

1 A bill to be entitled
2 An act relating to criminal history records; providing a
3 short title; amending s. 943.0585, F.S.; authorizing a
4 court to expunge a criminal history record of a person who
5 had a prior criminal history record sealed or expunged in
6 certain circumstances; authorizing a person to lawfully
7 deny or fail to acknowledge the arrests and subsequent
8 dispositions of an expunged record under certain
9 circumstances; providing that a person may fail to recite
10 or acknowledge an expunged criminal history record on an
11 employment application without committing certain
12 violations; authorizing the Department of Law Enforcement
13 to disclose the contents of an expunged record to the
14 subject of the record upon the subject's request;
15 providing requirements for a second expunction; requiring
16 the website of a clerk of court to include information
17 relating to sealing and expunction procedures and a link
18 to related information on the department's website;
19 amending s. 943.059, F.S.; authorizing a court to seal a
20 criminal history record of a person who had a prior
21 criminal history record sealed or expunged in certain
22 circumstances; authorizing a person to lawfully deny or
23 fail to acknowledge the arrests and subsequent
24 dispositions of a sealed record under certain
25 circumstances; providing that a person may fail to recite
26 or acknowledge a sealed criminal history record on an
27 employment application without committing certain

28 | violations; providing requirements for a second sealing;
29 | providing an effective date.

30 |

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

32 |

33 | Section 1. This act may be cited as the "Jim King Keep
34 | Florida Working Act."

35 | Section 2. Paragraph (b) of subsection (1), paragraph (f)
36 | of subsection (2), paragraph (c) of subsection (3), and
37 | subsection (4) of section 943.0585, Florida Statutes, are
38 | amended, subsection (5) of that section is renumbered as
39 | subsection (7), and new subsections (5) and (6) are added to
40 | that section, to read:

41 | 943.0585 Court-ordered expunction of criminal history
42 | records.—The courts of this state have jurisdiction over their
43 | own procedures, including the maintenance, expunction, and
44 | correction of judicial records containing criminal history
45 | information to the extent such procedures are not inconsistent
46 | with the conditions, responsibilities, and duties established by
47 | this section. Any court of competent jurisdiction may order a
48 | criminal justice agency to expunge the criminal history record
49 | of a minor or an adult who complies with the requirements of
50 | this section. The court shall not order a criminal justice
51 | agency to expunge a criminal history record until the person
52 | seeking to expunge a criminal history record has applied for and
53 | received a certificate of eligibility for expunction pursuant to
54 | subsection (2). A criminal history record that relates to a
55 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,

56 | s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
57 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
58 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
59 | any violation specified as a predicate offense for registration
60 | as a sexual predator pursuant to s. 775.21, without regard to
61 | whether that offense alone is sufficient to require such
62 | registration, or for registration as a sexual offender pursuant
63 | to s. 943.0435, may not be expunged, without regard to whether
64 | adjudication was withheld, if the defendant was found guilty of
65 | or pled guilty or nolo contendere to the offense, or if the
66 | defendant, as a minor, was found to have committed, or pled
67 | guilty or nolo contendere to committing, the offense as a
68 | delinquent act. The court may only order expunction of a
69 | criminal history record pertaining to one arrest or one incident
70 | of alleged criminal activity, except as provided in this
71 | section. The court may, at its sole discretion, order the
72 | expunction of a criminal history record pertaining to more than
73 | one arrest if the additional arrests directly relate to the
74 | original arrest. If the court intends to order the expunction of
75 | records pertaining to such additional arrests, such intent must
76 | be specified in the order. A criminal justice agency may not
77 | expunge any record pertaining to such additional arrests if the
78 | order to expunge does not articulate the intention of the court
79 | to expunge a record pertaining to more than one arrest. This
80 | section does not prevent the court from ordering the expunction
81 | of only a portion of a criminal history record pertaining to one
82 | arrest or one incident of alleged criminal activity.
83 | Notwithstanding any law to the contrary, a criminal justice

84 agency may comply with laws, court orders, and official requests
85 of other jurisdictions relating to expunction, correction, or
86 confidential handling of criminal history records or information
87 derived therefrom. This section does not confer any right to the
88 expunction of any criminal history record, and any request for
89 expunction of a criminal history record may be denied at the
90 sole discretion of the court.

91 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
92 petition to a court to expunge a criminal history record is
93 complete only when accompanied by:

94 (b) The petitioner's sworn statement attesting that the
95 petitioner:

96 1. Has never, prior to the date on which the petition is
97 filed, been adjudicated guilty of a criminal offense or
98 comparable ordinance violation, or been adjudicated delinquent
99 for committing any felony or a misdemeanor specified in s.
100 943.051(3)(b).

101 2. Has not been adjudicated guilty of, or adjudicated
102 delinquent for committing, any of the acts stemming from the
103 arrest or alleged criminal activity to which the petition
104 pertains.

105 3. Has never secured a prior sealing or expunction, except
106 as provided in subsection (5) and s. 943.059(5), of a criminal
107 history record under this section, former s. 893.14, former s.
108 901.33, or former s. 943.058, or from any jurisdiction outside
109 the state, unless expunction is sought of a criminal history
110 record previously sealed for 10 years pursuant to paragraph
111 (2)(h) and the record is otherwise eligible for expunction.

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112 4. Is eligible for such an expunction to the best of his
113 or her knowledge or belief and does not have any other petition
114 to expunge or any petition to seal pending before any court.
115

116 Any person who knowingly provides false information on such
117 sworn statement to the court commits a felony of the third
118 degree, punishable as provided in s. 775.082, s. 775.083, or s.
119 775.084.

120 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
121 petitioning the court to expunge a criminal history record, a
122 person seeking to expunge a criminal history record shall apply
123 to the department for a certificate of eligibility for
124 expunction. The department shall, by rule adopted pursuant to
125 chapter 120, establish procedures pertaining to the application
126 for and issuance of certificates of eligibility for expunction.
127 A certificate of eligibility for expunction is valid for 12
128 months after the date stamped on the certificate when issued by
129 the department. After that time, the petitioner must reapply to
130 the department for a new certificate of eligibility. Eligibility
131 for a renewed certification of eligibility must be based on the
132 status of the applicant and the law in effect at the time of the
133 renewal application. The department shall issue a certificate of
134 eligibility for expunction to a person who is the subject of a
135 criminal history record if that person:

136 (f) Has never secured a prior sealing or expunction,
137 except as provided in subsection (5) and s. 943.059(5), of a
138 criminal history record under this section, former s. 893.14,
139 former s. 901.33, or former s. 943.058, unless expunction is

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140 sought of a criminal history record previously sealed for 10
141 years pursuant to paragraph (h) and the record is otherwise
142 eligible for expunction.

143 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

144 (c) For an order to expunge entered by a court prior to
145 July 1, 1992, the department shall notify the appropriate state
146 attorney or statewide prosecutor of an order to expunge which is
147 contrary to law because the person who is the subject of the
148 record has previously been convicted of a crime or comparable
149 ordinance violation or has had a prior criminal history record
150 sealed or expunged, except as provided in subsection (5) and s.
151 943.059(5). Upon receipt of such notice, the appropriate state
152 attorney or statewide prosecutor shall take action, within 60
153 days, to correct the record and petition the court to void the
154 order to expunge. The department shall seal the record until
155 such time as the order is voided by the court.

156 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
157 criminal history record of a minor or an adult which is ordered
158 expunged by a court of competent jurisdiction pursuant to this
159 section must be physically destroyed or obliterated by any
160 criminal justice agency having custody of such record; except
161 that any criminal history record in the custody of the
162 department must be retained in all cases. A criminal history
163 record ordered expunged that is retained by the department is
164 confidential and exempt from the provisions of s. 119.07(1) and
165 s. 24(a), Art. I of the State Constitution and not available to
166 any person or entity except upon order of a court of competent
167 jurisdiction. A criminal justice agency may retain a notation

168 | indicating compliance with an order to expunge.

169 | (a) The person who is the subject of a criminal history
 170 | record that is expunged under this section or under other
 171 | provisions of law, including former s. 893.14, former s. 901.33,
 172 | and former s. 943.058, may lawfully deny or fail to acknowledge
 173 | the arrests and subsequent dispositions covered by the expunged
 174 | record, except when the subject of the record:

175 | 1. Is a candidate for employment with a criminal justice
 176 | agency;

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

178 | 3. Concurrently or subsequently petitions for relief under
 179 | this section or s. 943.059;

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

181 | 5. Is seeking to be employed or licensed by or to contract
 182 | with the Department of Children and Family Services, the Agency
 183 | for Health Care Administration, the Agency for Persons with
 184 | Disabilities, or the Department of Juvenile Justice or to be
 185 | employed or used by such contractor or licensee in a sensitive
 186 | position having direct contact with children, the
 187 | developmentally disabled, the aged, or the elderly as provided
 188 | in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 189 | 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),
 190 | chapter 916, s. 985.644, chapter 400, or chapter 429;

191 | 6. Is seeking to be employed or licensed by the Department
 192 | of Education, any district school board, any university
 193 | laboratory school, any charter school, any private or parochial
 194 | school, or any local governmental entity that licenses child
 195 | care facilities; or

196 7. Is seeking authorization from a seaport listed in s.
197 311.09 for employment within or access to one or more of such
198 seaports pursuant to s. 311.12.

199 (b) Subject to the exceptions in paragraph (a), a person
200 who has been granted an expunction under this section, former s.
201 893.14, former s. 901.33, or former s. 943.058 may not be held
202 under any provision of law of this state to commit perjury or to
203 be otherwise liable for giving a false statement by reason of
204 such person's failure to recite or acknowledge an expunged
205 criminal history record, including failure to recite or
206 acknowledge such information on an employment application.

207 (c) Information relating to the existence of an expunged
208 criminal history record which is provided in accordance with
209 paragraph (a) is confidential and exempt from the provisions of
210 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
211 except that the department shall disclose the existence of a
212 criminal history record ordered expunged to the entities set
213 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
214 respective licensing, access authorization, and employment
215 purposes, and to criminal justice agencies for their respective
216 criminal justice purposes. It is unlawful for any employee of an
217 entity set forth in subparagraph (a)1., subparagraph (a)4.,
218 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
219 disclose information relating to the existence of an expunged
220 criminal history record of a person seeking employment, access
221 authorization, or licensure with such entity or contractor,
222 except to the person to whom the criminal history record relates
223 or to persons having direct responsibility for employment,

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224 access authorization, or licensure decisions. Any person who
 225 violates this paragraph commits a misdemeanor of the first
 226 degree, punishable as provided in s. 775.082 or s. 775.083.

227 (d) The department may disclose the contents of an
 228 expunged record to the subject of the record upon the receipt of
 229 a written, notarized request from the subject of the record.

230 (5) EXPUNCTION OF CRIMINAL HISTORY RECORD AFTER PRIOR
 231 SEALING OR EXPUNCTION.—

232 (a) A court may expunge a person's criminal history record
 233 after a prior criminal history record has been sealed or
 234 expunged only if the person obtains a certificate from the
 235 department to expunge the criminal history record. The
 236 department may issue the certificate for a second expunction
 237 only if:

238 1. The person has had only one prior expunction of his or
 239 her criminal history record under this section or one prior
 240 expunction following the sealing of the same arrest or alleged
 241 criminal activity that was expunged;

242 2. The person has not been arrested in this state during
 243 the 10-year period prior to the date on which the application
 244 for the certificate is filed; and

245 3. The person has not previously sealed or expunged a
 246 criminal history record that involved the same offense to which
 247 the petition to expunge pertains.

248 (b) All other provisions and requirements of this section
 249 apply to an application to expunge a second criminal history
 250 record.

251 (6) INFORMATION.—Each website for the office of a clerk of

252 court must include information relating to procedures to seal or
 253 expunge criminal history records. This information must include
 254 a link to related information on the department's website.

255 Section 3. Paragraph (b) of subsection (1), paragraph (e)
 256 of subsection (2), paragraph (c) of subsection (3), and
 257 paragraphs (a) and (b) of subsection (4) of section 943.059,
 258 Florida Statutes, are amended, subsection (5) is renumbered as
 259 subsection (6), and a new subsection (5) is added to that
 260 section, to read:

261 943.059 Court-ordered sealing of criminal history
 262 records.—The courts of this state shall continue to have
 263 jurisdiction over their own procedures, including the
 264 maintenance, sealing, and correction of judicial records
 265 containing criminal history information to the extent such
 266 procedures are not inconsistent with the conditions,
 267 responsibilities, and duties established by this section. Any
 268 court of competent jurisdiction may order a criminal justice
 269 agency to seal the criminal history record of a minor or an
 270 adult who complies with the requirements of this section. The
 271 court shall not order a criminal justice agency to seal a
 272 criminal history record until the person seeking to seal a
 273 criminal history record has applied for and received a
 274 certificate of eligibility for sealing pursuant to subsection
 275 (2). A criminal history record that relates to a violation of s.
 276 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 277 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 278 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 279 916.1075, a violation enumerated in s. 907.041, or any violation

280 specified as a predicate offense for registration as a sexual
281 predator pursuant to s. 775.21, without regard to whether that
282 offense alone is sufficient to require such registration, or for
283 registration as a sexual offender pursuant to s. 943.0435, may
284 not be sealed, without regard to whether adjudication was
285 withheld, if the defendant was found guilty of or pled guilty or
286 nolo contendere to the offense, or if the defendant, as a minor,
287 was found to have committed or pled guilty or nolo contendere to
288 committing the offense as a delinquent act. The court may only
289 order sealing of a criminal history record pertaining to one
290 arrest or one incident of alleged criminal activity, except as
291 provided in this section. The court may, at its sole discretion,
292 order the sealing of a criminal history record pertaining to
293 more than one arrest if the additional arrests directly relate
294 to the original arrest. If the court intends to order the
295 sealing of records pertaining to such additional arrests, such
296 intent must be specified in the order. A criminal justice agency
297 may not seal any record pertaining to such additional arrests if
298 the order to seal does not articulate the intention of the court
299 to seal records pertaining to more than one arrest. This section
300 does not prevent the court from ordering the sealing of only a
301 portion of a criminal history record pertaining to one arrest or
302 one incident of alleged criminal activity. Notwithstanding any
303 law to the contrary, a criminal justice agency may comply with
304 laws, court orders, and official requests of other jurisdictions
305 relating to sealing, correction, or confidential handling of
306 criminal history records or information derived therefrom. This
307 section does not confer any right to the sealing of any criminal

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308 history record, and any request for sealing a criminal history
 309 record may be denied at the sole discretion of the court.

310 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
 311 petition to a court to seal a criminal history record is
 312 complete only when accompanied by:

313 (b) The petitioner's sworn statement attesting that the
 314 petitioner:

315 1. Has never, prior to the date on which the petition is
 316 filed, been adjudicated guilty of a criminal offense or
 317 comparable ordinance violation, or been adjudicated delinquent
 318 for committing any felony or a misdemeanor specified in s.
 319 943.051(3) (b) .

320 2. Has not been adjudicated guilty of or adjudicated
 321 delinquent for committing any of the acts stemming from the
 322 arrest or alleged criminal activity to which the petition to
 323 seal pertains.

324 3. Has never secured a prior sealing or expunction, except
 325 as provided in subsection (5), of a criminal history record
 326 under this section, former s. 893.14, former s. 901.33, former
 327 s. 943.058, or from any jurisdiction outside the state.

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

331
 332 Any person who knowingly provides false information on such
 333 sworn statement to the court commits a felony of the third
 334 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 335 775.084.

336 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
 337 petitioning the court to seal a criminal history record, a
 338 person seeking to seal a criminal history record shall apply to
 339 the department for a certificate of eligibility for sealing. The
 340 department shall, by rule adopted pursuant to chapter 120,
 341 establish procedures pertaining to the application for and
 342 issuance of certificates of eligibility for sealing. A
 343 certificate of eligibility for sealing is valid for 12 months
 344 after the date stamped on the certificate when issued by the
 345 department. After that time, the petitioner must reapply to the
 346 department for a new certificate of eligibility. Eligibility for
 347 a renewed certification of eligibility must be based on the
 348 status of the applicant and the law in effect at the time of the
 349 renewal application. The department shall issue a certificate of
 350 eligibility for sealing to a person who is the subject of a
 351 criminal history record provided that such person:

352 (e) Has never secured a prior sealing or expunction,
 353 except as provided in subsection (5), of a criminal history
 354 record under this section, former s. 893.14, former s. 901.33,
 355 or former s. 943.058.

356 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

357 (c) For an order to seal entered by a court prior to July
 358 1, 1992, the department shall notify the appropriate state
 359 attorney or statewide prosecutor of any order to seal which is
 360 contrary to law because the person who is the subject of the
 361 record has previously been convicted of a crime or comparable
 362 ordinance violation or has had a prior criminal history record
 363 sealed or expunged, except as provided in subsection (5). Upon

364 receipt of such notice, the appropriate state attorney or
 365 statewide prosecutor shall take action, within 60 days, to
 366 correct the record and petition the court to void the order to
 367 seal. The department shall seal the record until such time as
 368 the order is voided by the court.

369 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 370 history record of a minor or an adult which is ordered sealed by
 371 a court of competent jurisdiction pursuant to this section is
 372 confidential and exempt from the provisions of s. 119.07(1) and
 373 s. 24(a), Art. I of the State Constitution and is available only
 374 to the person who is the subject of the record, to the subject's
 375 attorney, to criminal justice agencies for their respective
 376 criminal justice purposes, which include conducting a criminal
 377 history background check for approval of firearms purchases or
 378 transfers as authorized by state or federal law, to judges in
 379 the state courts system for the purpose of assisting them in
 380 their case-related decisionmaking responsibilities, as set forth
 381 in s. 943.053(5), or to those entities set forth in
 382 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 383 licensing, access authorization, and employment purposes.

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

- 390 1. Is a candidate for employment with a criminal justice
 391 agency;

- 392 2. Is a defendant in a criminal prosecution;
- 393 3. Concurrently or subsequently petitions for relief under
394 this section or s. 943.0585;
- 395 4. Is a candidate for admission to The Florida Bar;
- 396 5. Is seeking to be employed or licensed by or to contract
397 with the Department of Children and Family Services, the Agency
398 for Health Care Administration, the Agency for Persons with
399 Disabilities, or the Department of Juvenile Justice or to be
400 employed or used by such contractor or licensee in a sensitive
401 position having direct contact with children, the
402 developmentally disabled, the aged, or the elderly as provided
403 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
404 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.
405 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;
- 406 6. Is seeking to be employed or licensed by the Department
407 of Education, any district school board, any university
408 laboratory school, any charter school, any private or parochial
409 school, or any local governmental entity that licenses child
410 care facilities;
- 411 7. Is attempting to purchase a firearm from a licensed
412 importer, licensed manufacturer, or licensed dealer and is
413 subject to a criminal history check under state or federal law;
414 or
- 415 8. Is seeking authorization from a Florida seaport
416 identified in s. 311.09 for employment within or access to one
417 or more of such seaports pursuant to s. 311.12.
- 418 (b) Subject to the exceptions in paragraph (a), a person
419 who has been granted a sealing under this section, former s.

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420 893.14, former s. 901.33, or former s. 943.058 may not be held
421 under any provision of law of this state to commit perjury or to
422 be otherwise liable for giving a false statement by reason of
423 such person's failure to recite or acknowledge a sealed criminal
424 history record, including failure to recite or acknowledge such
425 information on an employment application.

426 (5) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
427 OR EXPUNCTION.—

428 (a) A court may seal a person's criminal history record
429 after a prior criminal history record has been sealed or
430 expunged only if the person obtains a certificate from the
431 department to seal the criminal history record. The department
432 may issue the certificate for a second sealing only if:

433 1. The person has had only one prior expunction or sealing
434 of his or her criminal history record under s. 943.0585 or this
435 section or one prior expunction following the sealing of the
436 same arrest or alleged criminal activity that was expunged;

437 2. The person has not been arrested in this state during
438 the 5-year period prior to the date on which the application for
439 the certificate is filed; and

440 3. The person has not previously sealed or expunged a
441 criminal history record that involved the same offense to which
442 the petition to seal pertains.

443 (b) All other provisions and requirements of this section
444 apply to an application to seal a second criminal history
445 record.

446 Section 4. This act shall take effect July 1, 2011.