

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Higher Education Committee

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BILL: SB 1264

INTRODUCER: Senator Wise

SUBJECT: Background Screening

DATE: March 11, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	HE	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

This bill clarifies and defines the term “direct service provider”.

This bill mandates level 2 background screening for the following:

- Direct service providers of vocational rehabilitation services to vulnerable persons, including administrators, financial officers, and directors;
- All Department of Education employees and applicants; and
- Contractor personnel working on location at the Department of Education, local school board facilities, or other facilities where access may be available to confidential data or vulnerable persons.

The Commission of Independent Education (Commission) is required to adopt standards for admissions staff of private postsecondary institutions that the Commission has licensed, and is authorized to refuse and revoke licenses in certain instances relating to prior legal actions. This bill prohibits the solicitation of applicants for admission unless the institution is licensed by the Commission.

This bill substantially amends sections 413.20, 413.208, 413.407, 744.1083, 1005.02, 1005.22, 1005.31, 1005.38, and creates 413.2105, 1001.12, and 1012.02, of the Florida Statutes.

## II. Present Situation:

### Statutory Definitions

Minors are defined as persons under the age of 18 years old.<sup>1</sup>

The term “vulnerable adult” is defined as a person of at least 18 years old who is unable to provide self-care due to mental, emotional, sensory, chronic physical or developmental disabilities.<sup>2</sup>

### Level 2 Background Screening

Level 2 screening consists of security background screening initiated by fingerprinting, for statewide criminal history records checks through the Florida Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation for particular offenses.<sup>3</sup> These offenses pertain to ones in which the person has been arrested and awaits final disposition, has plead or been found guilty of the charge, or has a record of an adjudication of delinquency which has not been sealed or expunged. Enumerated offenses include:

- Sexual misconduct, including sexual battery;
- Adult abuse and exploitation;
- Manslaughter and murder;
- Assault and battery against a minor;
- Kidnapping;
- Theft and robbery;
- Fraudulent sale of controlled substances; and
- Certain violent crimes, including domestic violence.<sup>4</sup>

Level 2 background screening is currently statutorily required for a variety of individuals, including the following:

- Applicants for certification, and licensees, administrators, and financial officers who provide personal care and services to clients included in the service population of the Agency for Health Care Administration (ss. 381.60225(1) and 408.809(1), F.S.);
- Direct service providers, managers and supervisors of residential facilities of those with developmental disabilities included in the population served by the Agency for Persons with Disabilities (s. 393.0655(1), F.S.);
- Noninstructional school district employees or contractual personnel permitted access on school grounds when students are present, who have direct contact with students or who have access or control of student funds (s. 1012.465(1), F.S.);
- Child care facilities personnel (s. 402.305(2), F.S.);

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<sup>1</sup> s. 1.01, F.S.

<sup>2</sup> s. 415.102(27), F.S.

<sup>3</sup> s. 435.04(1), F.S.

<sup>4</sup> s. 435.04(2), F.S.

- Service provider personnel and owners, directors, and chief financial officers of substance abuse service providers of children and adult clients (s. 347.451(1)(a), F.S.); and
- Division of Blind Services, Department of Education employees and applicants for employment (s. 413.011(7), F.S.)

Statutory exemptions from disqualification, where a disqualifying offense is revealed through screening, are authorized on a discretionary basis for the following:

- Felonies for which at least 3 years have passed since the felon has completed a sentence, supervision, or sanction;
- Misdemeanors for which a sentence, supervision, or sanction is completed;
- Offenses previously felonies that are now misdemeanors; and
- Findings of delinquency.<sup>5</sup>

Exceptions from the exemption are provided, and these are for sexual predators, career offenders (habitual violent felony offenders), and sexual offenders.<sup>6</sup>

### **Commission for Independent Education**

The Commission for Independent Education (Commission), of the Department of Education, is statutorily charged with licensure of nonpublic postsecondary institutions that are under its jurisdiction.<sup>7</sup> Licensure can be granted on the basis of the Commission's full review or under a partial independent review and licensure by means of accreditation.<sup>8</sup> The Commission reports that 376 degree-granting institutions and 557 non-degree issuing institutions are currently under its jurisdiction as licensed entities. Applicants submitted 84 new institutional applications for approval during the 2009-10 fiscal year. Eighty-six Letters of Noncompliance were sent to entities that appeared to be operating a school or college without a license during the 2009-10 fiscal year.<sup>9</sup>

The Attorney General is conducting investigations, regarding allegations of unfair/deceptive practices in the area of recruitment, against the University of Phoenix (Apollo Group), Everest College (Florida Metropolitan University), Argosy University of Florida, Kaplan, Inc. (Kaplan University), Medvance Institute, Inc., The Keiser School (Keiser University), Sanford-Brown College (Sanford-Brown Institute), and Concorde Career Colleges, Inc. All of these entities operate under either a regular license or a license issued by means of accreditation by the Commission.

### **III. Effect of Proposed Changes:**

This bill clarifies and defines the term "direct service provider".

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<sup>5</sup> s. 435.07(1), F.S.

<sup>6</sup> s. 435.07(4), F.S.

<sup>7</sup> s. 1005.21, F.S.

<sup>8</sup> s. 1005.32, F.S., authorizes licensure by means of accreditation, provided that certain other conditions are met. According to the Commission, the Commission has approved 13 accrediting bodies to be considered for those institutions seeking licensure by means of accreditation.

<sup>9</sup> 2009-10 Annual Report, Commission for Independent Education (pgs. 2- 3, 11).

This bill mandates level 2 background screening for the following:

- Direct service providers of vocational rehabilitation services to vulnerable persons (minors and adults with certain disabilities), where providers include administrators, financial officers, and directors;
- Department of Education (Department) employees and applicants; and
- Contractor personnel working on location at the Department of Education, local school board facilities, or other facilities where access may be available to confidential data or vulnerable persons.

Rescreening is required on an every five year basis for direct service providers and contractor personnel, so costs will be borne initially and then pursuant to this timeframe. This bill does not specify that Department employees are subject to the rescreening requirement.

In addition to Level 2 offenses, this bill adds fraud, domestic violence, and felony drug offenses to its list of disqualifying offenses regarding direct service providers and contractor personnel only. This bill also includes the statutory exemption (with the statutory exceptions to the exemption for sexual predators, sexual offenders and career offenders). The Department applicants and employees are subject to a less strict level 2 standard.

Written notice is required if grounds for denial or termination of certification or contract exist based on screenings of direct service providers and contractor personnel. It is unclear whether this will give the person an opportunity to respond.

Although the bill explicitly provides for costs to be borne by the direct service provider or the contractor, it is silent regarding screenings for the Department. However, it is assumed that costs will similarly be borne in this manner.

Potential penalties for violations of level 2 screening requirements for direct service providers and contractor personnel include suspension, termination or revocation of contract.

Actual level 2 background screening is not mandated; however, the Commission of Independent Education (Commission) is required to adopt standards for admissions staff of private postsecondary institutions that are under its jurisdiction, and is authorized to refuse and revoke licenses in certain instances relating to prior legal actions, including civil actions and crimes relating to fraud. This bill prohibits the solicitation of applicants for admission unless the institution is licensed by the Commission. Therefore, those who are license holders may have an advantage in recruitment over those who are not.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Either the entities themselves or individual applicants to the organizations/private companies cited in this bill would incur costs of background screening, and rescreening.

The Florida Department of Law Enforcement (FDLE) indicates the following estimate, noting that it is likely much higher, as reported by the Department of Education for private sector costs associated with screening:

	FY 2011-12	FY 2012-13	FY 2013-14
Recurring (300 x \$43.25)		\$12,975	\$12,975
Non-recurring (3,000 x \$43.25)	\$129,750		

This is based on an estimate of approximately 3,000 requests in the first year, and then 300 for each year thereafter. Each request is \$43.25, with \$24 going into the FDLE Operating Trust Fund and \$19.25 being paid to the FBI for the national check. Costs would increase again in the fifth year, due to the rescreening requirement.

Revocation of a license/contract could prove very costly to the current license holder/contracting entity, and this is fiscally unascertainable.

C. Government Sector Impact:

The Florida Department of Law Enforcement (FDLE), estimates the following revenue associated with approximately 3,000 criminal history records checks on Department of Education current employees, applicants, direct service providers and contractor personnel in the first year, and 300 in years 2 and 3:

	FY 2011-12	FY 2012-13	FY 2013-14
Recurring (300 checks x \$24)		\$7,200	\$7,200
Non-recurring (3,000 x \$24)	\$72,000		

Department of Education employees represent very few of these checks, as the Department has already provided for background checks for all current employees. Due to anticipated budget constraints, the number of new employees is expected to be minimal, and therefore, the cost to background check inconsequential.

Regarding a fiscal impact on FDLE itself, FDLE notes that while this bill alone does not necessitate additional FTE or other resources, in combination with other background screening bills, demand on the FDLE criminal history system could require additional staffing and other resources.

**VI. Technical Deficiencies:**

Line 211: The bill requires employees and applicants for employment of the Department of Education to undergo level 2 background screenings under s. 435.04, F.S. The bill further provides that these individuals are eligible for an exemption from the disqualification, as provided in s. 435.07, F.S. However, the bill authorizes the “division” to grant the exemption. The department should be the authorized entity to grant an exemption.

Lines 218-273: The title of this bill is “background screening”. Language in this section provides guidance for denial or revocation of licensure of private postsecondary institutions by the Commission on Independent Education and has little to do with background screening, other than to briefly reference criminal or civil histories. This may potentially be considered a title defect. Also, a period is missing on Line 273 after the word “prospectively”.

Line 257: Regarding the provision that authorizes the Commission to refuse or revoke an institutional license, an applicant with a specified legal history appears to have been inadvertently included as one of the entities that could jeopardize an institution’s licensure, although the institution has no control over who applies for admission.

Line 259: This bill provides for an institution to be denied, or lose licensure where entities related to the institution have either been involved in certain criminal activity or been party to a civil action. It is unclear whether denial authority applies to any civil action, or just those related to the specific crimes mentioned (for example, the same activity resulting in a fraudulent practices claim both criminally and civilly).

Line 300: This bill requires level 2 screening for contractor personnel who will work at local school board facilities. It is unclear what a local school board facility means.

Line 301: This bill requires level 2 background screening for contractor employees working at certain locations who will have access to confidential data. It is unclear what is meant by “confidential data”.

Line 354: There is a typo here, as “termination” is listed twice.

## **VII. Related Issues:**

FDLE recommends that language be added which requires participation in FDLE’s fingerprint retention program, consistent with other background check requirements for school personnel. When fingerprints are retained, FDLE searches them against incoming arrests and notifies the regulatory agency if the retained fingerprints match an incoming arrest. Participating in this program would eliminate the state criminal history record check at the five year interval as the regulatory agency would receive a notification when a direct service provider was arrested. At the five year date, the Department of Education would request FDLE to submit the fingerprints to the FBI for a national check. Additionally, there would be a potential cost savings to the direct service provider, their employees and contractors for the cost of the fingerprints being taken and the time and travel to get fingerprinted.

## **VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.