

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.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 1992

INTRODUCER: Budget Committee, Children, Families, and Elder Affairs Committee and Senator Storms

SUBJECT: Background Screening

DATE: April 15, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Favorable
2.	Kynoch	Meyer, C.	BC	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill makes a number of changes to background screening requirements, primarily pertaining to individuals who work with Florida’s seniors. Those changes include:

- Exempting, from the definition of “direct service provider;” individuals who are related to the client, and volunteers who assist on an intermittent basis for less than 20 hours of direct, face-to-face contact with a client per month;
- Exempting, from any additional Level 2 background screening requirements, an individual who was background screened pursuant to an Agency for Health Care Administration (AHCA) licensure requirement if they are providing a service within the scope of their licensed practice;
- Allowing the Department of Elderly Affairs (DOEA) to adopt rules to implement a schedule to phase in the background screening of individuals serving as direct service providers on July 1, 2010. The phase in must be completed by July 1, 2012;
- Specifying that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained;

- Removing a provision relating to criminal offenses that was inadvertently applied to the DOEA.
- Revises the list of professionals to include law enforcement officers such that officers are not required to be refingerprinted or rescreened if they are working or volunteering in a capacity that would otherwise require them to be screened; and
- Requires fingerprint vendors to meet certain technology requirements and to take two sets of fingerprints;
- Establishes a July 1, 2013, date for retention of prints for persons screened under ch. 435, F.S.;
- Provides personnel of a qualified entity, as defined in ch. 943, F.S., with the ability to apply for an exemption from disqualification from being employed.
- Establishes a rescreening schedule for individuals required by the AHCA to be screened; and
- Requires the Department of Children and Family Services, the AHCA, the DOEA, the Department of Health, the Agency for Persons with Disabilities, and the Department of Law Enforcement to establish a statewide background screening workgroup, provides duties of the workgroup, and requires a report to the Legislature by November 1, 2011.

This bill has no fiscal impact to the state.

This bill substantially amends the following sections of the Florida Statutes: 409.1757, 430.0402, 435.04, 435.07, and 408.809.

II. Present Situation:

The Florida Legislature in 1995 created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons, including children, the elderly, and the disabled. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

To address these issues, the legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations.¹ The bill provided that a “vulnerable person” includes minors and vulnerable adults as defined in s. 415.102(26), F.S. That section defines “vulnerable adult” as an adult “whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.”²

Primary changes made by the bill included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all Level 1 screening to Level 2 screening. This did not require existing employees to be rescreened until they otherwise come up for rescreening pursuant to existing law;

¹ See Chapter 2010-114, L.O.F.

² *Id.*

- Requiring all fingerprint submissions to be done electronically by August 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under the AHCA, electronic prints were required as of August 1, 2010;
- Requiring certain personnel who deal substantially with vulnerable persons and who are not presently being screened, including persons who volunteer for more than 10 hours a month, to begin Level 2 screening. This includes homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under the DOEA;
- Adding additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening;
- Authorizing agencies to request the retention of fingerprints by the FDLE. The bill also provided for rulemaking and related implementation provisions for retention of fingerprints;
- Providing that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and
- Rewriting all screening provisions for clarity and consistency.³

To implement these new requirements, the DOEA adopted an emergency rule which required that all persons who come into direct contact with individuals receiving services provided through the department, whether as employee or volunteer, must undergo a Level 2 background screening prior to employment or volunteerism.⁴ Level 2 background screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).⁵ The department did not make additional funds available to its service providers for this purpose, and most providers have passed this cost on to their prospective employees and volunteers.

It has been reported that the expansion of Level 2 background screening on volunteers and Area Agency and service provider staff resulting from the 2010 legislation has dramatically impacted these types of service providers. These individuals would include Aging Resource Center staff and Meals on Wheels program volunteers who do not enter a senior's home.

The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a Level 2 background screening. If this trend continues, and the program continues to lose volunteers or is unable to recruit new volunteers, frail, homebound seniors will not receive needed meals and their nutrition will suffer.

- Many service provider agencies have relationships with churches whose volunteers deliver several hundred meals during the holiday season. Under the new background

³ *Id.*

⁴ See Rule 58ER10-1, *F.A.C.*, effective August 1, 2010.

⁵ *Criminal History Record Checks/Background Checks Fact Sheet* January 4, 2011. Available at <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited March 3, 2011).

screening requirements, these churches and civic organizations were unable to continue providing volunteers for holiday meal delivery; and

- Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteer labor. It is feared that programs and activities will be curtailed or lost entirely if the volunteer force is further diminished.

The provisions of the 2010 legislation are also impacting the Home Care for the Elderly (HCE) caregivers. Many HCE caregivers are family members. These family members receive a small monthly stipend of \$106 to help care for a frail, aging family member at home, and many of these caregivers have been providing this care for years. The stipend is used to pay for a number of things, including, but not limited to, incontinence products, nutritional supplements, respite care, etc. The new Level 2 background screening requirement is applicable to these family members/caregivers as well.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 409.1757, F.S., to include law enforcement officers in the list of professionals who are not required to be refingerprinted or rescreened if they are working or volunteering in a capacity that would otherwise require them to be screened.

Section 2 amends s. 430.0402, F.S., to make the following changes related to background screening:

- Exempting, from the definition of “direct service provider;” individuals who are related to the client, and volunteers who assist on an intermittent basis for less than 20 hours of direct, face-to-face contact with a client per month;
- Exempting, from any additional Level 2 background screening requirements, an individual who was background screened pursuant to an Agency for Health Care Administration (AHCA) licensure requirement if they are providing a service within the scope of their licensed practice;
- Allowing the Department of Elder Affairs (DOEA) to adopt rules to implement a schedule to phase in the background screening of individuals serving as direct service providers on July 1, 2010. The phase in must be completed by July 1, 2012;
- Specifying that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained; and
- Removing a provision relating to criminal offenses that was inadvertently applied to the DOEA.

Section 3 amends s. 435.04, F.S., to require fingerprint vendors to meet certain technology requirements and capture two sets of fingerprints. The bill establishes a July 1, 2013, date for retention of prints for persons screened under ch. 435, F.S.

⁶ Meeting with representatives from the Area Agencies on Aging and the Community Care for the Elderly program. November 18, 2010.

Section 4 amends s. 435.07, F.S., to provide personnel of a qualified entity, as defined in ch. 943, F.S., with the ability to apply for an exemption from disqualification from being employed.

Section 5 amends s. 408.809, F.S., to establish a rescreening schedule for individuals required by the Agency for Health Care Administration to be screened.

Section 6 requires the Department of Children and Family Services, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, and the Department of Law Enforcement to establish a statewide background screening workgroup, provides duties of the workgroup, and requires a report to the Legislature by November 1, 2011.

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, Section 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 Article I, Section 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.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24

plus \$6.25 for hard copy fingerprints).⁷ By decreasing the number of persons subject to screening, there will be less of a financial impact on employers and employees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Budget Committee on April 15, 2011:

- Revises the list of professionals to include law enforcement officers such that officers are not required to be refingerprinted or rescreened if they are working or volunteering in a capacity that would otherwise require them to be screened; and
- Requires fingerprint vendors to meet certain technology requirements and to take two sets of fingerprints;
- Establishes a July 1, 2013, date for retention of prints for persons screened under ch. 435, F.S.;
- Provides personnel of a qualified entity, as defined in ch. 943, F.S., with the ability to apply for an exemption from disqualification from being employed.
- Establishes a rescreening schedule for individuals required by the Agency for Health Care Administration to be screened; and
- Requires the Department of Children and Family Services, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, and the Department of Law Enforcement to establish a statewide background screening workgroup, provides duties of the workgroup, and requires a report to the Legislature by November 1, 2011.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁷Criminal History Record Checks / Background Checks Fact Sheet January 4, 2011. Available at: <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>. (Last visited March 3, 2011).