

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1294

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Background Screening for Emergency Medical Technicians and Paramedics

DATE: April 8, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	_____	_____	CJ	_____
3.	_____	_____	AHS	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires an applicant for certification or recertification as an emergency medical technician (EMT) or paramedic to submit to a criminal history background check.

An applicant for initial certification after July 1, 2003, must, in conjunction with the application for certification renewal and under procedures adopted by the Department of Health, submit information for a statewide criminal history check and a set of fingerprints to the department for a national criminal history check.

An applicant for renewed certification who has not previously submitted a set of fingerprints to the Department of Health must submit information required to perform a statewide criminal history check and a set of fingerprints to the department for a national criminal history check as a condition of the initial renewal of his or her certificate after July 1, 2003. For subsequent certification renewals, the department must, by rule, adopt an application form that includes a sworn oath or affirmation attesting to the existence of any criminal convictions, regardless of plea of adjudication, which have occurred since the previous certification.

The bill:

- Provides that the application of any applicant with prior criminal convictions is not complete until the criminal history and certified copies of all court documents for the prior criminal convictions have been received by the Department of Health;
- Enumerates a list of offenses which would disqualify an EMT or paramedic applicant for certification or renewed certification;

- Allows the Department of Health to grant exemptions to such disqualification based on specified criteria;
- Authorizes the Department of Health to accept electronically submitted EMT/paramedic applications and the department may require supplemental materials as part of the application;
- Deletes a requirement for the Department of Health to issue a temporary certificate with their examination grade report to applicants who have achieved a passing score on the EMT/paramedic certification examination;
- Eliminates the requirement for the department to issue an original certificate to an EMT/paramedic certification applicant within 45 days after the examination; and
- Eliminates requirements for the Department of Health to adopt a standard state insignia for EMTs and paramedics and requirements for the display of the insignia.

Training programs for EMTs or paramedics approved by the Department of Health must at the initiation of the course, advise students of the certification and regulatory requirements in Florida, including, but not limited to, the required criminal history background screening for EMTs or paramedics for initial and renewal certification. The Department of Health must prescribe by rule the required content of this component of the course.

This bill amends sections 401.27 and 401.2701, Florida Statutes.

II. Present Situation:

Practitioner Profiles

Section 456.039, F.S., requires each licensed physician, osteopathic physician, chiropractic physician, and podiatric physician to submit specified information which, beginning July 1, 1999, has been compiled into practitioner profiles to be made available to the public. The information must include: graduate medical education; hospitals at which the physician has privileges; the address at which the physician will primarily conduct his or her practice; specialty certification; year the physician began practice; faculty appointments; a description of any criminal offense committed; a description of any final disciplinary action taken within the most recent 10 years; and professional liability closed claims reported to the Department of Insurance within the most recent 10 years exceeding \$5,000. In addition the physician may submit: professional awards and publications; languages, other than English, used by the physician to communicate with patients; and an indication of whether the physician participates in the Medicaid program. Each person who applies for initial licensure as a medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, at the time of application, and each medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, in conjunction with the renewal of the license, submit the information required for practitioner profiles.

Section 456.039, F.S., requires medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit fingerprints for a national criminal history check as part of initial licensure. The section also requires already licensed medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit, on a one-time-basis, a set of fingerprints for the initial renewal of their licenses after January 1, 2000, to the Department of Health. The Department of Health must submit the fingerprints of licensure renewal applicants to the Florida Department of Law Enforcement (FDLE) and FDLE then must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's license after January 1, 2000. For any subsequent renewal of the applicant's license, the Department of Health must submit the required information for a statewide criminal history check of the applicant.

Section 456.0391, F.S., requires advanced registered nurse practitioners to comply with the practitioner profiling requirements and submit fingerprints and specified information for compilation into a practitioner profile. The Department of Health began compiling profiles for advanced registered nurse practitioners on July 1, 2001.

Section 456.041, F.S., requires the Department of Health to indicate if the criminal history information reported by a medical physician, osteopathic physician, chiropractic physician, podiatric physician or advanced registered nurse practitioner is not corroborated by a criminal history check. The Department of Health or the board having regulatory authority over the practitioner must investigate any information it receives when it has reasonable grounds to believe that the practitioner has violated any law that relates to the practitioner's practice. Each practitioner's profile must include the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public."

Medical physicians, osteopathic physicians, chiropractic physicians, podiatric physicians and advanced registered nurse practitioners applying for licensure renewal must submit the information required for the practitioner profiles, however, an applicant who has submitted fingerprints to the Department of Health for a national criminal history check upon initial licensure and is renewing his or her license for the first time, only needs to submit the information and fee required for a statewide criminal history check.

Certification of Emergency Medical Technicians and Paramedics

Part III, ch. 401, F.S., provides for the regulation of emergency medical technicians (EMTs) and paramedics by the Department of Health. Any person who wishes to be certified as an EMT or paramedic must apply to the Department of Health under oath on forms provided by the department which must contain such information as the department requires, which may include affirmative evidence of ability to comply with applicable law and rules. An applicant for certification or recertification as an EMT or paramedic, as appropriate, must have completed the most recent EMT training course or paramedic training course of the United States Department of Transportation as approved by the Department of Health; certify under oath that he or she is not addicted to alcohol or any controlled substance; certify under oath that he or she is free from any physical or mental defect or disease that might impair the applicant's ability to perform his or her duties; and within 1 year after course completion have passed an examination developed

or required by the Department of Health. In addition, for an EMT, the applicant must hold either a current American Heart Association cardiopulmonary resuscitation course card or its equivalent as defined by department rule. For a paramedic, the applicant must hold a certificate of successful course completion of advanced cardiac life support from the American Heart Association or its equivalent as defined by department rule.

The EMT/paramedic certification examination must be offered monthly. Individuals achieving a passing score on the certification examination may be issued a temporary certificate with their examination grade report. The Department of Health must issue an original certification within 45 days after the examination. Each EMT certificate and each paramedic certificate will expire automatically and may be renewed if the holder meets the qualifications for renewal as established by the Department of Health.

Under s. 401.411, F.S., the Department of Health may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any licensee, certificateholder or other person operating under part III, ch. 401, F.S., for specified grounds. Such grounds include: the violation of any rule of the Department of Health or any provision of part III, ch. 401, F.S.; being found guilty of, or pleading nolo contendere to, regardless of adjudication in any jurisdiction, a crime that relates to practice as an EMT or paramedic, or to practice in any other occupation, when operating under part III, ch. 401, F.S.; addiction to alcohol or any controlled substance; the conviction in any court in any state or in any federal court of a felony, unless the person's civil rights have been restored; unprofessional conduct; and the failure to report to the Department of Health any person known to be in violation of the part.

The Department of Health requests EMT/paramedic applicants to disclose any criminal convictions on the certification application. The department has adopted an administrative rule that provides that an applicant for certification or recertification as an EMT or paramedic who has been convicted of a felony and has complied with the requirements of ch. 940, F.S., and provides documentation of restoration of his or her civil rights shall be certified if the applicant otherwise meets the certification or recertification requirements and no other basis for denial exists.¹

Section 401.23, F.S., provides definitions. "Advanced life support" is defined to mean treatment of life-threatening medical emergencies through the use of specified techniques by a qualified person, pursuant to Department of Health rules. "Basic life support" is defined to mean treatment of medical emergencies by a qualified person through the use of specified techniques and other techniques described in the Emergency Medical Technician Basic Training Course Curriculum of the United States Department of Transportation. "Basic life support" also includes other techniques that have been approved and are performed under conditions specified by rules of the Department of Health. The rule further provides that the department must consider an applicant for certification or recertification as an EMT or paramedic with a felony conviction whose civil rights have not been restored, upon the applicant's submission of the following documentation: copy of the judgment of the felony conviction; all probation documents, plus the name and telephone number of the probation officer; and information regarding any additional convictions.

¹ See "Convicted Felons Applying for EMT or Paramedic Certification or Recertification," Rule 64 E-2.033, Florida Administrative Code.

Background Screening of Health Care Facility Staff

Chapter 98-171, Laws of Florida, initiated background screening requirements for applicants for licensure, certification, and registration of health care facilities and health care services. As a result, effective July 1, 1998, the owners, employees, administrators and financial officers of health care entities were required to submit to criminal history checks by law enforcement agencies and screening through the central abuse registry of the Department of Children and Family Services. The categories of facility types or service providers whose licensure applicants are subject to background screening requirements are: abortion clinics; adult day care centers; adult family-care homes; ambulatory surgical centers; assisted living facilities; birth centers; clinical laboratories; crisis stabilization units; drug-free workplace laboratories; durable medical equipment providers; health care service pools; home health agencies; homemaker, sitter, companion agencies; home medical equipment providers; homes for special services; hospices; hospitals; intermediate care facilities for the developmentally disabled; multiphasic health testing centers; nurse registries; nursing homes; organ procurement organizations, tissue banks, eye banks; prescribed pediatric extended care centers; residential treatment facilities; transitional living facilities; and, utilization review agencies. The Agency for Health Care Administration (AHCA or agency) began implementation on October 1, 1998.

The 1998 legislation gave the Agency for Health Care Administration authority to prohibit licensure, certification, or registration of unsuitable applicants. This authority has as its objective the prevention of harm to patients, residents, and recipients of health care services and products by undesirable applicants for licensure.

Upon application for licensure as one of the specified health care facilities or service providers, managing employees must submit to a level 2 background screening by AHCA. Also subject to screening are members of the board of directors, officers, and persons owning 5 percent or more of the entity, if AHCA has probable cause to believe that any such individual has been convicted of an offense contemplated by the level 2 screening criteria.

Background screening must conform to level 2 employment screening, under chapter 435, F.S., which includes screening through the FBI's databases and state criminal records checks. The screening requirements may be waived if an applicant provides proof of such screening within the previous 5 years in conjunction with any other state health care licensure, certification, or registration requirements.

An applicant entity subject to level 2 screening must submit to AHCA, along with the application for initial or renewal licensure: (1) a description and explanation of any exclusions, permanent suspensions, or terminations from the Medicare or Medicaid programs or submit proof of compliance with Medicare or Medicaid program ownership and control-interest disclosure requirements; and (2) for a member of its board of directors, its officers, or any individual owning 5 percent or more of the applicant entity, a description and explanation of any conviction of an offense that would preclude employment under the level 2 screening standards of chapter 435, F.S. An exception is provided for a director of a not-for-profit organization when the director serves solely in a voluntary capacity, does not regularly participate in the day-to-day operational decisions of the organization, receives no remuneration for services on the board of

directors, has no financial interest, and has no family member with a financial interest in the organization, if the director and the organization include a statement in the licensure application affirming such a relationship.

The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, F.S., on all employees hired on or after October 1, 1998, who perform personal services for residents. Level 1 screening is less stringent than level 2 screening.

AHCA is authorized to issue a provisional license to an applicant or a managing employee of the applicant who meets the standards for the state criminal records check, but for whom AHCA has not yet received results from the FBI's criminal records check or to an applicant or managing employee of the applicant who is waiting for a response from AHCA to a request for exemption from disqualification from employment, as provided for under chapter 435, F.S. The agency may grant a license or certify or register an applicant entity after it receives the FBI report, but only if such report confirms that all standards have been met or upon AHCA granting an exemption from disqualification under chapter 435, F.S.

The agency may not grant a license, certify, or register an applicant entity if the applicant, or a managing employee of the applicant, has been found guilty of, or has entered a plea of nolo contendere or guilty to any offense that would preclude employment under the level 2 screening standards of chapter 435, F.S. However, a license may be granted to an applicant or a managing employee of the applicant if AHCA grants an exemption from disqualification. The agency may deny or revoke a license if the applicant or a managing employee of the applicant has falsely represented or omitted a material fact in the application relating to: (1) exclusion, permanent suspension, or termination from the Medicare or Medicaid programs; (2) describing or explaining a board member's, an officer's, or a 5-percent owner's conviction that would preclude employment under level 2 screening standards; or (3) has been excluded, permanently suspended, or terminated from the Medicare or Medicaid program.

Exemption from Employment Disqualification

A prospective employee otherwise disqualified due to a criminal record may apply for exemption from employment disqualification. Facility owners, administrators, financial officers, and personnel are to submit applications to AHCA, while individually licensed health care professionals, including licensed nursing home administrators, must submit requests for exemption from employment disqualification to the Department of Health (DOH).

Eligibility for exemption requires that an individual must not have been adjudicated guilty of a disqualifying felony offense within the previous three years, and, the individual must demonstrate by clear and convincing evidence that she or he will not present a danger if employed within the health care field. Individuals applying for an exemption have the burden of providing sufficient evidence of rehabilitation as to the following criteria: (1) the circumstances surrounding the criminal incident for which an exemption is sought; (2) the time period that has elapsed since the incident; (3) the nature of the harm caused to the victim; (4) a history of the applicant since the incident; and (5) any other evidence or circumstance indicating that the applicant is leading a positive lifestyle.

Due Process

Individuals who request an exemption from employment disqualification and who are denied such an exemption by either DOH or AHCA may request a hearing before an administrative law judge of the Division of Administrative Hearings (DOAH), within the Department of Management Services, as provided under Chapter 120, F.S. An applicant who is unsuccessful at DOAH may appeal the final agency action with the appropriate District Court of Appeal.

III. Effect of Proposed Changes:

The bill authorizes the Department of Health to accept electronically submitted applications for certification or recertification as an EMT or paramedic. The Department of Health may require supplemental materials as part of the electronic application, including an applicant's original signature and documentation verifying eligibility for certification to be submitted in a nonelectronic format. The bill revises the application process to no longer require an applicant to certify *under oath* any addiction to alcohol or any controlled substance or that the applicant is free from any defect or disease impairing the applicant's ability to perform his or her duties.

The bill deletes requirements for the Department of Health to issue a temporary certificate with their examination grade report to applicants who have achieved a passing score on the EMT/paramedic certification examination. The requirement for the department to issue an original certificate to an EMT/paramedic certification applicant within 45 days after the examination is eliminated. The bill eliminates requirements for the Department of Health to adopt a standard state insignia for EMTs and paramedics and requirements for the display of the insignia. Under the bill, any person who wears the EMT/paramedic insignia in Florida must denote the level of certification at which the person is functioning.

An applicant for initial certification after July 1, 2003, must, in conjunction with the application for certification or certification renewal and under procedures adopted by the Department of Health, submit information and a set of fingerprints to the department for a statewide criminal history and a national criminal history check of the applicant. The applicant must submit fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the department for a statewide criminal history check and a national criminal history check.

An applicant for renewed certification who has not previously submitted a set of fingerprints to the Department of Health must submit information required to perform a statewide criminal history check and a set of fingerprints for a national criminal history check as a condition of the initial renewal of his or her certificate after July 1, 2003. For subsequent certification renewals, the department must, by rule, adopt an application form that includes a sworn oath or affirmation attesting to the existence of any criminal convictions, regardless of plea of adjudication, which have occurred since the previous certification.

The Department of Health must notify current certificateholders of the requirement to undergo a criminal history background screening sufficiently in advance of the 2004 biennial expiration for the certificateholder to provide the required information before submission of the renewal certification application. Eligibility for renewal may not be denied by the department for the first

renewal application subsequent to enactment of this bill for delays created in obtaining the criminal history, if the applicant has submitted the required criminal background screening information or affidavit and fees with the renewal certification application.

Applications for certification must be processed within 90 days after receipt of a completed application. If there has been a criminal conviction, the certification application will not be complete until the criminal history and certified copies of all court documents for the prior criminal convictions have been received by the Department of Health. The Department of Health must submit fingerprints and information required for a statewide criminal history check to the Department of Law Enforcement, and the Department of Law Enforcement must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.

If an applicant has undergone a criminal history check for employment or certification as a firefighter in Florida, the Division of State Fire Marshal of the Department of Financial Services must provide the Department of Health with the criminal history information regarding any applicant for EMT or paramedic certification or recertification. Any applicant for initial certification or renewal as an EMT or paramedic who has already submitted fingerprints and information to the Division of State Fire Marshall as part of the requirements for certification or employment as a firefighter within 2 years prior to application and submits an affidavit in a form prescribed by the Department of Health attesting that he or she has been a resident of Florida for the previous 2 years does not have to submit fingerprints or duplicate information to the Department of Health.

Similar to the Level I or Level II criminal history checks for employment or licensure under ch. 435, F.S., the bill enumerates a list of offenses which would disqualify an EMT or paramedic applicant for certification or renewed certification. The Department of Health may grant exemptions to such disqualification based on specified criteria. Notwithstanding the grounds for certification denial outlined in s. 401.411, F.S., relating to EMTs or paramedics, an applicant must not have been found guilty of, regardless of plea or adjudication, any offense prohibited under specified provisions of Florida law or under similar statutes of another jurisdiction. The offenses enumerated are identical to those required for Level I or II criminal history checks for specified persons under ch. 435, F.S.

The following offenses allow the Department of Health to grant an exemption to disqualification from certification or renewed certification: (1) felonies committed more than 3 years prior to the date of disqualification; (2) misdemeanors prohibited under any of the cited criminal offenses; (3) offenses that were felonies when committed but are now misdemeanors; (4) findings of delinquency; or (5) commissions of acts of domestic violence. The Department of Health may grant an exemption to any applicant who demonstrates by clear and convincing evidence that the applicant should not be disqualified from certification or renewed certification. The applicant seeking an exemption has the burden of setting forth sufficient evidence of rehabilitation. Denial of certification or renewed certification may not be removed from, nor may an exemption be granted to, any applicant who is found guilty of, regardless of plea or adjudication, any enumerated felony solely by reason of any pardon, executive clemency, or restoration of civil rights.

Training programs for EMTs or paramedics approved by the Department of Health must at the initiation of the course, advise students of the certification and regulatory requirements in Florida, including, but not limited to, the required criminal history background screening for EMTs or paramedics for initial and renewal certification. The Department of Health must prescribe by rule the required content of this component of the course.

The bill provides an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Health reports that the cost of initial certification or first subsequent renewal certification for EMT and paramedic applicants will increase by \$32 and by \$8 for each successive renewal certification. The Department of Law Enforcement's current fees for criminal background screening are \$8 for a statewide check and \$24 for a national check.

C. Government Sector Impact:

The Department of Health reports it will incur administrative costs to process the documentation relating to the criminal history check required by the bill for EMT or paramedic applicants for certification or recertification. The department has indicated that it will cost \$244,551 for fiscal year 2003-2004 and \$246,609 for fiscal year 2004-2005. The costs include 3 positions and employment of 3 temporary data entry personnel.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
