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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: WD	.	
3/18/2008	.	
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1 The Committee on Criminal Justice (Dockery) recommended the
 2 following **amendment**:

Senate Amendment (with title amendment)

Between line(s) 68 and 69

insert:

Section 2. Section 943.0561, Florida Statutes, is created
to read:

943.0561 Unlawful dissemination of sealed or expunged
criminal records by private sector third-party background
screening companies.-

(1) The Legislature finds that issues of information
quality in criminal history databases, whether commercial or
state, require adequate privacy safeguards that provide
individuals a meaningful opportunity to correct inaccurate or
incomplete information before it has an adverse effect on an
employment or licensure opportunity. Providing a process for

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18 appealing incorrect or incomplete records will enhance individual
19 protections for privacy and the fair use of the information.

20 (2) It is unlawful for any person, business, corporation,
21 partnership, or other private entity to knowingly make available,
22 lend, donate, or sell any criminal history record obtained from
23 the Department of Law Enforcement or any local, county, or state
24 entity, which has been sealed or expunged or otherwise made
25 exempt from public dissemination pursuant to s. 943.059.

26 (3) Any person who is aggrieved by a violation of this
27 section or disputes the unlawful dissemination of a sealed or
28 expunged record may contact the private entity and request a
29 correction of information. A record correction must be requested
30 in writing by certified mail to the entity. Once received, the
31 person, business, corporation, partnership, or other private
32 entity who disseminated the disputed record must conduct an
33 investigation within 30 days of receipt of the correction
34 request, unless the dispute is deemed frivolous. The private
35 entity must send to the person requesting the correction a
36 written investigation report and a copy of the revised criminal
37 history record if changes were made. The person requesting the
38 correction may also request that revised criminal history records
39 be sent to recent recipients.

40 (4) A person who knowingly violates subsection (2) shall be
41 guilty of a misdemeanor of the first degree, punishable as
42 provide in s. 775.082 or s. 775.083.

43 (5) No person, business, corporation, partnership, or
44 private entity may be held civilly liable for disseminating a
45 disputed record, made in good faith pursuant to this subsection.

46 Section 3. Section 943.0581, Florida Statutes, is amended
47 to read:



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48 | 943.0581 Administrative expunction.--

49 | (1) Notwithstanding any law dealing generally with the
50 | preservation and destruction of public records, the department
51 | may provide, by rule adopted pursuant to chapter 120, for the
52 | administrative expunction of any nonjudicial record of an arrest
53 | of a minor or an adult made contrary to law or by mistake.

54 | (2) A law enforcement agency shall apply to the department
55 | in the manner prescribed by rule for the administrative
56 | expunction of any nonjudicial record of any arrest of a minor or
57 | an adult who is subsequently determined by the agency, at its
58 | discretion, or by the final order of a court of competent
59 | jurisdiction, to have been arrested contrary to law or by
60 | mistake.

61 | (3) An adult or, in the case of a minor child, the parent
62 | or legal guardian of the minor child, may apply to the department
63 | in the manner prescribed by rule for the administrative
64 | expunction of any nonjudicial record of an arrest alleged to have
65 | been made contrary to law or by mistake, provided that the
66 | application is supported by the endorsement of the head of the
67 | arresting agency or his or her designee or the state attorney or
68 | his or her designee of the judicial circuit in which the arrest
69 | occurred.

70 | (4) An application for administrative expunction shall
71 | include an affidavit executed by the chief of the law enforcement
72 | agency, sheriff, or department head of the state law enforcement
73 | agency in which the affiant verifies that he or she has reviewed
74 | the record of the arrest and that the arrest was contrary to law
75 | or was a mistake. The affidavit shall include the date and time
76 | of the arrest, the name of the arresting officer, the name of the
77 | person arrested, and the crime or crimes charged, and the

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78 offender based tracking system number. The application shall be
79 on the submitting agency's letterhead.

80 (5) In the case of persons arrested on a warrant, capias or
81 pick-up order, the request for an administrative expunction may
82 be made by the sheriff or his or her designee of the county where
83 the warrant, capias or pick-up order was issued or by the state
84 attorney or his or her designee of the judicial circuit where the
85 warrant, capias or pick-up order was issued.

86 (6) (5) No application, or endorsement, or affidavit made
87 under this section shall be admissible as evidence in any
88 judicial or administrative proceeding or otherwise be construed
89 in any way as an admission of liability in connection with an
90 arrest.

91 Section 4. Section 943.0585, Florida Statutes, is amended
92 to read:

93 943.0585 Court-ordered expunction of criminal history
94 records.--The courts of this state have jurisdiction over their
95 own procedures, including the maintenance, expunction, and
96 correction of judicial records containing criminal history
97 information to the extent such procedures are not inconsistent
98 with the conditions, responsibilities, and duties established by
99 this section. Any court of competent jurisdiction may order a
100 criminal justice agency to expunge the criminal history record of
101 a minor or an adult who complies with the requirements of this
102 section. The court shall not order a criminal justice agency to
103 expunge a criminal history record until the person seeking to
104 expunge a criminal history record has applied for and received a
105 certificate of eligibility for expunction pursuant to subsection
106 (2). A criminal history record that relates to a violation of s.
107 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.

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108 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
109 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
110 916.1075, a violation enumerated in s. 907.041, or any violation
111 specified as a predicate offense for registration as a sexual
112 predator pursuant to s. 775.21, without regard to whether that
113 offense alone is sufficient to require such registration, or for
114 registration as a sexual offender pursuant to s. 943.0435, may
115 not be expunged, without regard to whether adjudication was
116 withheld, if the defendant was found guilty of or pled guilty or
117 nolo contendere to the offense, or if the defendant, as a minor,
118 was found to have committed, or pled guilty or nolo contendere to
119 committing, the offense as a delinquent act. The court may only
120 order expunction of a criminal history record pertaining to one
121 arrest or one incident of alleged criminal activity, except as
122 provided in this section. The court may, at its sole discretion,
123 order the expunction of a criminal history record pertaining to
124 more than one arrest if the additional arrests directly relate to
125 the original arrest. If the court intends to order the expunction
126 of records pertaining to such additional arrests, such intent
127 must be specified in the order. A criminal justice agency may not
128 expunge any record pertaining to such additional arrests if the
129 order to expunge does not articulate the intention of the court
130 to expunge a record pertaining to more than one arrest. This
131 section does not prevent the court from ordering the expunction
132 of only a portion of a criminal history record pertaining to one
133 arrest or one incident of alleged criminal activity.
134 Notwithstanding any law to the contrary, a criminal justice
135 agency may comply with laws, court orders, and official requests
136 of other jurisdictions relating to expunction, correction, or
137 confidential handling of criminal history records or information



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138 derived therefrom. This section does not confer any right to the
139 expunction of any criminal history record, and any request for
140 expunction of a criminal history record may be denied at the sole
141 discretion of the court.

142 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each
143 petition to a court to expunge a criminal history record is
144 complete only when accompanied by:

145 (a) A valid certificate of eligibility for expunction
146 issued by the department pursuant to subsection (2).

147 (b) The petitioner's sworn statement attesting that the
148 petitioner:

149 1. Has never, prior to the date on which the petition is
150 filed, been adjudicated guilty of a criminal offense or
151 comparable ordinance violation, or been adjudicated delinquent
152 for committing any felony or a misdemeanor specified in s.
153 943.051(3)(b).

154 2. Has not been adjudicated guilty of, or adjudicated
155 delinquent for committing, any of the acts stemming from the
156 arrest or alleged criminal activity to which the petition
157 pertains.

158 3. Has never secured a prior sealing or expunction of a
159 criminal history record under this section, former s. 893.14,
160 former s. 901.33, or former s. 943.058, or from any jurisdiction
161 outside the state, unless expunction is sought of a criminal
162 history record previously sealed for 10 years pursuant to
163 paragraph (2)(h) and the record is otherwise eligible for
164 expunction.

165 4. Is eligible for such an expunction to the best of his or
166 her knowledge or belief and does not have any other petition to
167 expunge or any petition to seal pending before any court.



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168
169 Any person who knowingly provides false information on such sworn
170 statement to the court commits a felony of the third degree,
171 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

172 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to
173 petitioning the court to expunge a criminal history record, a
174 person seeking to expunge a criminal history record shall apply
175 to the department for a certificate of eligibility for
176 expunction. The department shall, by rule adopted pursuant to
177 chapter 120, establish procedures pertaining to the application
178 for and issuance of certificates of eligibility for expunction. A
179 certificate of eligibility for expunction is valid for 12 months
180 after the date stamped on the certificate when issued by the
181 department. After that time, the petitioner must reapply to the
182 department for a new certificate of eligibility. Eligibility for
183 a renewed certification of eligibility must be based on the
184 status of the applicant and the law in effect at the time of the
185 renewal application. The department shall issue a certificate of
186 eligibility for expunction to a person who is the subject of a
187 criminal history record if that person:

188 (a) Has obtained, and submitted to the department, a
189 written, certified statement from the appropriate state attorney
190 or statewide prosecutor which indicates:

191 1. That an indictment, information, or other charging
192 document was not filed or issued in the case.

193 2. That an indictment, information, or other charging
194 document, if filed or issued in the case, was dismissed or nolle
195 prosequi by the state attorney or statewide prosecutor, or was
196 dismissed by a court of competent jurisdiction, and that none of
197 the charges related to the arrest or alleged criminal activity to



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198 | which the petition to expunge pertains resulted in a trial,
199 | without regard to whether the outcome of the trial was other than
200 | an adjudication of guilt.

201 | 3. That the criminal history record does not relate to a
202 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s.
203 | 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
204 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
205 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
206 | any violation specified as a predicate offense for registration
207 | as a sexual predator pursuant to s. 775.21, without regard to
208 | whether that offense alone is sufficient to require such
209 | registration, or for registration as a sexual offender pursuant
210 | to s. 943.0435, where the defendant was found guilty of, or pled
211 | guilty or nolo contendere to any such offense, or that the
212 | defendant, as a minor, was found to have committed, or pled
213 | guilty or nolo contendere to committing, such an offense as a
214 | delinquent act, without regard to whether adjudication was
215 | withheld.

216 | (b) Remits a \$75 processing fee to the department for
217 | placement in the Department of Law Enforcement Operating Trust
218 | Fund, unless such fee is waived by the executive director.

219 | (c) Has submitted to the department a certified copy of the
220 | disposition of the charge to which the petition to expunge
221 | pertains.

222 | (d) Has never, prior to the date on which the application
223 | for a certificate of eligibility is filed, been adjudicated
224 | guilty of a criminal offense or comparable ordinance violation,
225 | or been adjudicated delinquent for committing any felony or a
226 | misdemeanor specified in s. 943.051(3)(b).

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227 (e) Has not been adjudicated guilty of, or adjudicated
228 delinquent for committing, any of the acts stemming from the
229 arrest or alleged criminal activity to which the petition to
230 expunge pertains.

231 (f) Has never secured a prior sealing or expunction of a
232 criminal history record under this section, former s. 893.14,
233 former s. 901.33, or former s. 943.058, unless expunction is
234 sought of a criminal history record previously sealed for 10
235 years pursuant to paragraph (h) and the record is otherwise
236 eligible for expunction.

237 (g) Is no longer under court supervision applicable to the
238 disposition of the arrest or alleged criminal activity to which
239 the petition to expunge pertains.

240 (h) Has previously obtained a court order sealing the
241 record under this section, former s. 893.14, former s. 901.33, or
242 former s. 943.058 for a minimum of 10 years because adjudication
243 was withheld or because all charges related to the arrest or
244 alleged criminal activity to which the petition to expunge
245 pertains were not dismissed prior to trial, without regard to
246 whether the outcome of the trial was other than an adjudication
247 of guilt. The requirement for the record to have previously been
248 sealed for a minimum of 10 years does not apply when a plea was
249 not entered or all charges related to the arrest or alleged
250 criminal activity to which the petition to expunge pertains were
251 dismissed prior to trial.

252 Each Clerk of Court shall place information on his or her
253 Internet web site about the availability of criminal history
254 sealing and expunction. This information shall include a link to
255 the department's web pages for criminal history seal and expunge
256 information and applications.



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257 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

258 (a) In judicial proceedings under this section, a copy of
259 the completed petition to expunge shall be served upon the
260 appropriate state attorney or the statewide prosecutor and upon
261 the arresting agency; however, it is not necessary to make any
262 agency other than the state a party. The appropriate state
263 attorney or the statewide prosecutor and the arresting agency may
264 respond to the court regarding the completed petition to expunge.

265 (b) If relief is granted by the court, the clerk of the
266 court shall certify copies of the order to the appropriate state
267 attorney or the statewide prosecutor and the arresting agency.
268 The arresting agency is responsible for forwarding the order to
269 any other agency to which the arresting agency disseminated the
270 criminal history record information to which the order pertains.
271 The department shall forward the order to expunge to the Federal
272 Bureau of Investigation. The clerk of the court shall certify a
273 copy of the order to any other agency which the records of the
274 court reflect has received the criminal history record from the
275 court.

276 (c) For an order to expunge entered by a court prior to
277 July 1, 1992, the department shall notify the appropriate state
278 attorney or statewide prosecutor of an order to expunge which is
279 contrary to law because the person who is the subject of the
280 record has previously been convicted of a crime or comparable
281 ordinance violation or has had a prior criminal history record
282 sealed or expunged. Upon receipt of such notice, the appropriate
283 state attorney or statewide prosecutor shall take action, within
284 60 days, to correct the record and petition the court to void the
285 order to expunge. The department shall seal the record until such
286 time as the order is voided by the court.



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287 (d) On or after July 1, 1992, the department or any other
288 criminal justice agency is not required to act on an order to
289 expunge entered by a court when such order does not comply with
290 the requirements of this section. Upon receipt of such an order,
291 the department must notify the issuing court, the appropriate
292 state attorney or statewide prosecutor, the petitioner or the
293 petitioner's attorney, and the arresting agency of the reason for
294 noncompliance. The appropriate state attorney or statewide
295 prosecutor shall take action within 60 days to correct the record
296 and petition the court to void the order. No cause of action,
297 including contempt of court, shall arise against any criminal
298 justice agency for failure to comply with an order to expunge
299 when the petitioner for such order failed to obtain the
300 certificate of eligibility as required by this section or such
301 order does not otherwise comply with the requirements of this
302 section.

303 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
304 criminal history record of a minor or an adult which is ordered
305 expunged by a court of competent jurisdiction pursuant to this
306 section must be physically destroyed or obliterated by any
307 criminal justice agency having custody of such record; except
308 that any criminal history record in the custody of the department
309 must be retained in all cases. A criminal history record ordered
310 expunged that is retained by the department is confidential and
311 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
312 of the State Constitution and not available to any person or
313 entity except upon order of a court of competent jurisdiction. A
314 criminal justice agency may retain a notation indicating
315 compliance with an order to expunge.



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316 (a) The person who is the subject of a criminal history
317 record that is expunged under this section or under other
318 provisions of law, including former s. 893.14, former s. 901.33,
319 and former s. 943.058, may lawfully deny or fail to acknowledge
320 the arrests and subsequent dispositions covered by the expunged
321 record, except when the subject of the record:

322 1. Is a candidate for employment with a criminal justice
323 agency;

324 2. Is a defendant in a criminal prosecution;

325 3. Concurrently or subsequently petitions for relief under
326 this section or s. 943.059;

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

328 5. Is seeking to be employed or licensed by or to contract
329 with the Department of Children and Family Services or the
330 Department of Juvenile Justice or to be employed or used by such
331 contractor or licensee in a sensitive position having direct
332 contact with children, the developmentally disabled, the aged, or
333 the elderly as provided in s. 110.1127(3), s. 393.063, s.
334 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
335 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter
336 400, or chapter 429;

337 6. Is seeking to be employed or licensed by the Department
338 of Education, any district school board, any university
339 laboratory school, any charter school, any private or parochial
340 school, or any local governmental entity that licenses child care
341 facilities; or

342 7. Is seeking authorization from a Florida seaport
343 identified in s. 311.09 for employment within or access to one or
344 more of such seaports pursuant to s. 311.12 or s. 311.125.



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345 (b) Subject to the exceptions in paragraph (a), a person
346 who has been granted an expunction under this section, former s.
347 893.14, former s. 901.33, or former s. 943.058 may not be held
348 under any provision of law of this state to commit perjury or to
349 be otherwise liable for giving a false statement by reason of
350 such person's failure to recite or acknowledge an expunged
351 criminal history record, including when asked on an employment
352 application.

353 (c) Information relating to the existence of an expunged
354 criminal history record which is provided in accordance with
355 paragraph (a) is confidential and exempt from the provisions of
356 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
357 except that the department shall disclose the existence of a
358 criminal history record ordered expunged to the entities set
359 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
360 respective licensing, access authorization, and employment
361 purposes, and to criminal justice agencies for their respective
362 criminal justice purposes. It is unlawful for any employee of an
363 entity set forth in subparagraph (a)1., subparagraph (a)4.,
364 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
365 disclose information relating to the existence of an expunged
366 criminal history record of a person seeking employment, access
367 authorization, or licensure with such entity or contractor,
368 except to the person to whom the criminal history record relates
369 or to persons having direct responsibility for employment, access
370 authorization, or licensure decisions. Any person who violates
371 this paragraph commits a misdemeanor of the first degree,
372 punishable as provided in s. 775.082 or s. 775.083.



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373 (d) The contents of an expunged record may be disclosed by the
374 department upon the receipt of the written, notarized request
375 from the subject of the record.

376 (5) STATUTORY REFERENCES.--Any reference to any other
377 chapter, section, or subdivision of the Florida Statutes in this
378 section constitutes a general reference under the doctrine of
379 incorporation by reference.

380 Section 5. Section 943.059, Florida Statutes, is amended to
381 read:

382 943.059 Court-ordered sealing of criminal history records.-
383 -The courts of this state shall continue to have jurisdiction
384 over their own procedures, including the maintenance, sealing,
385 and correction of judicial records containing criminal history
386 information to the extent such procedures are not inconsistent
387 with the conditions, responsibilities, and duties established by
388 this section. Any court of competent jurisdiction may order a
389 criminal justice agency to seal the criminal history record of a
390 minor or an adult who complies with the requirements of this
391 section. The court shall not order a criminal justice agency to
392 seal a criminal history record until the person seeking to seal a
393 criminal history record has applied for and received a
394 certificate of eligibility for sealing pursuant to subsection
395 (2). A criminal history record that relates to a violation of s.
396 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
397 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
398 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
399 916.1075, a violation enumerated in s. 907.041, or any violation
400 specified as a predicate offense for registration as a sexual
401 predator pursuant to s. 775.21, without regard to whether that
402 offense alone is sufficient to require such registration, or for

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403 registration as a sexual offender pursuant to s. 943.0435, may
404 not be sealed, without regard to whether adjudication was
405 withheld, if the defendant was found guilty of or pled guilty or
406 nolo contendere to the offense, or if the defendant, as a minor,
407 was found to have committed or pled guilty or nolo contendere to
408 committing the offense as a delinquent act. The court may only
409 order sealing of a criminal history record pertaining to one
410 arrest or one incident of alleged criminal activity, except as
411 provided in this section. The court may, at its sole discretion,
412 order the sealing of a criminal history record pertaining to more
413 than one arrest if the additional arrests directly relate to the
414 original arrest. If the court intends to order the sealing of
415 records pertaining to such additional arrests, such intent must
416 be specified in the order. A criminal justice agency may not seal
417 any record pertaining to such additional arrests if the order to
418 seal does not articulate the intention of the court to seal
419 records pertaining to more than one arrest. This section does not
420 prevent the court from ordering the sealing of only a portion of
421 a criminal history record pertaining to one arrest or one
422 incident of alleged criminal activity. Notwithstanding any law to
423 the contrary, a criminal justice agency may comply with laws,
424 court orders, and official requests of other jurisdictions
425 relating to sealing, correction, or confidential handling of
426 criminal history records or information derived therefrom. This
427 section does not confer any right to the sealing of any criminal
428 history record, and any request for sealing a criminal history
429 record may be denied at the sole discretion of the court.

430 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
431 petition to a court to seal a criminal history record is complete
432 only when accompanied by:

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433 (a) A valid certificate of eligibility for sealing issued
434 by the department pursuant to subsection (2).

435 (b) The petitioner's sworn statement attesting that the
436 petitioner:

437 1. Has never, prior to the date on which the petition is
438 filed, been adjudicated guilty of a criminal offense or
439 comparable ordinance violation, or been adjudicated delinquent
440 for committing any felony or a misdemeanor specified in s.
441 943.051(3)(b).

442 2. Has not been adjudicated guilty of or adjudicated
443 delinquent for committing any of the acts stemming from the
444 arrest or alleged criminal activity to which the petition to seal
445 pertains.

446 3. Has never secured a prior sealing, except as provided in
447 subsection(6), or expunction of a criminal history record under
448 this section, former s. 893.14, former s. 901.33, former s.
449 943.058, or from any jurisdiction outside the state.

450 4. Is eligible for such a sealing to the best of his or her
451 knowledge or belief and does not have any other petition to seal
452 or any petition to expunge pending before any court.

453
454 Any person who knowingly provides false information on such sworn
455 statement to the court commits a felony of the third degree,
456 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

457 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
458 petitioning the court to seal a criminal history record, a person
459 seeking to seal a criminal history record shall apply to the
460 department for a certificate of eligibility for sealing. The
461 department shall, by rule adopted pursuant to chapter 120,
462 establish procedures pertaining to the application for and



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463 issuance of certificates of eligibility for sealing. A
464 certificate of eligibility for sealing is valid for 12 months
465 after the date stamped on the certificate when issued by the
466 department. After that time, the petitioner must reapply to the
467 department for a new certificate of eligibility. Eligibility for
468 a renewed certification of eligibility must be based on the
469 status of the applicant and the law in effect at the time of the
470 renewal application. The department shall issue a certificate of
471 eligibility for sealing to a person who is the subject of a
472 criminal history record provided that such person:

473 (a) Has submitted to the department a certified copy of the
474 disposition of the charge to which the petition to seal pertains.

475 (b) Remits a \$75 processing fee to the department for
476 placement in the Department of Law Enforcement Operating Trust
477 Fund, unless such fee is waived by the executive director.

478 (c) Has never, prior to the date on which the application
479 for a certificate of eligibility is filed, been adjudicated
480 guilty of a criminal offense or comparable ordinance violation,
481 or been adjudicated delinquent for committing any felony or a
482 misdemeanor specified in s. 943.051(3)(b).

483 (d) Has not been adjudicated guilty of or adjudicated
484 delinquent for committing any of the acts stemming from the
485 arrest or alleged criminal activity to which the petition to seal
486 pertains.

487 (e) Has never secured a prior sealing, except as provided
488 in subsection (6), or expunction of a criminal history record
489 under this section, former s. 893.14, former s. 901.33, or former
490 s. 943.058.



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491 (f) Is no longer under court supervision applicable to the
492 disposition of the arrest or alleged criminal activity to which
493 the petition to seal pertains.

494 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

495 (a) In judicial proceedings under this section, a copy of
496 the completed petition to seal shall be served upon the
497 appropriate state attorney or the statewide prosecutor and upon
498 the arresting agency; however, it is not necessary to make any
499 agency other than the state a party. The appropriate state
500 attorney or the statewide prosecutor and the arresting agency may
501 respond to the court regarding the completed petition to seal.

502 (b) If relief is granted by the court, the clerk of the
503 court shall certify copies of the order to the appropriate state
504 attorney or the statewide prosecutor and to the arresting agency.
505 The arresting agency is responsible for forwarding the order to
506 any other agency to which the arresting agency disseminated the
507 criminal history record information to which the order pertains.
508 The department shall forward the order to seal to the Federal
509 Bureau of Investigation. The clerk of the court shall certify a
510 copy of the order to any other agency which the records of the
511 court reflect has received the criminal history record from the
512 court.

513 (c) For an order to seal entered by a court prior to July
514 1, 1992, the department shall notify the appropriate state
515 attorney or statewide prosecutor of any order to seal which is
516 contrary to law because the person who is the subject of the
517 record has previously been convicted of a crime or comparable
518 ordinance violation or has had a prior criminal history record
519 sealed, except as provided in subsection (6), or expunged. Upon
520 receipt of such notice, the appropriate state attorney or



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521 statewide prosecutor shall take action, within 60 days, to
522 correct the record and petition the court to void the order to
523 seal. The department shall seal the record until such time as the
524 order is voided by the court.

525 (d) On or after July 1, 1992, the department or any other
526 criminal justice agency is not required to act on an order to
527 seal entered by a court when such order does not comply with the
528 requirements of this section. Upon receipt of such an order, the
529 department must notify the issuing court, the appropriate state
530 attorney or statewide prosecutor, the petitioner or the
531 petitioner's attorney, and the arresting agency of the reason for
532 noncompliance. The appropriate state attorney or statewide
533 prosecutor shall take action within 60 days to correct the record
534 and petition the court to void the order. No cause of action,
535 including contempt of court, shall arise against any criminal
536 justice agency for failure to comply with an order to seal when
537 the petitioner for such order failed to obtain the certificate of
538 eligibility as required by this section or when such order does
539 not comply with the requirements of this section.

540 (e) An order sealing a criminal history record pursuant to
541 this section does not require that such record be surrendered to
542 the court, and such record shall continue to be maintained by the
543 department and other criminal justice agencies.

544 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
545 history record of a minor or an adult which is ordered sealed by
546 a court of competent jurisdiction pursuant to this section is
547 confidential and exempt from the provisions of s. 119.07(1) and
548 s. 24(a), Art. I of the State Constitution and is available only
549 to the person who is the subject of the record, to the subject's
550 attorney, to criminal justice agencies for their respective



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551 criminal justice purposes, which include conducting a criminal
552 history background check for approval of firearms purchases or
553 transfers as authorized by state or federal law, or to those
554 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for
555 their respective licensing, access authorization, and employment
556 purposes.

557 (a) The subject of a criminal history record sealed under
558 this section or under other provisions of law, including former
559 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
560 deny or fail to acknowledge the arrests and subsequent
561 dispositions covered by the sealed record, except when the
562 subject of the record:

563 1. Is a candidate for employment with a criminal justice
564 agency;

565 2. Is a defendant in a criminal prosecution;

566 3. Concurrently or subsequently petitions for relief under
567 this section or s. 943.0585;

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

569 5. Is seeking to be employed or licensed by or to contract
570 with the Department of Children and Family Services or the
571 Department of Juvenile Justice or to be employed or used by such
572 contractor or licensee in a sensitive position having direct
573 contact with children, the developmentally disabled, the aged, or
574 the elderly as provided in s. 110.1127(3), s. 393.063, s.
575 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
576 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.
577 985.644, chapter 400, or chapter 429;

578 6. Is seeking to be employed or licensed by the Department
579 of Education, any district school board, any university
580 laboratory school, any charter school, any private or parochial

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581 school, or any local governmental entity that licenses child care
582 facilities;

583 7. Is attempting to purchase a firearm from a licensed
584 importer, licensed manufacturer, or licensed dealer and is
585 subject to a criminal history background check under state or
586 federal law; or

587 8. Is seeking authorization from a Florida seaport
588 identified in s. 311.09 for employment within or access to one or
589 more of such seaports pursuant to s. 311.12 or s. 311.125.

590 (b) Subject to the exceptions in paragraph (a), a person
591 who has been granted a sealing under this section, former s.
592 893.14, former s. 901.33, or former s. 943.058 may not be held
593 under any provision of law of this state to commit perjury or to
594 be otherwise liable for giving a false statement by reason of
595 such person's failure to recite or acknowledge a sealed criminal
596 history record, including when asked on an employment
597 application.

598 (c) Information relating to the existence of a sealed
599 criminal record provided in accordance with the provisions of
600 paragraph (a) is confidential and exempt from the provisions of
601 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
602 except that the department shall disclose the sealed criminal
603 history record to the entities set forth in subparagraphs (a)1.,
604 4., 5., 6., and 8. for their respective licensing, access
605 authorization, and employment purposes. It is unlawful for any
606 employee of an entity set forth in subparagraph (a)1.,
607 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
608 subparagraph (a)8. to disclose information relating to the
609 existence of a sealed criminal history record of a person seeking
610 employment, access authorization, or licensure with such entity

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611 or contractor, except to the person to whom the criminal history
612 record relates or to persons having direct responsibility for
613 employment, access authorization, or licensure decisions. Any
614 person who violates the provisions of this paragraph commits a
615 misdemeanor of the first degree, punishable as provided in s.
616 775.082 or s. 775.083.

617 (5) STATUTORY REFERENCES.--Any reference to any other
618 chapter, section, or subdivision of the Florida Statutes in this
619 section constitutes a general reference under the doctrine of
620 incorporation by reference.

621 (6) A person may petition the court to seek a sealing of his
622 criminal history record, after having secured one previous
623 expunction or sealing, under the following circumstances. Prior
624 to petitioning the court for such relief, a person shall apply to
625 the department to obtain a certificate of eligibility for a
626 sealing of his criminal history record only if five years have
627 passed without any subsequent arrests occurring since the date of
628 the court order for the initial criminal history record
629 expunction or sealing. All other provisions and requirements
630 under this section apply when a person seeks a second sealing of
631 his criminal history record.

632
633 (Redesignate Subsequent Section.)

634
635 ===== T I T L E A M E N D M E N T =====

636 And the title is amended as follows:

637 On line 11, after the semicolon
638 insert:

639 creating s. 943.0561, F.S.; specifying legislative intent;
640 provides that it is a first degree misdemeanor to



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641 disseminate certain criminal history records which have
642 been sealed or expunged; providing a process to correct
643 information on a criminal history record; provides
644 immunity from civil liability; amending s. 943.0581, F.S.,
645 permitting either the arresting agency or the agency where
646 the warrant was issued to request an administrative
647 expunction; amending s. 943.0585, F.S., requiring the
648 Clerk of the Court to place information about the
649 availability of criminal history sealing and expunction on
650 his Internet web site, including a link to the Department
651 of Law Enforcement's web pages related to such
652 information; clarifying under what circumstances a person
653 can legally deny an expunged criminal history record;
654 authorizing disclosure of the contents of an expunged
655 record upon receipt of a written, notarized request from
656 the record subject; amending s. 943.059, F.S.; clarifying
657 under what circumstances a person can legally deny a
658 sealed criminal history record; providing that a person
659 may petition the court to seek a second criminal history
660 record sealing under certain circumstances;
661