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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2011	.	
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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 111 and 112

insert:

Section 2. Paragraph (e) is added to subsection (1) of section 435.04, Florida Statutes, and subsection (4) is added to that section, to read:

435.04 Level 2 screening standards.—

(1)

(e) Vendors who submit fingerprints on behalf of employers must:

1. Use technology that is compliant with systems used by the Department of Law Enforcement;



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14 2. Have the ability to communicate electronically with the
15 state agency accepting screening results from the Department of
16 Law Enforcement; and

17 3. Capture two sets of fingerprint images from each
18 individual screened. If the first set of prints are deemed
19 illegible as determined by the Department of Law Enforcement or
20 the Federal Bureau of Investigation, the vendor shall submit the
21 second set of prints after being so notified by the agency
22 requiring the screening.

23 (4) Fingerprints required for screening under this section
24 shall be retained for any person who is screened on or before
25 July 1, 2013.

26 Section 3. Subsection (6) is added to section 435.07,
27 Florida Statutes, to read:

28 435.07 Exemptions from disqualification.—Unless otherwise
29 provided by law, the provisions of this section apply to
30 exemptions from disqualification for disqualifying offenses
31 revealed pursuant to background screenings required under this
32 chapter, regardless of whether those disqualifying offenses are
33 listed in this chapter or other laws.

34 (6) Personnel of a qualified entity as described in s.
35 943.0542, who are required to be screened pursuant to s. 435.04,
36 may apply for an exemption pursuant to this chapter.

37 Section 4. Section 408.809, Florida Statutes, is amended to
38 read:

39 408.809 Background screening; prohibited offenses.—

40 (1) Level 2 background screening pursuant to chapter 435
41 must be conducted through the agency on each of the following
42 persons, who are considered employees for the purposes of



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43 conducting screening under chapter 435:

44 (a) The licensee, if an individual.

45 (b) The administrator or a similarly titled person who is
46 responsible for the day-to-day operation of the provider.

47 (c) The financial officer or similarly titled individual
48 who is responsible for the financial operation of the licensee
49 or provider.

50 (d) Any person who is a controlling interest if the agency
51 has reason to believe that such person has been convicted of any
52 offense prohibited by s. 435.04. For each controlling interest
53 who has been convicted of any such offense, the licensee shall
54 submit to the agency a description and explanation of the
55 conviction at the time of license application.

56 (e) Any person, as required by authorizing statutes,
57 seeking employment with a licensee or provider who is expected
58 to, or whose responsibilities may require him or her to, provide
59 personal care or services directly to clients or have access to
60 client funds, personal property, or living areas; and any
61 person, as required by authorizing statutes, contracting with a
62 licensee or provider whose responsibilities require him or her
63 to provide personal care or personal services directly to
64 clients. Evidence of contractor screening may be retained by the
65 contractor's employer or the licensee.

66 (2) Every 5 years following his or her licensure,
67 employment, or entry into a contract in a capacity that under
68 subsection (1) would require level 2 background screening under
69 chapter 435, each such person must submit to level 2 background
70 rescreening as a condition of retaining such license or
71 continuing in such employment or contractual status. For any



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72 such rescreening, the agency shall request the Department of Law
73 Enforcement to forward the person's fingerprints to the Federal
74 Bureau of Investigation for a national criminal history record
75 check. If the fingerprints of such a person are not retained by
76 the Department of Law Enforcement under s. 943.05(2)(g), the
77 person must file a complete set of fingerprints with the agency
78 and the agency shall forward the fingerprints to the Department
79 of Law Enforcement for state processing, and the Department of
80 Law Enforcement shall forward the fingerprints to the Federal
81 Bureau of Investigation for a national criminal history record
82 check. The fingerprints may be retained by the Department of Law
83 Enforcement under s. 943.05(2)(g). The cost of the state and
84 national criminal history records checks required by level 2
85 screening may be borne by the licensee or the person
86 fingerprinted. Proof of compliance with level 2 screening
87 standards submitted within the previous 5 years to meet any
88 provider or professional licensure requirements of the agency,
89 the Department of Health, the Agency for Persons with
90 Disabilities, the Department of Children and Family Services, or
91 the Department of Financial Services for an applicant for a
92 certificate of authority or provisional certificate of authority
93 to operate a continuing care retirement community under chapter
94 651 satisfies the requirements of this section if the person
95 subject to screening has not been unemployed for more than 90
96 days and such proof is accompanied, under penalty of perjury, by
97 an affidavit of compliance with the provisions of chapter 435
98 and this section using forms provided by the agency.

99 (3) All fingerprints must be provided in electronic format.
100 Screening results shall be reviewed by the agency with respect



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101 to the offenses specified in s. 435.04 and this section, and the
102 qualifying or disqualifying status of the person named in the
103 request shall be maintained in a database. The qualifying or
104 disqualifying status of the person named in the request shall be
105 posted on a secure website for retrieval by the licensee or
106 designated agent on the licensee's behalf.

107 (4) In addition to the offenses listed in s. 435.04, all
108 persons required to undergo background screening pursuant to
109 this part or authorizing statutes must not have an arrest
110 awaiting final disposition for, must not have been found guilty
111 of, regardless of adjudication, or entered a plea of nolo
112 contendere or guilty to, and must not have been adjudicated
113 delinquent and the record not have been sealed or expunged for
114 any of the following offenses or any similar offense of another
115 jurisdiction:

116 (a) Any authorizing statutes, if the offense was a felony.

117 (b) This chapter, if the offense was a felony.

118 (c) Section 409.920, relating to Medicaid provider fraud.

119 (d) Section 409.9201, relating to Medicaid fraud.

120 (e) Section 741.28, relating to domestic violence.

121 (f) Section 817.034, relating to fraudulent acts through
122 mail, wire, radio, electromagnetic, photoelectronic, or
123 photooptical systems.

124 (g) Section 817.234, relating to false and fraudulent
125 insurance claims.

126 (h) Section 817.505, relating to patient brokering.

127 (i) Section 817.568, relating to criminal use of personal
128 identification information.

129 (j) Section 817.60, relating to obtaining a credit card



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130 through fraudulent means.

131 (k) Section 817.61, relating to fraudulent use of credit
132 cards, if the offense was a felony.

133 (l) Section 831.01, relating to forgery.

134 (m) Section 831.02, relating to uttering forged
135 instruments.

136 (n) Section 831.07, relating to forging bank bills, checks,
137 drafts, or promissory notes.

138 (o) Section 831.09, relating to uttering forged bank bills,
139 checks, drafts, or promissory notes.

140 (p) Section 831.30, relating to fraud in obtaining
141 medicinal drugs.

142 (q) Section 831.31, relating to the sale, manufacture,
143 delivery, or possession with the intent to sell, manufacture, or
144 deliver any counterfeit controlled substance, if the offense was
145 a felony.

146 (5) A person who serves as a controlling interest of, is
147 employed by, or contracts with a licensee on July 31, 2010, who
148 has been screened and qualified according to standards specified
149 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in
150 compliance with the following schedule. ~~The agency may adopt~~
151 ~~rules to establish a schedule to stagger the implementation of~~
152 ~~the required rescreening over the 5-year period, beginning July~~
153 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such
154 person has a disqualifying offense that was not a disqualifying
155 offense at the time of the last screening, but is a current
156 disqualifying offense and was committed before the last
157 screening, he or she may apply for an exemption from the
158 appropriate licensing agency and, if agreed to by the employer,



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159 may continue to perform his or her duties until the licensing
160 agency renders a decision on the application for exemption if
161 the person is eligible to apply for an exemption and the
162 exemption request is received by the agency within 30 days after
163 receipt of the rescreening results by the person. The
164 rescreening schedule shall be:

165 (a) Individuals for whom the last screening was conducted
166 on or before December 31, 2003, must be rescreened by July 31,
167 2013.

168 (b) Individuals for whom the last screening conducted was
169 between January 1, 2004, and December 31, 2007, must be
170 rescreened by July 31, 2014.

171 (c) Individuals for whom the last screening conducted was
172 between January 1, 2008, through July 31, 2010, must be
173 rescreened by July 31, 2015.

174 (6)~~(5)~~ The costs associated with obtaining the required
175 screening must be borne by the licensee or the person subject to
176 screening. Licensees may reimburse persons for these costs. The
177 Department of Law Enforcement shall charge the agency for
178 screening pursuant to s. 943.053(3). The agency shall establish
179 a schedule of fees to cover the costs of screening.

180 (7)~~(6)~~(a) As provided in chapter 435, the agency may grant
181 an exemption from disqualification to a person who is subject to
182 this section and who:

183 1. Does not have an active professional license or
184 certification from the Department of Health; or

185 2. Has an active professional license or certification from
186 the Department of Health but is not providing a service within
187 the scope of that license or certification.



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188 (b) As provided in chapter 435, the appropriate regulatory
189 board within the Department of Health, or the department itself
190 if there is no board, may grant an exemption from
191 disqualification to a person who is subject to this section and
192 who has received a professional license or certification from
193 the Department of Health or a regulatory board within that
194 department and that person is providing a service within the
195 scope of his or her licensed or certified practice.

196 ~~(8)~~(7) The agency and the Department of Health may adopt
197 rules pursuant to ss. 120.536(1) and 120.54 to implement this
198 section, chapter 435, and authorizing statutes requiring
199 background screening and to implement and adopt criteria
200 relating to retaining fingerprints pursuant to s. 943.05(2).

201 ~~(9)~~(8) There is no unemployment compensation or other
202 monetary liability on the part of, and no cause of action for
203 damages arising against, an employer that, upon notice of a
204 disqualifying offense listed under chapter 435 or this section,
205 terminates the person against whom the report was issued,
206 whether or not that person has filed for an exemption with the
207 Department of Health or the agency.

208 Section 5. The Department of Children and Family Services,
209 the Agency for Health Care Administration, the Department of
210 Elderly Affairs, the Department of Health, the Agency for
211 Persons with Disabilities, and the Department of Law Enforcement
212 shall create a statewide interagency background screening
213 workgroup for the purpose of developing a work plan for
214 implementing a statewide system for streamlining background
215 screening processes and sharing of background screening
216 information.



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217 (1) The interagency workgroup shall be coordinated through
218 the Agency for Health Care Administration and shall include
219 representatives from each of the state agencies required to
220 create the workgroup.

221 (2) The interagency workgroup shall submit a work plan for
222 implementing a streamlined background screening system to the
223 President of the Senate and the Speaker of the House of
224 Representatives by November 1, 2011.

225 (3) The interagency workgroup work plan shall, at a
226 minimum, address the following:

227 (a) The feasibility of creating a single statewide database
228 accessible by all agencies participating on the workgroup.

229 (b) The feasibility of co-locating or consolidating current
230 screening processes.

231 (c) Standardized screening criteria.

232 (d) Consistent criminal history information.

233 (e) Centralized exemptions.

234 (f) State and national retention of prints.

235 (g) National rescreens.

236 (i) Responsibility for retained prints and resubmission.

237 (j) Access to information.

238 (k) Fees.

239 (l) Screening turnaround time.

240 (m) The need for cooperative agreements among agencies that
241 may access information.

242 (n) Legal considerations and the need for legislative
243 action necessary for accessing information by participating
244 agencies.

245 (o) Guidelines for how the information shall be accessed,



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246 used, and disseminated.

247 (p) The organizational level at which information may be
248 accessed and shared.

249 (q) The specific information to be maintained and shared
250 through the system.

251 (r) Registration of employee information regarding the
252 employment status of persons screened, including date of hire
253 and date of separation, to facilitate notifications of arrests
254 and dispositions to the appropriate provider.

255 (s) The costs of implementing the streamlined system to the
256 state, employers, employees, and volunteers.

257

258 ===== T I T L E A M E N D M E N T =====

259 And the title is amended as follows:

260

261 Delete line 19

262 and insert:

263 purposes of background screening; amending s. 435.04,
264 F.S.; requiring vendors who submit fingerprints on
265 behalf of employers to meet specified criteria;
266 requiring that fingerprints be retained for any person
267 screened by a certain date; amending s. 435.07, F.S.;
268 providing that personnel of a qualified entity as
269 defined in ch. 943, F.S., may apply for an exemption
270 from screening; amending s. 408.809, F.S.; eliminating
271 a rule that requires the Agency for Health Care
272 Administration to stagger rescreening schedules;
273 providing a rescreening schedule; requiring the
274 establishment of a statewide interagency workgroup



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275 relating to statewide background screening procedures
276 and information sharing; providing for membership;
277 requiring the workgroup to submit a report to the
278 Legislature by a specified date; setting forth the
279 topics that, at a minimum, the workgroup must address
280 in its work plan; providing an