



100946

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2009	.	
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The Committee on Governmental Oversight and Accountability  
(King) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 118 and 119

insert:

Section 3. Section 768.096, Florida Statutes, is amended to  
read:

768.096 Employer presumption against negligent hiring.—

(1) In a civil action for the death of, or injury or damage  
to, a third person caused by the intentional tort of an  
employee, such employee's employer is presumed not to have been  
negligent in hiring such employee if, before hiring the



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12 employee, the employer conducted a background investigation of  
13 the prospective employee and the investigation did not reveal  
14 any information that reasonably demonstrated the unsuitability  
15 of the prospective employee for the particular work to be  
16 performed or for the context of the employment in general. A  
17 background investigation under this section must include:

18 (a) Obtaining a criminal background investigation on the  
19 prospective employee under subsection (2);

20 (b) Making a reasonable effort to contact references and  
21 former employers of the prospective employee concerning the  
22 suitability of the prospective employee for employment;

23 (c) Requiring the prospective employee to complete a job  
24 application form that includes questions concerning whether he  
25 or she has ever been convicted of a crime, including details  
26 concerning the type of crime, the date of conviction and the  
27 penalty imposed, and whether the prospective employee has ever  
28 been a defendant in a civil action for intentional tort,  
29 including the nature of the intentional tort and the disposition  
30 of the action;

31 (d) Obtaining, with written authorization from the  
32 prospective employee, a check of the driver's license record of  
33 the prospective employee if such a check is relevant to the work  
34 the employee will be performing and if the record can reasonably  
35 be obtained; and ~~or~~

36 (e) Interviewing the prospective employee.

37 (2) To satisfy the criminal-background-investigation  
38 requirement of this section, an employer must request and obtain  
39 from the Department of Law Enforcement a check of the  
40 information as reported and reflected in the Florida Crime



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41 Information Center system as of the date of the request. The  
42 employer must review and consider the results of the criminal  
43 background investigation and, if the prospective employee has  
44 engaged in past criminal conduct, assure that the employee will  
45 not be assigned to particular work that would place the employee  
46 in a position where conduct that is similar to the employee's  
47 past criminal conduct is facilitated and determine that,  
48 notwithstanding the past criminal conduct of the employee, any  
49 information revealed by the investigation did not otherwise  
50 demonstrate the unsuitability of the employee for the particular  
51 work to be performed or context of the employment in general.

52 (3) The election by an employer not to conduct the  
53 investigation specified in subsection (1) does not raise any  
54 presumption that the employer failed to use reasonable care in  
55 hiring an employee.

56  
57 ===== T I T L E A M E N D M E N T =====

58 And the title is amended as follows:

59 Delete line 9

60 and insert:

61 civil rights; providing an exception; amending s. 768.096, F.S.;  
62 requiring an employer to review the results of a criminal  
63 background investigation; requiring an employer not to place an  
64 employee with a criminal record in a position where conduct  
65 similar to the employee's past criminal conduct would be  
66 facilitated; requiring an employer to determine that the  
67 criminal background investigation does not demonstrate that the  
68 employee is unsuitable for the particular work to be performed  
69 or the context of the employment in general; amending s.