

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 Children, Families, and Elder Affairs Committee

BILL: SB 320

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

SUBJECT: Background Screening

DATE: January 30, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Preston | Farmer | CF | Pre-meeting |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

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

- Exempting from fingerprinting and screening requirements mental health personnel working in a facility licensed under chapter 395, who work on an intermittent basis for less than 15 hours a week of direct, face-to-face contact with patients, unless those personnel are working in a facility where the primary purpose is the mental health treatment of minors;
- 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;
- 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;

- Revising 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;
- Requiring fingerprint vendors to meet certain technology requirements;
- Establishing a July 1, 2013, date for retention of prints for persons screened under ch. 435, F.S.;
- Providing 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;
- Establishing a rescreening schedule for individuals required by the AHCA to be screened; and
- Requiring the Department of Children and Family Services, the AHCA, the DOEA, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Department of Law Enforcement to establish a statewide background screening workgroup, providing duties of the workgroup, and requiring a report to the Legislature by November 1, 2012.

The bill substantially amends the following sections of the Florida Statutes: 394.4572, 409.1757, 430.0402, 435.04, 435.06, 435.07, 408.809, and 464.203.

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 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 due to be rescreened pursuant to existing law;
- Requiring all fingerprint submissions to be done electronically by August 1, 2012, or earlier, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints were required as of August 1, 2010;

¹ Chapter 2010-114, L.O.F.

² *Id.*

- Requiring certain personnel who dealt substantially with vulnerable persons and who were not presently being screened, including persons who volunteered for more than 10 hours a month, to begin Level 2 screening. This included homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under 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 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, DOEA adopted an emergency rule which required that all persons who came 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 may suffer.

Many service provider agencies have relationships with churches whose volunteers deliver several hundred meals during the holiday season. Under the new background screening requirements, these churches and civic organizations were unable to continue providing volunteers for holiday meal delivery.

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.

³ *Id.*

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

⁵ *Florida Department of Law Enforcement, Criminal History Record Checks/Background Checks Fact Sheet* July 7, 2011. Retrieved January 28, 2012, from <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>.

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:

The bill makes changes to the law related to background screening that include:

- Exempting from fingerprinting and screening requirements mental health personnel working in a facility licensed under chapter 395 who work on an intermittent basis for less than 15 hours a week of direct, face-to-face contact with patients, unless those personnel are working in a facility where the primary purpose is the mental health treatment of minors;
- 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 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;
- 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;
- Revising 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;
- Requiring fingerprint vendors to meet certain technology requirements;
- Establishing a July 1, 2013, date for retention of prints for persons screened under ch. 435, F.S.;
- Providing 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;
- Establishing a rescreening schedule for individuals required by the AHCA to be screened; and
- Requiring the Department of Children and Family Services, the AHCA, the DOEA, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Department of Law Enforcement to establish a statewide background screening workgroup; providing duties of the workgroup; and requiring a report to the Legislature by November 1, 2012.

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

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:

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:

During the 2011 session the House and Senate passed CS/SB 1992 relating to background screening. The bill made a number of changes to background screening requirements, primarily to address issues that arose from changes made in a larger, more comprehensive background screening bill enacted in 2010.⁸

The bill also provided for the creation of a statewide interagency background screening workgroup to address additional issues relating to background screening of persons who

⁷Florida Department of Law Enforcement, *Criminal History Record Checks / Background Checks Fact Sheet July 7, 2011*. Retrieved January 28, 2012, from <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>.

⁸Chapter 2010-114, L.O.F.

work with vulnerable populations.

The Governor subsequently vetoed CS/SB 1992 stating that the bill will allow certain volunteers to work directly with vulnerable Floridians without first submitting to a background screening.⁹ The Governor authorized the creation of the same workgroup contained in the legislation.

The interagency workgroup was required, at a minimum, to address the following:

- The feasibility of creating a single statewide database that is accessible by all agencies participating on the workgroup;
- The feasibility of collocating or consolidating current screening processes;
- Standardized screening criteria;
- Consistent criminal history information;
- State and national retention of prints;
- The need for cooperative agreements among agencies that may access information;
- Legal considerations and the need for legislative action necessary for accessing information by participating agencies;
- Guidelines for how the information shall be accessed, used, and disseminated;
- The organizational level at which information may be accessed and shared; and
- The specific information to be maintained and shared through the system.

The workgroup met formally on September 7, 2011, September 21, 2011, and October 2, 2011, and submitted a report to the Governor on October 14, 2011. Members of the workgroup have continued to meet with interested stakeholders to further address any outstanding concerns.

The sponsor of the bill will introduce a strike everything amendment that includes provisions related to the concerns expressed in the Governor's veto message and incorporates the recommendations of the workgroup.

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.

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

⁹ Governor Rick Scott, CS/CS/SB 1992, Veto Message. June 23, 2011. Retrieved January 28, 2012 from <http://www.flgov.com/wp-content/uploads/2011/06/sb1992-6.23.2011.pdf>.