

By the Committees on Budget; and Children, Families, and Elder Affairs

576-04685-11

20111992c1

1                                   A bill to be entitled  
2       An act relating to background screening; amending s.  
3       409.1757, F.S.; adding law enforcement officers who  
4       have a good moral character to the list of  
5       professionals who are not required to be  
6       refingerprinted or rescreened; amending s. 430.0402,  
7       F.S.; including volunteers within the definition of  
8       the term "direct service provider" for purposes of  
9       required background screening; exempting a volunteer  
10      who meets certain criteria and a client's relative or  
11      spouse from the screening requirement; excepting  
12      certain licensed professionals and persons screened as  
13      a licensure requirement from further screening under  
14      certain circumstances; requiring direct service  
15      providers working as of a certain date to be screened  
16      within a specified period; providing a phase-in for  
17      screening direct service providers; requiring that  
18      employers of direct service providers and certain  
19      other individuals be rescreened every 5 years unless  
20      fingerprints are retained electronically by the  
21      Department of Law Enforcement; removing an offense  
22      from the list of disqualifying offenses for purposes  
23      of background screening; amending s. 435.04, F.S.;  
24      requiring vendors who submit fingerprints on behalf of  
25      employers to meet specified criteria; requiring that  
26      fingerprints be retained for any person screened by a  
27      certain date; amending s. 435.07, F.S.; providing that  
28      personnel of a qualified entity as defined in ch. 943,  
29      F.S., may apply for an exemption from screening;

576-04685-11

20111992c1

30 amending s. 408.809, F.S.; eliminating a rule that  
31 requires the Agency for Health Care Administration to  
32 stagger rescreening schedules; providing a rescreening  
33 schedule; requiring the establishment of a statewide  
34 interagency workgroup relating to statewide background  
35 screening procedures and information sharing;  
36 providing for membership; requiring the workgroup to  
37 submit a report to the Legislature by a specified  
38 date; setting forth the topics that, at a minimum, the  
39 workgroup must address in its work plan; providing an  
40 effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Section 409.1757, Florida Statutes, is amended  
45 to read:

46 409.1757 Persons not required to be refingerprinted or  
47 rescreened.—Any provision of law to the contrary  
48 notwithstanding, human resource personnel who have been  
49 fingerprinted or screened pursuant to chapters 393, 394, 397,  
50 402, and this chapter, ~~and~~ teachers who have been fingerprinted  
51 pursuant to chapter 1012, and law enforcement officers who meet  
52 the requirements of s. 943.13, who have not been unemployed for  
53 more than 90 days thereafter, and who under the penalty of  
54 perjury attest to the completion of such fingerprinting or  
55 screening and to compliance with ~~the provisions of~~ this section  
56 and the standards for good moral character as contained in such  
57 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,  
58 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall~~ not be

576-04685-11

20111992c1

59 required to be refingerprinted or rescreened in order to comply  
60 with any caretaker screening or fingerprinting requirements.

61 Section 2. Section 430.0402, Florida Statutes, is amended  
62 to read:

63 430.0402 Screening of direct service providers.—

64 (1) (a) Level 2 background screening pursuant to chapter 435  
65 is required for direct service providers. Background screening  
66 includes employment history checks as provided in s. 435.03(1)  
67 and local criminal records checks through local law enforcement  
68 agencies.

69 (b) For purposes of this section, the term "direct service  
70 provider" means a person 18 years of age or older, including a  
71 volunteer, who, pursuant to a program to provide services to the  
72 elderly, has direct, face-to-face contact with a client while  
73 providing services to the client and ~~or~~ has access to the  
74 client's living areas or to the client's funds or personal  
75 property. The term does not include ~~includes coordinators,~~  
76 managers, and supervisors of residential facilities and  
77 volunteers who assist on an intermittent basis for less than 20  
78 hours of direct, face-to-face contact with a client per month,  
79 individuals who are related by blood to the client, or the  
80 client's spouse.

81 (2) Licensed physicians or, nurses, ~~or~~ other professionals  
82 licensed by the Department of Health, or attorneys in good  
83 standing with The Florida Bar are not subject to background  
84 screening if they are providing a service that is within the  
85 scope of their licensed practice.

86 (3) Individuals qualified for employment by the Agency for  
87 Health Care Administration pursuant to the agency's background

576-04685-11

20111992c1

88 screening standards for licensure or employment contained in s.  
89 408.809 are not subject to subsequent or additional Level 2  
90 screening pursuant to chapter 435, or to the unique screening  
91 requirements of this section, by virtue of their employment as a  
92 direct service provider if they are providing a service that is  
93 within the scope of their licensed practice.

94 (4)~~(3)~~ Refusal on the part of an employer to dismiss a  
95 manager, supervisor, or direct service provider who has been  
96 found to be in noncompliance with standards of this section  
97 shall result in the automatic denial, termination, or revocation  
98 of the license or certification, rate agreement, purchase order,  
99 or contract, in addition to any other remedies authorized by  
100 law.

101 (5) Individuals serving as direct service providers on July  
102 31, 2010, must be screened by July 1, 2012. The department may  
103 adopt rules to establish a schedule to stagger the  
104 implementation of the required screening over a 1-year period,  
105 beginning July 1, 2011, through July 1, 2012.

106 (6) An employer of a direct service provider who previously  
107 qualified for employment or volunteer work under Level 1  
108 screening standards or an individual who is required to be  
109 screened according to the Level 2 screening standards contained  
110 in chapter 435, pursuant to this section, shall be rescreened  
111 every 5 years following the date of his or her last background  
112 screening or exemption, unless such individual's fingerprints  
113 are continuously retained and monitored by the Department of Law  
114 Enforcement in the federal fingerprint retention program  
115 according to the procedures specified in s. 943.05.

116 (7)~~(4)~~ The background screening conducted pursuant to this

576-04685-11

20111992c1

117 section must ensure that, in addition to the disqualifying  
118 offenses listed in s. 435.04, no person subject to the  
119 provisions of this section has an arrest awaiting final  
120 disposition for, has been found guilty of, regardless of  
121 adjudication, or entered a plea of nolo contendere or guilty to,  
122 or has been adjudicated delinquent and the record has not been  
123 sealed or expunged for, any offense prohibited under any of the  
124 following provisions of state law or similar law of another  
125 jurisdiction:

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

127 (a) ~~(b)~~ Section 409.920, relating to Medicaid provider  
128 fraud.

129 (b) ~~(e)~~ Section 409.9201, relating to Medicaid fraud.

130 (c) ~~(d)~~ Section 817.034, relating to fraudulent acts through  
131 mail, wire, radio, electromagnetic, photoelectronic, or  
132 photooptical systems.

133 (d) ~~(e)~~ Section 817.234, relating to false and fraudulent  
134 insurance claims.

135 (e) ~~(f)~~ Section 817.505, relating to patient brokering.

136 (f) ~~(g)~~ Section 817.568, relating to criminal use of  
137 personal identification information.

138 (g) ~~(h)~~ Section 817.60, relating to obtaining a credit card  
139 through fraudulent means.

140 (h) ~~(i)~~ Section 817.61, relating to fraudulent use of credit  
141 cards, if the offense was a felony.

142 (i) ~~(j)~~ Section 831.01, relating to forgery.

143 (j) ~~(k)~~ Section 831.02, relating to uttering forged  
144 instruments.

145 (k) ~~(l)~~ Section 831.07, relating to forging bank bills,

576-04685-11

20111992c1

146 checks, drafts, or promissory notes.

147 ~~(1)(m)~~ Section 831.09, relating to uttering forged bank  
148 bills, checks, drafts, or promissory notes.

149 Section 3. Paragraph (e) is added to subsection (1) of  
150 section 435.04, Florida Statutes, and subsection (4) is added to  
151 that section, to read:

152 435.04 Level 2 screening standards.—

153 (1)

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

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

158 2. Have the ability to communicate electronically with the  
159 state agency accepting screening results from the Department of  
160 Law Enforcement; and

161 3. Capture two sets of fingerprint images from each  
162 individual screened. If the first set of prints are deemed  
163 illegible as determined by the Department of Law Enforcement or  
164 the Federal Bureau of Investigation, the vendor shall submit the  
165 second set of prints after being so notified by the agency  
166 requiring the screening.

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

170 Section 4. Subsection (6) is added to section 435.07,  
171 Florida Statutes, to read:

172 435.07 Exemptions from disqualification.—Unless otherwise  
173 provided by law, the provisions of this section apply to  
174 exemptions from disqualification for disqualifying offenses

576-04685-11

20111992c1

175 revealed pursuant to background screenings required under this  
176 chapter, regardless of whether those disqualifying offenses are  
177 listed in this chapter or other laws.

178 (6) Personnel of a qualified entity as described in s.  
179 943.0542, who are required to be screened pursuant to s. 435.04,  
180 may apply for an exemption pursuant to this chapter.

181 Section 5. Section 408.809, Florida Statutes, is amended to  
182 read:

183 408.809 Background screening; prohibited offenses.—

184 (1) Level 2 background screening pursuant to chapter 435  
185 must be conducted through the agency on each of the following  
186 persons, who are considered employees for the purposes of  
187 conducting screening under chapter 435:

188 (a) The licensee, if an individual.

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

191 (c) The financial officer or similarly titled individual  
192 who is responsible for the financial operation of the licensee  
193 or provider.

194 (d) Any person who is a controlling interest if the agency  
195 has reason to believe that such person has been convicted of any  
196 offense prohibited by s. 435.04. For each controlling interest  
197 who has been convicted of any such offense, the licensee shall  
198 submit to the agency a description and explanation of the  
199 conviction at the time of license application.

200 (e) Any person, as required by authorizing statutes,  
201 seeking employment with a licensee or provider who is expected  
202 to, or whose responsibilities may require him or her to, provide  
203 personal care or services directly to clients or have access to

576-04685-11

20111992c1

204 client funds, personal property, or living areas; and any  
205 person, as required by authorizing statutes, contracting with a  
206 licensee or provider whose responsibilities require him or her  
207 to provide personal care or personal services directly to  
208 clients. Evidence of contractor screening may be retained by the  
209 contractor's employer or the licensee.

210 (2) Every 5 years following his or her licensure,  
211 employment, or entry into a contract in a capacity that under  
212 subsection (1) would require level 2 background screening under  
213 chapter 435, each such person must submit to level 2 background  
214 rescreening as a condition of retaining such license or  
215 continuing in such employment or contractual status. For any  
216 such rescreening, the agency shall request the Department of Law  
217 Enforcement to forward the person's fingerprints to the Federal  
218 Bureau of Investigation for a national criminal history record  
219 check. If the fingerprints of such a person are not retained by  
220 the Department of Law Enforcement under s. 943.05(2)(g), the  
221 person must file a complete set of fingerprints with the agency  
222 and the agency shall forward the fingerprints to the Department  
223 of Law Enforcement for state processing, and the Department of  
224 Law Enforcement shall forward the fingerprints to the Federal  
225 Bureau of Investigation for a national criminal history record  
226 check. The fingerprints may be retained by the Department of Law  
227 Enforcement under s. 943.05(2)(g). The cost of the state and  
228 national criminal history records checks required by level 2  
229 screening may be borne by the licensee or the person  
230 fingerprinted. Proof of compliance with level 2 screening  
231 standards submitted within the previous 5 years to meet any  
232 provider or professional licensure requirements of the agency,



576-04685-11

20111992c1

233 the Department of Health, the Agency for Persons with  
234 Disabilities, the Department of Children and Family Services, or  
235 the Department of Financial Services for an applicant for a  
236 certificate of authority or provisional certificate of authority  
237 to operate a continuing care retirement community under chapter  
238 651 satisfies the requirements of this section if the person  
239 subject to screening has not been unemployed for more than 90  
240 days and such proof is accompanied, under penalty of perjury, by  
241 an affidavit of compliance with the provisions of chapter 435  
242 and this section using forms provided by the agency.

243 (3) All fingerprints must be provided in electronic format.  
244 Screening results shall be reviewed by the agency with respect  
245 to the offenses specified in s. 435.04 and this section, and the  
246 qualifying or disqualifying status of the person named in the  
247 request shall be maintained in a database. The qualifying or  
248 disqualifying status of the person named in the request shall be  
249 posted on a secure website for retrieval by the licensee or  
250 designated agent on the licensee's behalf.

251 (4) In addition to the offenses listed in s. 435.04, all  
252 persons required to undergo background screening pursuant to  
253 this part or authorizing statutes must not have an arrest  
254 awaiting final disposition for, must not have been found guilty  
255 of, regardless of adjudication, or entered a plea of nolo  
256 contendere or guilty to, and must not have been adjudicated  
257 delinquent and the record not have been sealed or expunged for  
258 any of the following offenses or any similar offense of another  
259 jurisdiction:

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

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

576-04685-11

20111992c1

- 262 (c) Section 409.920, relating to Medicaid provider fraud.
- 263 (d) Section 409.9201, relating to Medicaid fraud.
- 264 (e) Section 741.28, relating to domestic violence.
- 265 (f) Section 817.034, relating to fraudulent acts through  
266 mail, wire, radio, electromagnetic, photoelectronic, or  
267 photooptical systems.
- 268 (g) Section 817.234, relating to false and fraudulent  
269 insurance claims.
- 270 (h) Section 817.505, relating to patient brokering.
- 271 (i) Section 817.568, relating to criminal use of personal  
272 identification information.
- 273 (j) Section 817.60, relating to obtaining a credit card  
274 through fraudulent means.
- 275 (k) Section 817.61, relating to fraudulent use of credit  
276 cards, if the offense was a felony.
- 277 (l) Section 831.01, relating to forgery.
- 278 (m) Section 831.02, relating to uttering forged  
279 instruments.
- 280 (n) Section 831.07, relating to forging bank bills, checks,  
281 drafts, or promissory notes.
- 282 (o) Section 831.09, relating to uttering forged bank bills,  
283 checks, drafts, or promissory notes.
- 284 (p) Section 831.30, relating to fraud in obtaining  
285 medicinal drugs.
- 286 (q) Section 831.31, relating to the sale, manufacture,  
287 delivery, or possession with the intent to sell, manufacture, or  
288 deliver any counterfeit controlled substance, if the offense was  
289 a felony.
- 290 (5) A person who serves as a controlling interest of, is

576-04685-11

20111992c1

291 employed by, or contracts with a licensee on July 31, 2010, who  
292 has been screened and qualified according to standards specified  
293 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in  
294 compliance with the following schedule. ~~The agency may adopt~~  
295 ~~rules to establish a schedule to stagger the implementation of~~  
296 ~~the required rescreening over the 5-year period, beginning July~~  
297 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such  
298 person has a disqualifying offense that was not a disqualifying  
299 offense at the time of the last screening, but is a current  
300 disqualifying offense and was committed before the last  
301 screening, he or she may apply for an exemption from the  
302 appropriate licensing agency and, if agreed to by the employer,  
303 may continue to perform his or her duties until the licensing  
304 agency renders a decision on the application for exemption if  
305 the person is eligible to apply for an exemption and the  
306 exemption request is received by the agency within 30 days after  
307 receipt of the rescreening results by the person. The  
308 rescreening schedule shall be:

309 (a) Individuals for whom the last screening was conducted  
310 on or before December 31, 2003, must be rescreened by July 31,  
311 2013.

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

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

318 (6) ~~(5)~~ The costs associated with obtaining the required  
319 screening must be borne by the licensee or the person subject to

576-04685-11

20111992c1

320 screening. Licensees may reimburse persons for these costs. The  
321 Department of Law Enforcement shall charge the agency for  
322 screening pursuant to s. 943.053(3). The agency shall establish  
323 a schedule of fees to cover the costs of screening.

324 (7)~~(6)~~(a) As provided in chapter 435, the agency may grant  
325 an exemption from disqualification to a person who is subject to  
326 this section and who:

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

329 2. Has an active professional license or certification from  
330 the Department of Health but is not providing a service within  
331 the scope of that license or certification.

332 (b) As provided in chapter 435, the appropriate regulatory  
333 board within the Department of Health, or the department itself  
334 if there is no board, may grant an exemption from  
335 disqualification to a person who is subject to this section and  
336 who has received a professional license or certification from  
337 the Department of Health or a regulatory board within that  
338 department and that person is providing a service within the  
339 scope of his or her licensed or certified practice.

340 (8)~~(7)~~ The agency and the Department of Health may adopt  
341 rules pursuant to ss. 120.536(1) and 120.54 to implement this  
342 section, chapter 435, and authorizing statutes requiring  
343 background screening and to implement and adopt criteria  
344 relating to retaining fingerprints pursuant to s. 943.05(2).

345 (9)~~(8)~~ There is no unemployment compensation or other  
346 monetary liability on the part of, and no cause of action for  
347 damages arising against, an employer that, upon notice of a  
348 disqualifying offense listed under chapter 435 or this section,

576-04685-11

20111992c1

349 terminates the person against whom the report was issued,  
350 whether or not that person has filed for an exemption with the  
351 Department of Health or the agency.

352 Section 6. The Department of Children and Family Services,  
353 the Agency for Health Care Administration, the Department of  
354 Elderly Affairs, the Department of Health, the Agency for  
355 Persons with Disabilities, and the Department of Law Enforcement  
356 shall create a statewide interagency background screening  
357 workgroup for the purpose of developing a work plan for  
358 implementing a statewide system for streamlining background  
359 screening processes and sharing background screening  
360 information.

361 (1) The interagency workgroup shall be coordinated through  
362 the Agency for Health Care Administration and shall include  
363 representatives from each of the state agencies required to  
364 create the workgroup.

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

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

371 (a) The feasibility of creating a single statewide database  
372 that is accessible by all agencies participating on the  
373 workgroup.

374 (b) The feasibility of collocating or consolidating current  
375 screening processes.

376 (c) Standardized screening criteria.

377 (d) Consistent criminal history information.

576-04685-11

20111992c1

- 378       (e) Centralized exemptions.
- 379       (f) State and national retention of prints.
- 380       (g) National rescreens.
- 381       (h) Responsibility for retained prints and resubmission.
- 382       (i) Access to information.
- 383       (j) Fees.
- 384       (k) Screening turnaround time.
- 385       (l) The need for cooperative agreements among agencies that  
386 may access information.
- 387       (m) Legal considerations and the need for legislative  
388 action necessary for accessing information by participating  
389 agencies.
- 390       (n) Guidelines for how the information shall be accessed,  
391 used, and disseminated.
- 392       (o) The organizational level at which information may be  
393 accessed and shared.
- 394       (p) The specific information to be maintained and shared  
395 through the system.
- 396       (q) Registration of employee information regarding the  
397 employment status of persons screened, including date of hire  
398 and date of separation, to facilitate notifications of arrests  
399 and dispositions to the appropriate provider.
- 400       (r) The costs of implementing the streamlined system to the  
401 state, employers, employees, and volunteers.

402       Section 7. This act shall take effect July 1, 2011.