 433 order sealing of a criminal history record pertaining to one
 434 arrest or one incident of alleged criminal activity, except as
 435 provided in this section. The court may, at its sole discretion,
 436 order the sealing of a criminal history record pertaining to
 437 more than one arrest if the additional arrests directly relate
 438 to the original arrest. If the court intends to order the
 439 sealing of records pertaining to such additional arrests, such
 440 intent must be specified in the order. A criminal justice agency

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441 | may not seal any record pertaining to such additional arrests if
 442 | the order to seal does not articulate the intention of the court
 443 | to seal records pertaining to more than one arrest. This section
 444 | does not prevent the court from ordering the sealing of only a
 445 | portion of a criminal history record pertaining to one arrest or
 446 | one incident of alleged criminal activity. Notwithstanding any
 447 | law to the contrary, a criminal justice agency may comply with
 448 | laws, court orders, and official requests of other jurisdictions
 449 | relating to sealing, correction, or confidential handling of
 450 | criminal history records or information derived therefrom. This
 451 | section does not confer any right to the sealing of any criminal
 452 | history record, and any request for sealing a criminal history
 453 | record may be denied at the sole discretion of the court.

454 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 455 | history record of a minor or an adult which is ordered sealed by
 456 | a court of competent jurisdiction pursuant to this section is
 457 | confidential and exempt from the provisions of s. 119.07(1) and
 458 | s. 24(a), Art. I of the State Constitution and is available only
 459 | to the person who is the subject of the record, to the subject's
 460 | attorney, to criminal justice agencies for their respective
 461 | criminal justice purposes, or to those entities set forth in
 462 | subparagraphs (a)1., 4., 5., and 6. for their respective
 463 | licensing and employment purposes.

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

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- 469 1. Is a candidate for employment with a criminal justice
470 agency;
- 471 2. Is a defendant in a criminal prosecution;
- 472 3. Concurrently or subsequently petitions for relief under
473 this section or s. 943.0585;
- 474 4. Is a candidate for admission to The Florida Bar;
- 475 5. Is seeking to be employed or licensed by or to contract
476 with the Department of Children and Family Services or the
477 Department of Juvenile Justice or to be employed or used by such
478 contractor or licensee in a sensitive position having direct
479 contact with children, the developmentally disabled, the aged,
480 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.
481 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
482 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter
483 400; or
- 484 6. Is seeking to be employed or licensed by the Office of
485 Teacher Education, Certification, Staff Development, and
486 Professional Practices of the Department of Education, any
487 district school board, or any local governmental entity which
488 licenses child care facilities.

489 Section 11. For the purpose of incorporating the amendment
490 to section 985.407, Florida Statutes, in a reference thereto,
491 paragraph (e) of subsection (4) of section 985.05, Florida
492 Statutes, is reenacted to read:

493 985.05 Court records.--

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

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497 (e) Records of proceedings under this part may be used to
498 prove disqualification pursuant to ss. 110.1127, 393.0655,
499 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and
500 985.407.

501 Section 12. This act shall take effect upon becoming a
502 law.