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1 A bill to be entitled

2 An act relating to criminal justice; providing legislative
3 intent; requiring state agencies and regulatory boards to
4 prepare reports that identify and evaluate restrictions on
5 licensing and employment; amending s. 112.011, F.S.;
6 prohibiting state agencies from denying an application for
7 a license, permit, certificate, or employment based on a
8 person's lack of civil rights; providing an exception;
9 amending s. 943.0585, F.S.; clarifying under what
10 circumstances a person may legally deny the existence of
11 an expunged criminal history record; authorizing the
12 disclosure of the contents of an expunged record upon
13 receipt of a written, notarized request from the record
14 subject; requiring clerks of the court to post information
15 relating to procedures to seal or expunge criminal history
16 records on the clerk's website; amending s. 943.059, F.S.;
17 clarifying under what circumstances a person may legally
18 deny the existence of a sealed criminal history record;
19 authorizing a court to seal a criminal history record of a
20 person who had a prior criminal history record sealed or
21 expunged; requiring the Office of Program Policy Analysis
22 and Government Accountability to prepare a report of its
23 findings relating to the use of criminal history records
24 in licensing and employment decisions; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Restrictions on the employment of ex-offenders;
30 legislative intent; state agency reporting requirements.--

31 (1) The Legislature declares that it is the goal of this
32 state to provide to prospective employees a clear statement of
33 which crimes would disqualify ex-offenders from which
34 occupations. It is the intent of the Legislature to make
35 opportunities for employment available to ex-offenders so that
36 they will be less likely to revert to criminal behavior, insofar
37 as the employment of such persons does not detract from the
38 safety of the public. The Legislature further declares that
39 state agencies should identify all restrictions imposed by the
40 agencies or by boards that regulate professions and occupations
41 on employment and should make an effort to define each
42 restriction as narrowly as possible while continuing to maintain
43 public safety.

44 (2) Each state agency, including, but not limited to,
45 professional and occupational regulatory boards, shall, by
46 December 31, 2010, and every 8 years thereafter, submit to the
47 Governor, the President of the Senate, and the Speaker of the
48 House of Representatives a report that includes:

49 (a) A list of all agency or board policies that disqualify
50 from employment or licensure persons who have been convicted of
51 a crime and have completed any incarceration and restitution to
52 which they have been sentenced for such a crime.

53 (b) A determination of whether the disqualifying policies
54 are readily available to prospective employers and licensees.

55 (c) The identification and evaluation of alternatives to
56 the disqualifying policies to promote the employment of ex-

57 offenders and protect the public.

58 (d) An evaluation of whether the disqualifying polices are
 59 too broad and whether crimes or acts of moral turpitude that
 60 disqualify a person from licensure should be more specifically
 61 or narrowly identified.

62 Section 2. Section 112.011, Florida Statutes, is amended
 63 to read:

64 112.011 Disqualification from licensing and public
 65 employment based on criminal conviction ~~Felons; removal of~~
 66 ~~disqualifications for employment, exceptions.--~~

67 (1) (a) Except as provided in s. 775.16, a person may ~~shall~~
 68 not be disqualified from employment by the state, any of its
 69 agencies or political subdivisions, or any municipality solely
 70 because of a prior conviction for a crime. However, a person may
 71 be denied employment by the state, any of its agencies or
 72 political subdivisions, or any municipality by reason of the
 73 prior conviction for a crime if the crime was a felony or first
 74 degree misdemeanor and directly related to the position of
 75 employment sought.

76 (b) Except as provided in s. 775.16, a person ~~whose civil~~
 77 ~~rights have been restored shall not be disqualified to practice,~~
 78 ~~pursue, or engage in any occupation, trade, vocation,~~
 79 ~~profession, or business for which a license, permit, or~~
 80 ~~certificate is required to be issued by the state, any of its~~
 81 ~~agencies or political subdivisions, or any municipality solely~~
 82 ~~because of a prior conviction for a crime. However, a person~~
 83 ~~whose civil rights have been restored may be denied a license,~~
 84 ~~permit, or certification to pursue, practice, or engage in an~~

85 occupation, trade, vocation, profession, or business by reason
 86 of the prior conviction for a crime if the crime was a felony or
 87 first degree misdemeanor relevant to the standards normally
 88 associated with, or determined by the regulatory authority to be
 89 necessary for the protection of the public or other parties for,
 90 ~~and directly related to~~ the specific occupation, trade,
 91 vocation, profession, or business for which the license, permit,
 92 or certificate is sought.

93 (c) Notwithstanding any law to the contrary, a state
 94 agency may not deny an application for a license, permit,
 95 certificate, or employment based on the applicant's lack of
 96 civil rights. However, this paragraph does not apply to
 97 applications for a license to carry a concealed weapon or
 98 firearm under chapter 790.

99 (2) (a) This section does ~~shall~~ not apply ~~be applicable~~ to
 100 any law enforcement or correctional agency.

101 (b) This section shall not be applicable to the employment
 102 practices of any fire department relating to the hiring of
 103 firefighters. An applicant for employment with any fire
 104 department who has ~~with~~ a prior felony conviction shall be
 105 excluded from employment for a period of 4 years after
 106 expiration of sentence or final release by the Parole Commission
 107 unless the applicant, prior to the expiration of the 4-year
 108 period, has received a full pardon or has had his or her civil
 109 rights restored.

110 (c) This section does ~~shall~~ not apply ~~be applicable~~ to the
 111 employment practices of any county or municipality relating to
 112 the hiring of personnel for positions deemed to be critical to

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113 security or public safety pursuant to ss. 125.5801 and 166.0442.

114 (3) Any complaint concerning the violation of this section
 115 shall be adjudicated in accordance with the procedures set forth
 116 in chapter 120 for administrative and judicial review.

117 Section 3. Section 943.0585, Florida Statutes, is amended
 118 to read:

119 943.0585 Court-ordered expunction of criminal history
 120 records.--The courts of this state have jurisdiction over their
 121 own procedures, including the maintenance, expunction, and
 122 correction of judicial records containing criminal history
 123 information to the extent such procedures are not inconsistent
 124 with the conditions, responsibilities, and duties established by
 125 this section. Any court of competent jurisdiction may order a
 126 criminal justice agency to expunge the criminal history record
 127 of a minor or an adult who complies with the requirements of
 128 this section. The court shall not order a criminal justice
 129 agency to expunge a criminal history record until the person
 130 seeking to expunge a criminal history record has applied for and
 131 received a certificate of eligibility for expunction pursuant to
 132 subsection (2). A criminal history record that relates to a
 133 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 134 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 135 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 136 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 137 any violation specified as a predicate offense for registration
 138 as a sexual predator pursuant to s. 775.21, without regard to
 139 whether that offense alone is sufficient to require such
 140 registration, or for registration as a sexual offender pursuant

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141 to s. 943.0435, may not be expunged, without regard to whether
142 adjudication was withheld, if the defendant was found guilty of
143 or pled guilty or nolo contendere to the offense, or if the
144 defendant, as a minor, was found to have committed, or pled
145 guilty or nolo contendere to committing, the offense as a
146 delinquent act. The court may only order expunction of a
147 criminal history record pertaining to one arrest or one incident
148 of alleged criminal activity, except as provided in this
149 section. The court may, at its sole discretion, order the
150 expunction of a criminal history record pertaining to more than
151 one arrest if the additional arrests directly relate to the
152 original arrest. If the court intends to order the expunction of
153 records pertaining to such additional arrests, such intent must
154 be specified in the order. A criminal justice agency may not
155 expunge any record pertaining to such additional arrests if the
156 order to expunge does not articulate the intention of the court
157 to expunge a record pertaining to more than one arrest. This
158 section does not prevent the court from ordering the expunction
159 of only a portion of a criminal history record pertaining to one
160 arrest or one incident of alleged criminal activity.

161 Notwithstanding any law to the contrary, a criminal justice
162 agency may comply with laws, court orders, and official requests
163 of other jurisdictions relating to expunction, correction, or
164 confidential handling of criminal history records or information
165 derived therefrom. This section does not confer any right to the
166 expunction of any criminal history record, and any request for
167 expunction of a criminal history record may be denied at the
168 sole discretion of the court.

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

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

174 (b) The petitioner's sworn statement attesting that the
 175 petitioner:

176 1. Has never, prior to the date on which the petition is
 177 filed, been adjudicated guilty of a criminal offense or
 178 comparable ordinance violation, or been adjudicated delinquent
 179 for committing any felony or a misdemeanor specified in s.
 180 943.051(3)(b).

181 2. Has not been adjudicated guilty of, or adjudicated
 182 delinquent for committing, any of the acts stemming from the
 183 arrest or alleged criminal activity to which the petition
 184 pertains.

185 3. Has never secured a prior sealing or expunction of a
 186 criminal history record under this section, former s. 893.14,
 187 former s. 901.33, or former s. 943.058, or from any jurisdiction
 188 outside the state, unless expunction is sought of a criminal
 189 history record previously sealed for 10 years pursuant to
 190 paragraph (2)(h) and the record is otherwise eligible for
 191 expunction.

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

195

196 Any person who knowingly provides false information on such

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197 | sworn statement to the court commits a felony of the third
198 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
199 | 775.084.

200 | (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to
201 | petitioning the court to expunge a criminal history record, a
202 | person seeking to expunge a criminal history record shall apply
203 | to the department for a certificate of eligibility for
204 | expunction. The department shall, by rule adopted pursuant to
205 | chapter 120, establish procedures pertaining to the application
206 | for and issuance of certificates of eligibility for expunction.
207 | A certificate of eligibility for expunction is valid for 12
208 | months after the date stamped on the certificate when issued by
209 | the department. After that time, the petitioner must reapply to
210 | the department for a new certificate of eligibility. Eligibility
211 | for a renewed certification of eligibility must be based on the
212 | status of the applicant and the law in effect at the time of the
213 | renewal application. The department shall issue a certificate of
214 | eligibility for expunction to a person who is the subject of a
215 | criminal history record if that person:

216 | (a) Has obtained, and submitted to the department, a
217 | written, certified statement from the appropriate state attorney
218 | or statewide prosecutor which indicates:

219 | 1. That an indictment, information, or other charging
220 | document was not filed or issued in the case.

221 | 2. That an indictment, information, or other charging
222 | document, if filed or issued in the case, was dismissed or nolle
223 | prosequi by the state attorney or statewide prosecutor, or was
224 | dismissed by a court of competent jurisdiction, and that none of

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225 the charges related to the arrest or alleged criminal activity
226 to which the petition to expunge pertains resulted in a trial,
227 without regard to whether the outcome of the trial was other
228 than an adjudication of guilt.

229 3. That the criminal history record does not relate to a
230 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
231 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
232 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
233 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
234 any violation specified as a predicate offense for registration
235 as a sexual predator pursuant to s. 775.21, without regard to
236 whether that offense alone is sufficient to require such
237 registration, or for registration as a sexual offender pursuant
238 to s. 943.0435, where the defendant was found guilty of, or pled
239 guilty or nolo contendere to any such offense, or that the
240 defendant, as a minor, was found to have committed, or pled
241 guilty or nolo contendere to committing, such an offense as a
242 delinquent act, without regard to whether adjudication was
243 withheld.

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

247 (c) Has submitted to the department a certified copy of
248 the disposition of the charge to which the petition to expunge
249 pertains.

250 (d) Has never, prior to the date on which the application
251 for a certificate of eligibility is filed, been adjudicated
252 guilty of a criminal offense or comparable ordinance violation,

253 or been adjudicated delinquent for committing any felony or a
 254 misdemeanor specified in s. 943.051(3)(b).

255 (e) Has not been adjudicated guilty of, or adjudicated
 256 delinquent for committing, any of the acts stemming from the
 257 arrest or alleged criminal activity to which the petition to
 258 expunge pertains.

259 (f) Has never secured a prior sealing or expunction of a
 260 criminal history record under this section, former s. 893.14,
 261 former s. 901.33, or former s. 943.058, unless expunction is
 262 sought of a criminal history record previously sealed for 10
 263 years pursuant to paragraph (h) and the record is otherwise
 264 eligible for expunction.

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

268 (h) Has previously obtained a court order sealing the
 269 record under this section, former s. 893.14, former s. 901.33,
 270 or former s. 943.058 for a minimum of 10 years because
 271 adjudication was withheld or because all charges related to the
 272 arrest or alleged criminal activity to which the petition to
 273 expunge pertains were not dismissed prior to trial, without
 274 regard to whether the outcome of the trial was other than an
 275 adjudication of guilt. The requirement for the record to have
 276 previously been sealed for a minimum of 10 years does not apply
 277 when a plea was not entered or all charges related to the arrest
 278 or alleged criminal activity to which the petition to expunge
 279 pertains were dismissed prior to trial.

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

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281 (a) In judicial proceedings under this section, a copy of
282 the completed petition to expunge shall be served upon the
283 appropriate state attorney or the statewide prosecutor and upon
284 the arresting agency; however, it is not necessary to make any
285 agency other than the state a party. The appropriate state
286 attorney or the statewide prosecutor and the arresting agency
287 may respond to the court regarding the completed petition to
288 expunge.

289 (b) If relief is granted by the court, the clerk of the
290 court shall certify copies of the order to the appropriate state
291 attorney or the statewide prosecutor and the arresting agency.
292 The arresting agency is responsible for forwarding the order to
293 any other agency to which the arresting agency disseminated the
294 criminal history record information to which the order pertains.
295 The department shall forward the order to expunge to the Federal
296 Bureau of Investigation. The clerk of the court shall certify a
297 copy of the order to any other agency which the records of the
298 court reflect has received the criminal history record from the
299 court.

300 (c) For an order to expunge entered by a court prior to
301 July 1, 1992, the department shall notify the appropriate state
302 attorney or statewide prosecutor of an order to expunge which is
303 contrary to law because the person who is the subject of the
304 record has previously been convicted of a crime or comparable
305 ordinance violation or has had a prior criminal history record
306 sealed or expunged. Upon receipt of such notice, the appropriate
307 state attorney or statewide prosecutor shall take action, within
308 60 days, to correct the record and petition the court to void

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309 the order to expunge. The department shall seal the record until
310 such time as the order is voided by the court.

311 (d) On or after July 1, 1992, the department or any other
312 criminal justice agency is not required to act on an order to
313 expunge entered by a court when such order does not comply with
314 the requirements of this section. Upon receipt of such an order,
315 the department must notify the issuing court, the appropriate
316 state attorney or statewide prosecutor, the petitioner or the
317 petitioner's attorney, and the arresting agency of the reason
318 for noncompliance. The appropriate state attorney or statewide
319 prosecutor shall take action within 60 days to correct the
320 record and petition the court to void the order. No cause of
321 action, including contempt of court, shall arise against any
322 criminal justice agency for failure to comply with an order to
323 expunge when the petitioner for such order failed to obtain the
324 certificate of eligibility as required by this section or such
325 order does not otherwise comply with the requirements of this
326 section.

327 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
328 criminal history record of a minor or an adult which is ordered
329 expunged by a court of competent jurisdiction pursuant to this
330 section must be physically destroyed or obliterated by any
331 criminal justice agency having custody of such record; except
332 that any criminal history record in the custody of the
333 department must be retained in all cases. A criminal history
334 record ordered expunged that is retained by the department is
335 confidential and exempt from the provisions of s. 119.07(1) and
336 s. 24(a), Art. I of the State Constitution and not available to

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337 any person or entity except upon order of a court of competent
338 jurisdiction. A criminal justice agency may retain a notation
339 indicating compliance with an order to expunge.

340 (a) The person who is the subject of a criminal history
341 record that is expunged under this section or under other
342 provisions of law, including former s. 893.14, former s. 901.33,
343 and former s. 943.058, may lawfully deny or fail to acknowledge
344 the arrests and subsequent dispositions covered by the expunged
345 record, except when the subject of the record:

346 1. Is a candidate for employment with a criminal justice
347 agency;

348 2. Is a defendant in a criminal prosecution;

349 3. Concurrently or subsequently petitions for relief under
350 this section or s. 943.059;

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

352 5. Is seeking to be employed or licensed by or to contract
353 with the Department of Children and Family Services, the Agency
354 for Health Care Administration, the Agency for Persons with
355 Disabilities, or the Department of Juvenile Justice or to be
356 employed or used by such contractor or licensee in a sensitive
357 position having direct contact with children, the
358 developmentally disabled, the aged, or the elderly as provided
359 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
360 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),
361 chapter 916, s. 985.644, chapter 400, or chapter 429;

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

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365 school, or any local governmental entity that licenses child
366 care facilities; or

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

370 (b) Subject to the exceptions in paragraph (a), a person
371 who has been granted an expunction under this section, former s.
372 893.14, former s. 901.33, or former s. 943.058 may not be held
373 under any provision of law of this state to commit perjury or to
374 be otherwise liable for giving a false statement by reason of
375 such person's failure to recite or acknowledge an expunged
376 criminal history record, including a failure to recite or
377 acknowledge on an employment application.

378 (c) Information relating to the existence of an expunged
379 criminal history record which is provided in accordance with
380 paragraph (a) is confidential and exempt from the provisions of
381 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
382 except that the department shall disclose the existence of a
383 criminal history record ordered expunged to the entities set
384 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
385 respective licensing, access authorization, and employment
386 purposes, and to criminal justice agencies for their respective
387 criminal justice purposes. It is unlawful for any employee of an
388 entity set forth in subparagraph (a)1., subparagraph (a)4.,
389 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
390 disclose information relating to the existence of an expunged
391 criminal history record of a person seeking employment, access
392 authorization, or licensure with such entity or contractor,

393 | except to the person to whom the criminal history record relates
 394 | or to persons having direct responsibility for employment,
 395 | access authorization, or licensure decisions. Any person who
 396 | violates this paragraph commits a misdemeanor of the first
 397 | degree, punishable as provided in s. 775.082 or s. 775.083.

398 | (d) The department may disclose the contents of an
 399 | expunged record to the subject of the record upon the receipt of
 400 | a written, notarized request from the subject of the record.

401 | (5) Each website for the office of a clerk of court must
 402 | include information relating to procedures to seal or expunge
 403 | criminal history records. This information must include the link
 404 | to related information on the website of the department.

405 | ~~(6)-(5)~~ STATUTORY REFERENCES.--Any reference to any other
 406 | chapter, section, or subdivision of the Florida Statutes in this
 407 | section constitutes a general reference under the doctrine of
 408 | incorporation by reference.

409 | Section 4. Section 943.059, Florida Statutes, is amended
 410 | to read:

411 | 943.059 Court-ordered sealing of criminal history
 412 | records.--The courts of this state shall continue to have
 413 | jurisdiction over their own procedures, including the
 414 | maintenance, sealing, and correction of judicial records
 415 | containing criminal history information to the extent such
 416 | procedures are not inconsistent with the conditions,
 417 | responsibilities, and duties established by this section. Any
 418 | court of competent jurisdiction may order a criminal justice
 419 | agency to seal the criminal history record of a minor or an
 420 | adult who complies with the requirements of this section. The

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421 court shall not order a criminal justice agency to seal a
422 criminal history record until the person seeking to seal a
423 criminal history record has applied for and received a
424 certificate of eligibility for sealing pursuant to subsection
425 (2). A criminal history record that relates to a violation of s.
426 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
427 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
428 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
429 916.1075, a violation enumerated in s. 907.041, or any violation
430 specified as a predicate offense for registration as a sexual
431 predator pursuant to s. 775.21, without regard to whether that
432 offense alone is sufficient to require such registration, or for
433 registration as a sexual offender pursuant to s. 943.0435, may
434 not be sealed, without regard to whether adjudication was
435 withheld, if the defendant was found guilty of or pled guilty or
436 nolo contendere to the offense, or if the defendant, as a minor,
437 was found to have committed or pled guilty or nolo contendere to
438 committing the offense as a delinquent act. The court may only
439 order sealing of a criminal history record pertaining to one
440 arrest or one incident of alleged criminal activity, except as
441 provided in this section. The court may, at its sole discretion,
442 order the sealing of a criminal history record pertaining to
443 more than one arrest if the additional arrests directly relate
444 to the original arrest. If the court intends to order the
445 sealing of records pertaining to such additional arrests, such
446 intent must be specified in the order. A criminal justice agency
447 may not seal any record pertaining to such additional arrests if
448 the order to seal does not articulate the intention of the court

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449 | to seal records pertaining to more than one arrest. This section
 450 | does not prevent the court from ordering the sealing of only a
 451 | portion of a criminal history record pertaining to one arrest or
 452 | one incident of alleged criminal activity. Notwithstanding any
 453 | law to the contrary, a criminal justice agency may comply with
 454 | laws, court orders, and official requests of other jurisdictions
 455 | relating to sealing, correction, or confidential handling of
 456 | criminal history records or information derived therefrom. This
 457 | section does not confer any right to the sealing of any criminal
 458 | history record, and any request for sealing a criminal history
 459 | record may be denied at the sole discretion of the court.

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

463 | (a) A valid certificate of eligibility for sealing issued
 464 | by the department pursuant to subsection (2).

465 | (b) The petitioner's sworn statement attesting that the
 466 | petitioner:

467 | 1. Has never, prior to the date on which the petition is
 468 | filed, been adjudicated guilty of a criminal offense or
 469 | comparable ordinance violation, or been adjudicated delinquent
 470 | for committing any felony or a misdemeanor specified in s.
 471 | 943.051(3)(b).

472 | 2. Has not been adjudicated guilty of or adjudicated
 473 | delinquent for committing any of the acts stemming from the
 474 | arrest or alleged criminal activity to which the petition to
 475 | seal pertains.

476 | 3. Has never secured a prior sealing, except as provided

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477 in subsection (6), or expunction of a criminal history record
478 under this section, former s. 893.14, former s. 901.33, former
479 s. 943.058, or from any jurisdiction outside the state.

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

483

484 Any person who knowingly provides false information on such
485 sworn statement to the court commits a felony of the third
486 degree, punishable as provided in s. 775.082, s. 775.083, or s.
487 775.084.

488 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
489 petitioning the court to seal a criminal history record, a
490 person seeking to seal a criminal history record shall apply to
491 the department for a certificate of eligibility for sealing. The
492 department shall, by rule adopted pursuant to chapter 120,
493 establish procedures pertaining to the application for and
494 issuance of certificates of eligibility for sealing. A
495 certificate of eligibility for sealing is valid for 12 months
496 after the date stamped on the certificate when issued by the
497 department. After that time, the petitioner must reapply to the
498 department for a new certificate of eligibility. Eligibility for
499 a renewed certification of eligibility must be based on the
500 status of the applicant and the law in effect at the time of the
501 renewal application. The department shall issue a certificate of
502 eligibility for sealing to a person who is the subject of a
503 criminal history record provided that such person:

504 (a) Has submitted to the department a certified copy of

505 the disposition of the charge to which the petition to seal
 506 pertains.

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

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

515 (d) Has not been adjudicated guilty of or adjudicated
 516 delinquent for committing any of the acts stemming from the
 517 arrest or alleged criminal activity to which the petition to
 518 seal pertains.

519 (e) Has never secured a prior sealing, except as provided
 520 in subsection (6), or expunction of a criminal history record
 521 under this section, former s. 893.14, former s. 901.33, or
 522 former s. 943.058.

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

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

527 (a) In judicial proceedings under this section, a copy of
 528 the completed petition to seal shall be served upon the
 529 appropriate state attorney or the statewide prosecutor and upon
 530 the arresting agency; however, it is not necessary to make any
 531 agency other than the state a party. The appropriate state
 532 attorney or the statewide prosecutor and the arresting agency

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533 may respond to the court regarding the completed petition to
534 seal.

535 (b) If relief is granted by the court, the clerk of the
536 court shall certify copies of the order to the appropriate state
537 attorney or the statewide prosecutor and to the arresting
538 agency. The arresting agency is responsible for forwarding the
539 order to any other agency to which the arresting agency
540 disseminated the criminal history record information to which
541 the order pertains. The department shall forward the order to
542 seal to the Federal Bureau of Investigation. The clerk of the
543 court shall certify a copy of the order to any other agency
544 which the records of the court reflect has received the criminal
545 history record from the court.

546 (c) For an order to seal entered by a court prior to July
547 1, 1992, the department shall notify the appropriate state
548 attorney or statewide prosecutor of any order to seal which is
549 contrary to law because the person who is the subject of the
550 record has previously been convicted of a crime or comparable
551 ordinance violation or has had a prior criminal history record
552 sealed, except as provided in subsection (6), or expunged. Upon
553 receipt of such notice, the appropriate state attorney or
554 statewide prosecutor shall take action, within 60 days, to
555 correct the record and petition the court to void the order to
556 seal. The department shall seal the record until such time as
557 the order is voided by the court.

558 (d) On or after July 1, 1992, the department or any other
559 criminal justice agency is not required to act on an order to
560 seal entered by a court when such order does not comply with the

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561 requirements of this section. Upon receipt of such an order, the
562 department must notify the issuing court, the appropriate state
563 attorney or statewide prosecutor, the petitioner or the
564 petitioner's attorney, and the arresting agency of the reason
565 for noncompliance. The appropriate state attorney or statewide
566 prosecutor shall take action within 60 days to correct the
567 record and petition the court to void the order. No cause of
568 action, including contempt of court, shall arise against any
569 criminal justice agency for failure to comply with an order to
570 seal when the petitioner for such order failed to obtain the
571 certificate of eligibility as required by this section or when
572 such order does not comply with the requirements of this
573 section.

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

578 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
579 history record of a minor or an adult which is ordered sealed by
580 a court of competent jurisdiction pursuant to this section is
581 confidential and exempt from the provisions of s. 119.07(1) and
582 s. 24(a), Art. I of the State Constitution and is available only
583 to the person who is the subject of the record, to the subject's
584 attorney, to criminal justice agencies for their respective
585 criminal justice purposes, which include conducting a criminal
586 history background check for approval of firearms purchases or
587 transfers as authorized by state or federal law, to judges in
588 the state courts system for the purpose of assisting them in

589 their case-related decisionmaking responsibilities, as set forth
 590 in s. 943.053(5), or to those entities set forth in
 591 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 592 licensing, access authorization, and employment purposes.

593 (a) The subject of a criminal history record sealed under
 594 this section or under other provisions of law, including former
 595 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 596 deny or fail to acknowledge the arrests and subsequent
 597 dispositions covered by the sealed record, except when the
 598 subject of the record:

- 599 1. Is a candidate for employment with a criminal justice
 600 agency;
- 601 2. Is a defendant in a criminal prosecution;
- 602 3. Concurrently or subsequently petitions for relief under
 603 this section or s. 943.0585;
- 604 4. Is a candidate for admission to The Florida Bar;
- 605 5. Is seeking to be employed or licensed by or to contract
 606 with the Department of Children and Family Services, the Agency
 607 for Health Care Administration, the Agency for Persons with
 608 Disabilities, or the Department of Juvenile Justice or to be
 609 employed or used by such contractor or licensee in a sensitive
 610 position having direct contact with children, the
 611 developmentally disabled, the aged, or the elderly as provided
 612 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 613 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
 614 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;
- 615 6. Is seeking to be employed or licensed by the Department
 616 of Education, any district school board, any university

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617 laboratory school, any charter school, any private or parochial
618 school, or any local governmental entity that licenses child
619 care facilities;

620 7. Is attempting to purchase a firearm from a licensed
621 importer, licensed manufacturer, or licensed dealer and is
622 subject to a criminal history background check under state or
623 federal law; or

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

627 (b) Subject to the exceptions in paragraph (a), a person
628 who has been granted a sealing under this section, former s.
629 893.14, former s. 901.33, or former s. 943.058 may not be held
630 under any provision of law of this state to commit perjury or to
631 be otherwise liable for giving a false statement by reason of
632 such person's failure to recite or acknowledge a sealed criminal
633 history record, including a failure to recite or acknowledge on
634 an employment application.

635 (c) Information relating to the existence of a sealed
636 criminal record provided in accordance with the provisions of
637 paragraph (a) is confidential and exempt from the provisions of
638 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
639 except that the department shall disclose the sealed criminal
640 history record to the entities set forth in subparagraphs (a)1.,
641 4., 5., 6., and 8. for their respective licensing, access
642 authorization, and employment purposes. It is unlawful for any
643 employee of an entity set forth in subparagraph (a)1.,
644 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or

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645 subparagraph (a)8. to disclose information relating to the
646 existence of a sealed criminal history record of a person
647 seeking employment, access authorization, or licensure with such
648 entity or contractor, except to the person to whom the criminal
649 history record relates or to persons having direct
650 responsibility for employment, access authorization, or
651 licensure decisions. Any person who violates the provisions of
652 this paragraph commits a misdemeanor of the first degree,
653 punishable as provided in s. 775.082 or s. 775.083.

654 (5) STATUTORY REFERENCES.--Any reference to any other
655 chapter, section, or subdivision of the Florida Statutes in this
656 section constitutes a general reference under the doctrine of
657 incorporation by reference.

658 (6) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
659 OR EXPUNCTION.--A court may seal a person's criminal history
660 record after a prior criminal history record has been sealed or
661 expunged only if the person obtains a certificate from the
662 department to seal the criminal history record. The department
663 shall issue the certificate only if the person has not been
664 arrested during the 5-year period following the date of the
665 court order for the initial expunction or sealing of his or her
666 criminal history record. All other provisions and requirements
667 of this section apply to an application to seal a criminal
668 history record after a prior criminal history record has been
669 sealed or expunged.

670 Section 5. (1) The Office of Program Policy Analysis and
671 Government Accountability, in cooperation with the Department of
672 Law Enforcement, shall:

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673 (a) Assess current safeguards for the accuracy of the
674 criminal history data contained in the Department of Law
675 Enforcement's Computerized Criminal History (CCH) database.

676 (b) Assess the current process available to potential
677 private employers or licensing agencies to determine whether an
678 applicant has a criminal history.

679 (c) Assess whether an adequate process exists to allow a
680 potential private employer or licensing agency to determine
681 whether an applicant's response to an "arrest, conviction, or
682 adjudication withheld" criminal history question on an
683 application is truthful and complete.

684 (d) Assess the feasibility of establishing privacy
685 safeguards to protect job or license applicants, such as
686 requiring informed consent and providing an opportunity to
687 review a criminal history record before a job or licensing
688 application is made, before the criminal history record is
689 provided to the potential employer or licensing entity, or
690 before adverse action is taken by the potential employer or
691 licensing entity.

692 (e) Identify actions to improve the completeness of the
693 criminal history record and the consumer readability of the
694 criminal history record.

695 (2) The Office of Program Policy Analysis and Government
696 Accountability shall report its findings to the President of the
697 Senate and the Speaker of the House of Representatives by
698 February 1, 2010.

699 Section 6. This act shall take effect July 1, 2009.