

STORAGE NAME: h0437.ca

DATE: April 19, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 437

RELATING TO: Emergency Medical Services/Screening

SPONSOR(S): Representative Bullard

COMPANION BILL(S): SB 2080(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION (HFC) YEAS 10 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC)
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS (FRC)
 - (4)
 - (5)
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I. SUMMARY:

This bill provides for mandatory personnel and security background screening for persons employed or applying for employment as certified emergency medical technicians and paramedics using the level 2 standards provided in chapter 435, F.S. The bill authorizes a licensee to grant exemptions from disqualification from employment pursuant to s. 435.07, F.S.

Currently, there are no provisions in law for background screening or disqualification from employment made specifically for certified emergency medical technicians or paramedics.

There is a fiscal impact on the Department of Health related to processing affidavits and possible disciplinary action for failure to comply with chapter 435, F.S., which provides additional regulatory requirements regarding employees and employers subject to state mandated background screenings.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there are no provisions in law for background screening or disqualification from employment made specifically for emergency medical technicians or paramedics.

Chapter 401, F.S., regulates emergency medical technicians and paramedics. Section 401.411, F.S., authorizes the Department of Health (DOH) to deny, suspend, or revoke a certification of an emergency medical technician or paramedic for being found guilty of, or pleading nolo contendere to, regardless of adjudication in any jurisdiction, a crime that relates to the practice as an emergency medical technician or paramedic, or to the practice in any other occupation, when operating under part III, chapter 401, F.S. This section also prohibits denying, suspending, or revoking a certification based on a felony conviction if the individual's civil rights have been restored.

The certification application for an emergency medical technician or paramedic requires self-reporting of felony conviction history. If the applicant indicates a felony conviction, the DOH investigates the case to determine if the individual's civil rights have been restored. If civil rights have not been restored, the application is denied. If civil rights have been restored, the individual is certified provided that all other criteria for certification, pursuant to s. 401.27, F.S., are met. Failure to provide the information on the certification application does not constitute a fatal error in processing the application and the individual is certified provided that all other criteria for certification are met.

The provisions of chapter 435, F.S., are also applicable to employees and employers whenever background screening or a background security check is required by law for employment unless otherwise provided by law. Chapter 435, F.S., prescribes employment screening requirements, reporting requirements for covered employees and employers, conditions for exclusion from employment, exemptions from disqualification, payment for processing background screenings, confidentiality, and sharing of background screening information.

Section 435.04, F.S., provides level 2 security background standards and authorizes fingerprinting for use in performing screenings that include, but are not limited to:

- ◆ Employment history checks;
- ◆ Statewide criminal and juvenile records checks through the Florida Department of Law Enforcement (FDLE);
- ◆ Federal criminal records checks through the Federal Bureau of Investigation; and
- ◆ Criminal records checks through local law enforcement agencies.

Section 435.04, F.S., also provides an operational definition of the "minimum standard of good moral character" by identifying the statutory offenses that are to be considered as grounds for denying or terminating employment. It requires an employee, subject to this section, to agree to inform his or her employer immediately if convicted of any of the disqualifying offenses while employed by that employer. It also requires the employer, if licensed by any agency of the state, to submit annually an affidavit of compliance with the provisions of this section to the licensing agency. Failure to report by either the employee or the employer is under penalty of perjury.

Section 435.05, F.S., enables placing new employees, unless otherwise prohibited by state or federal law, on probationary status pending a determination of compliance with the minimum standards.

Section 435.07, F.S., provides conditions for exemptions from disqualification from employment when the mandatory background screening identifies offenses that require exclusion from employment. This section also allows a licensing agency to grant to any employee otherwise disqualified from employment an exemption from disqualification for:

- ◆ Felonies committed more than 3 years prior;
- ◆ Misdemeanors prohibited under any of the laws cited in chapter 435, F.S., or under similar statutes of other jurisdictions;
- ◆ Offenses that were felonies when committed and have since been reduced to misdemeanors;
- ◆ Findings of delinquency;
- ◆ Acts of domestic violence; or

- ◆ Confirmed reports of abuse, neglect, or exploitation of a vulnerable adult.

To receive an exemption from disqualification for employment, the employee must provide evidence of rehabilitation, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident. The employee may present any other evidence or circumstances to indicate that he or she will not present a danger if continued employment is allowed. Under this section, an exemption may not be granted solely by reason of any pardon, executive clemency, or restoration of civil rights.

B. EFFECT OF PROPOSED CHANGES:

The bill provides for mandatory personnel and security background screening for persons employed or applying for employment as certified emergency medical technicians and paramedics using the level 2 standards provided in chapter 435, F.S. The bill authorizes a licensee to grant exemptions from disqualification from employment pursuant to s. 435.07, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Emergency medical services licensees are required to ensure that their emergency medical technician and paramedic employees undergo background investigations.

The DOH is expected to process each of approximately 270 licensees' affidavits as required by chapter 435, F.S., pursuant to the provisions of this bill. Further, the DOH will now be responsible for disciplinary actions if a licensee fails to comply with reporting requirements pursuant to the provisions of this bill.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?
No.
- b. Does the bill require or authorize an increase in any fees?
No.
- c. Does the bill reduce total taxes, both rates and revenues?
No.
- d. Does the bill reduce total fees, both rates and revenues?
No.
- e. Does the bill authorize any fee or tax increase by any local government?
No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
N/A
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
N/A
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
N/A
 - (2) Who makes the decisions?
N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 401.275, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 401.275, F.S., to require emergency medical services licensees to initiate a level 2 screening on persons employed or applicants for employment as certified emergency medical technicians or paramedics. These employees and applicants are required to undergo personnel screening and security background investigations as a condition of employment or continued employment. Employers are authorized to grant exemptions from disqualification from employment.

Section 2. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

According to the DOH, the assumption is made that the employer is the responsible payer for background screening fees. In such case, private emergency services licensees will incur first year expenses related to background screenings for all current emergency medical technician and paramedic employees and for any new ones hired during the year. The following figures have been used for calculations:

- ◆ \$39 fee for background screening (\$24 for National Crime Information Center, \$15 for FDLE screening); and
- ◆ 2,974 emergency medical technicians and paramedics are currently employed by private emergency medical services licensees as indicated on their 1996 recertification application submitted to the Bureau of Emergency Medical Services, DOH.

Approximately 3,800 new emergency medical technicians or paramedics are certified each year. Costs associated with background screening for FY 1999-00 is \$115,986.

2. Direct Private Sector Benefits:

Emergency medical technicians and paramedics will receive background checks, fingerprinting, and security screenings through FDLE and the FBI.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill provides an additional condition of employment for emergency medical technicians or paramedics. Any hiring delay caused by the requirements of the bill should be eliminated provided that employing an individual on probationary status pending the outcome of the background screening has applicability.

D. FISCAL COMMENTS:

The FDLE has established fees to include and cover the cost of their own background investigations and the processing of fingerprints through the Federal Bureau of Investigation. These fees offset any costs incurred by requiring current or applying emergency medical technicians or paramedics to have background screenings.

The DOH will incur annual expenses related to processing each of approximately 270 licensees' affidavits as required by chapter 435, F.S. The DOH will also incur expenses related to disciplinary actions, as far as penalty of perjury is concerned, if a licensee fails to comply with reporting requirements. No estimates are available for this expense, but it is anticipated that it will be absorbed by current licensing fees.

The assumption is made that the employer is the responsible payer for background screening fees. In such case, non-fire county emergency services licensees will incur first year expenses related to background screenings for all current emergency medical technician and paramedic employees, and for any new ones hired during the first year. No estimate is available for the cost the employer will incur for processing the fingerprints to the FDLE and acting as intermediary between the FDLE and the employee. Fire departments, both county and municipal, should not experience a fiscal impact as personnel are already subject to background checks.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

According to the DOH, the bill, as introduced, allows the employer to determine the fitness of the emergency medical technician or paramedic to work, yet the state has certification responsibility. Other health care professionals are required to be screened either as a condition of licensure, under their respective medical practice acts, or as a condition of employment by a facility, e.g., nursing homes and other health care related facilities, pursuant to s. 400.215, F.S. In either circumstance, a state agency plays a decisive role in the determination of fitness for employment based on the outcome of the background check.

The bill does not provide for disciplinary action by the DOH, as the certifying agency, against the licensed provider of certified emergency medical technician or paramedic, except for a penalty of perjury. The effect is that the emergency medical technician or paramedic may not be employed, but may still remain certified.

The bill creates a conflict for dually licensed and/or certified personnel such as a licensed nurse or certified firefighter who is also certified as an emergency medical technician or paramedic. Based on statistics aggregated from the 1996 recertification of emergency medical technicians or paramedics by the Bureau of Emergency Medical Services, 62% of this workforce are dually certified as firefighters and employed as firefighter/emergency medical technicians or firefighter/paramedics by municipal or county agencies. As such, they are subject to the statutory requirements affecting both firefighters and emergency medical technicians and paramedics.

Section 633.34, F.S., requires an applicant for employment as a firefighter to submit a fingerprint card to the Division of State Fire Marshal, Department of Insurance, with the current processing fee. The fingerprint card is forwarded to the FDLE and/or the Federal Bureau of Investigation. The firefighter applicant may be employed if he or she has been convicted of a felony and he or she is in compliance with s. 112.011, F.S. This section establishes who may or may not be disqualified from employment by the state or local governments. For example, if the firefighter applicant has been convicted of a misdemeanor related to the employment sought, he or she is excluded from employment for a period of 4 years after expiration of sentence.

Section 112.011, F.S., addresses disqualification from employment of public employees based on a felony conviction. Firefighter applicants with a prior felony conviction are required to meet a four-year exclusion from employment after expiration of sentence or final release by the Parole Commission, unless, prior to the expiration period, the individual has received a full pardon or has had his or her civil rights restored.

As stated by the DOH, the bill contains inconsistencies in time frame for exclusion from employment and specific felonies that are applicable, and raises questions for appealing decisions made by the employer regarding exemptions from disqualification for employment. Many emergency medical services providers are not public agencies and are therefore not bound by the Administrative Procedure Act, which is the state's appeal procedure.

As introduced, the bill creates an unfunded mandate in incurred background screening fees for the public and private sectors. Any shift of responsibility for processing background screenings or appeals regarding exemption determinations, will also shift the fiscal impact of these activities to the DOH.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 1999, the Health Care Licensing & Regulation Committee adopted a strike everything amendment that is traveling with the bill to add into law the current administrative rule requirement which states that, "each basic life support provider shall ensure and document in its employee records that each of its emergency medical technicians and paramedics hold a current certification from the department."

At the April 21, 1999, House Community Affairs Committee meeting, the sponsor of the bill will offer a substitute amendment to the "strike everything" amendment that is traveling with the bill. The substitute amendment corrects an inadvertent omission of the title amendment in the "strike everything" amendment. The substitute amendment provides a statutory reference, and directory and catchline language. It also replaces "emergency **management** technicians" with the correct term of "emergency **medical** technicians."

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Lucretia Shaw Collins

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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