

1 A bill to be entitled
2 An act relating to background screening; amending s.
3 394.4572, F.S.; providing that mental health personnel
4 working in a facility licensed under ch. 395, F.S.,
5 who work on an intermittent basis for less than 15
6 hours per week of direct, face-to-face contact with
7 patients are exempt from the fingerprinting and
8 screening requirements under certain conditions;
9 providing an exception; amending s. 408.809, F.S.;
10 providing additional conditions for a person to
11 satisfy screening requirements; eliminating a rule
12 that requires the Agency for Health Care
13 Administration to stagger rescreening schedules;
14 providing a rescreening schedule; amending s.
15 409.1757, F.S.; adding law enforcement officers who
16 have a good moral character to the list of
17 professionals who are not required to be
18 refingerprinted or rescreened; amending s. 409.221,
19 F.S.; revising provisions relating to background
20 screening for persons rendering care in the consumer-
21 directed care program; amending s. 430.0402, F.S.;
22 including a person who has access to a client's
23 personal identification information within the
24 definition of the term "direct service provider";
25 exempting certain professionals licensed by the
26 Department of Health, attorneys in good standing,
27 relatives of clients, and volunteers who assist on an
28 intermittent basis for less than 20 hours per month

29 | from level 2 background screening; excepting certain
30 | licensed professionals and persons screened as a
31 | licensure requirement from further screening under
32 | certain circumstances; requiring direct service
33 | providers working as of a certain date to be screened
34 | within a specified period; providing a phase-in for
35 | screening direct service providers; requiring that
36 | employers of direct service providers and certain
37 | other individuals be rescreened every 5 years unless
38 | fingerprints are retained electronically by the
39 | Department of Law Enforcement; removing an offense
40 | from the list of disqualifying offenses for purposes
41 | of background screening; amending s. 435.02, F.S.;
42 | revising and providing definitions relating to
43 | employment screening; amending s. 435.04, F.S.;
44 | requiring vendors who submit fingerprints on behalf of
45 | employers to meet specified criteria; amending s.
46 | 435.06, F.S.; authorizing an employer to hire an
47 | employee to a position that otherwise requires
48 | background screening before the completion of the
49 | screening process for the purpose of training the
50 | employee; prohibiting the employee from having direct
51 | contact with vulnerable persons until the screening
52 | process is complete; creating s. 435.12, F.S.;
53 | creating the Care Provider Background Screening
54 | Clearinghouse under the Agency for Health Care
55 | Administration, in consultation with the Department of
56 | Law Enforcement; providing rulemaking authority;

57 providing for the implementation and operation of the
58 clearinghouse; providing for the results of certain
59 criminal history checks to be shared among specified
60 agencies; providing for retention of fingerprints;
61 providing for the registration of employers; providing
62 an exemption for certain employees who have undergone
63 a criminal history check before the clearinghouse is
64 operational; creating s. 456.0135, F.S.; requiring an
65 application for initial licensure or license renewal
66 in a profession regulated by the Department of Health
67 to include fingerprints submitted by an approved
68 vendor after a specified date; providing procedures
69 and conditions for retention of fingerprints;
70 requiring the applicant to pay the costs of
71 fingerprint processing; amending s. 464.203, F.S.;
72 requiring the Board of Nursing to waive background
73 screening requirements for certain certified nursing
74 assistants; amending s. 943.05, F.S.; providing
75 procedures for qualified entities participating in the
76 Criminal Justice Information Program that elect to
77 participate in the fingerprint retention and search
78 process; providing for the imposition of fees for
79 processing fingerprints; authorizing the Department of
80 Law Enforcement to exclude certain entities from
81 participation for failure to timely remit fingerprint
82 processing fees; amending s. 943.053, F.S.; providing
83 procedures for the submission of fingerprints by
84 private vendors, private entities, and public agencies

85 | for certain criminal history checks; requiring the
 86 | vendor, entity, or agency to enter into an agreement
 87 | with the Department of Law Enforcement specifying
 88 | standards for electronic submission of fingerprints;
 89 | exempting specified criminal justice agencies from the
 90 | requirement for an agreement; providing procedures for
 91 | the vendor, entity, or agency to collect certain fees
 92 | and to remit those fees to the Department of Law
 93 | Enforcement; authorizing the Department of Law
 94 | Enforcement to exclude certain entities from
 95 | participation for failure to timely remit fingerprint
 96 | processing fees; amending s. 943.0585, F.S.; revising
 97 | provisions relating to the court-ordered expunction of
 98 | criminal history records; amending s. 943.059, F.S.;
 99 | revising provisions relating to the court-ordered
 100 | sealing of criminal history records; providing an
 101 | effective date.

102 |
 103 | Be It Enacted by the Legislature of the State of Florida:

104 |
 105 | Section 1. Paragraph (d) is added to subsection (1) of
 106 | section 394.4572, Florida Statutes, to read:

107 | 394.4572 Screening of mental health personnel.-

108 | (1)

109 | (d) Mental health personnel working in a facility licensed
 110 | under chapter 395 who work on an intermittent basis for less
 111 | than 15 hours per week of direct, face-to-face contact with
 112 | patients, and who are not listed on the Department of Law

113 Enforcement Career Offender Search or the Dru Sjodin National
 114 Sex Offender Public Website, are exempt from the fingerprinting
 115 and screening requirements, except that persons working in a
 116 mental health facility where the primary purpose of the facility
 117 is the mental health treatment of minors must be fingerprinted
 118 and meet screening requirements.

119 Section 2. Section 408.809, Florida Statutes, is amended
 120 to read:

121 408.809 Background screening; prohibited offenses.—

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

126 (a) The licensee, if an individual.

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

129 (c) The financial officer or similarly titled individual
 130 who is responsible for the financial operation of the licensee
 131 or provider.

132 (d) Any person who is a controlling interest if the agency
 133 has reason to believe that such person has been convicted of any
 134 offense prohibited by s. 435.04. For each controlling interest
 135 who has been convicted of any such offense, the licensee shall
 136 submit to the agency a description and explanation of the
 137 conviction at the time of license application.

138 (e) Any person, as required by authorizing statutes,
 139 seeking employment with a licensee or provider who is expected
 140 to, or whose responsibilities may require him or her to, provide

141 personal care or services directly to clients or have access to
142 client funds, personal property, or living areas; and any
143 person, as required by authorizing statutes, contracting with a
144 licensee or provider whose responsibilities require him or her
145 to provide personal care or personal services directly to
146 clients. Evidence of contractor screening may be retained by the
147 contractor's employer or the licensee.

148 (2) Every 5 years following his or her licensure,
149 employment, or entry into a contract in a capacity that under
150 subsection (1) would require level 2 background screening under
151 chapter 435, each such person must submit to level 2 background
152 rescreening as a condition of retaining such license or
153 continuing in such employment or contractual status. For any
154 such rescreening, the agency shall request the Department of Law
155 Enforcement to forward the person's fingerprints to the Federal
156 Bureau of Investigation for a national criminal history record
157 check. If the fingerprints of such a person are not retained by
158 the Department of Law Enforcement under s. 943.05(2)(g), the
159 person must file a complete set of fingerprints with the agency
160 and the agency shall forward the fingerprints to the Department
161 of Law Enforcement for state processing, and the Department of
162 Law Enforcement shall forward the fingerprints to the Federal
163 Bureau of Investigation for a national criminal history record
164 check. The fingerprints may be retained by the Department of Law
165 Enforcement under s. 943.05(2)(g). The cost of the state and
166 national criminal history records checks required by level 2
167 screening may be borne by the licensee or the person
168 fingerprinted. Until the person's background screening results

169 are retained in the clearinghouse created under s. 435.12, the
170 agency may accept as satisfying the requirements of this section
171 proof of compliance with level 2 screening standards submitted
172 within the previous 5 years to meet any provider or professional
173 licensure requirements of the agency, the Department of Health,
174 the Department of Elderly Affairs, the Agency for Persons with
175 Disabilities, the Department of Children and Family Services, or
176 the Department of Financial Services for an applicant for a
177 certificate of authority or provisional certificate of authority
178 to operate a continuing care retirement community under chapter
179 651, provided that:

180 (a) The screening standards and disqualifying offenses for
181 the prior screening are equivalent to those specified in s.
182 435.04 and this section;

183 (b) ~~satisfies the requirements of this section if~~ The
184 person subject to screening has not had a break in service from
185 a position that requires level 2 screening ~~been unemployed~~ for
186 more than 90 days; and

187 (c) Such proof is accompanied, under penalty of perjury,
188 by an affidavit of compliance with the provisions of chapter 435
189 and this section using forms provided by the agency.

190 (3) All fingerprints must be provided in electronic
191 format. Screening results shall be reviewed by the agency with
192 respect to the offenses specified in s. 435.04 and this section,
193 and the qualifying or disqualifying status of the person named
194 in the request shall be maintained in a database. The qualifying
195 or disqualifying status of the person named in the request shall
196 be posted on a secure website for retrieval by the licensee or

197 designated agent on the licensee's behalf.

198 (4) In addition to the offenses listed in s. 435.04, all
 199 persons required to undergo background screening pursuant to
 200 this part or authorizing statutes must not have an arrest
 201 awaiting final disposition for, must not have been found guilty
 202 of, regardless of adjudication, or entered a plea of nolo
 203 contendere or guilty to, and must not have been adjudicated
 204 delinquent and the record not have been sealed or expunged for
 205 any of the following offenses or any similar offense of another
 206 jurisdiction:

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

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

209 (c) Section 409.920, relating to Medicaid provider fraud.

210 (d) Section 409.9201, relating to Medicaid fraud.

211 (e) Section 741.28, relating to domestic violence.

212 (f) Section 817.034, relating to fraudulent acts through
 213 mail, wire, radio, electromagnetic, photoelectronic, or
 214 photooptical systems.

215 (g) Section 817.234, relating to false and fraudulent
 216 insurance claims.

217 (h) Section 817.505, relating to patient brokering.

218 (i) Section 817.568, relating to criminal use of personal
 219 identification information.

220 (j) Section 817.60, relating to obtaining a credit card
 221 through fraudulent means.

222 (k) Section 817.61, relating to fraudulent use of credit
 223 cards, if the offense was a felony.

224 (l) Section 831.01, relating to forgery.

225 (m) Section 831.02, relating to uttering forged
 226 instruments.

227 (n) Section 831.07, relating to forging bank bills,
 228 checks, drafts, or promissory notes.

229 (o) Section 831.09, relating to uttering forged bank
 230 bills, checks, drafts, or promissory notes.

231 (p) Section 831.30, relating to fraud in obtaining
 232 medicinal drugs.

233 (q) Section 831.31, relating to the sale, manufacture,
 234 delivery, or possession with the intent to sell, manufacture, or
 235 deliver any counterfeit controlled substance, if the offense was
 236 a felony.

237 (5) A person who serves as a controlling interest of, is
 238 employed by, or contracts with a licensee on July 31, 2010, who
 239 has been screened and qualified according to standards specified
 240 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in
 241 compliance with the following schedule. ~~The agency may adopt~~
 242 ~~rules to establish a schedule to stagger the implementation of~~
 243 ~~the required rescreening over the 5-year period, beginning July~~
 244 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such
 245 person has a disqualifying offense that was not a disqualifying
 246 offense at the time of the last screening, but is a current
 247 disqualifying offense and was committed before the last
 248 screening, he or she may apply for an exemption from the
 249 appropriate licensing agency and, if agreed to by the employer,
 250 may continue to perform his or her duties until the licensing
 251 agency renders a decision on the application for exemption if
 252 the person is eligible to apply for an exemption and the

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253 exemption request is received by the agency within 30 days after
254 receipt of the rescreening results by the person. The
255 rescreening schedule shall be:

256 (a) Individuals for whom the last screening was conducted
257 on or before December 31, 2004, must be rescreened by July 31,
258 2013.

259 (b) Individuals for whom the last screening conducted was
260 between January 1, 2005, and December 31, 2008, must be
261 rescreened by July 31, 2014.

262 (c) Individuals for whom the last screening conducted was
263 between January 1, 2009, through July 31, 2011, must be
264 rescreened by July 31, 2015.

265 (6)-(5) The costs associated with obtaining the required
266 screening must be borne by the licensee or the person subject to
267 screening. Licensees may reimburse persons for these costs. The
268 Department of Law Enforcement shall charge the agency for
269 screening pursuant to s. 943.053(3). The agency shall establish
270 a schedule of fees to cover the costs of screening.

271 (7)-(6)(a) As provided in chapter 435, the agency may grant
272 an exemption from disqualification to a person who is subject to
273 this section and who:

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

276 2. Has an active professional license or certification
277 from the Department of Health but is not providing a service
278 within the scope of that license or certification.

279 (b) As provided in chapter 435, the appropriate regulatory
280 board within the Department of Health, or the department itself

281 | if there is no board, may grant an exemption from
 282 | disqualification to a person who is subject to this section and
 283 | who has received a professional license or certification from
 284 | the Department of Health or a regulatory board within that
 285 | department and that person is providing a service within the
 286 | scope of his or her licensed or certified practice.

287 | ~~(8)~~~~(7)~~ The agency and the Department of Health may adopt
 288 | rules pursuant to ss. 120.536(1) and 120.54 to implement this
 289 | section, chapter 435, and authorizing statutes requiring
 290 | background screening and to implement and adopt criteria
 291 | relating to retaining fingerprints pursuant to s. 943.05(2).

292 | ~~(9)~~~~(8)~~ There is no unemployment compensation or other
 293 | monetary liability on the part of, and no cause of action for
 294 | damages arising against, an employer that, upon notice of a
 295 | disqualifying offense listed under chapter 435 or this section,
 296 | terminates the person against whom the report was issued,
 297 | whether or not that person has filed for an exemption with the
 298 | Department of Health or the agency.

299 | Section 3. Section 409.1757, Florida Statutes, is amended
 300 | to read:

301 | 409.1757 Persons not required to be refingerprinted or
 302 | rescreened.—Any ~~provision of~~ law to the contrary
 303 | notwithstanding, human resource personnel who have been
 304 | fingerprinted or screened pursuant to chapters 393, 394, 397,
 305 | 402, and this chapter, ~~and~~ teachers who have been fingerprinted
 306 | pursuant to chapter 1012, and law enforcement officers who meet
 307 | the requirements of s. 943.13, who have not been unemployed for
 308 | more than 90 days thereafter, and who under the penalty of

309 perjury attest to the completion of such fingerprinting or
310 screening and to compliance with ~~the provisions of~~ this section
311 and the standards for good moral character as contained in such
312 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,
313 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall not be~~
314 required to be refingerprinted or rescreened in order to comply
315 with any caretaker screening or fingerprinting requirements.

316 Section 4. Paragraph (i) of subsection (4) of section
317 409.221, Florida Statutes, is amended to read:

318 409.221 Consumer-directed care program.—

319 (4) CONSUMER-DIRECTED CARE.—

320 (i) Background screening requirements.—All persons who
321 render care under this section must undergo level 2 background
322 screening pursuant to chapter 435 and s. 408.809. The agency
323 shall, as allowable, reimburse consumer-employed caregivers for
324 the cost of conducting background screening as required by this
325 section. For purposes of this section, a person who has
326 undergone screening, who is qualified for employment under this
327 section and applicable rule, and who has not been unemployed for
328 more than 90 days following such screening is not required to be
329 rescreened. Such person must attest under penalty of perjury to
330 not having been convicted of a disqualifying offense since
331 completing such screening.

332 Section 5. Section 430.0402, Florida Statutes, is amended
333 to read:

334 430.0402 Screening of direct service providers.—

335 (1) (a) Except as provided in subsection (2), level 2
336 background screening pursuant to chapter 435 is required for

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337 direct service providers. Background screening includes
338 employment history checks as provided in s. 435.03(1) and local
339 criminal records checks through local law enforcement agencies.

340 (b) For purposes of this section, the term "direct service
341 provider" means a person 18 years of age or older who, pursuant
342 to a program to provide services to the elderly, has direct,
343 face-to-face contact with a client while providing services to
344 the client and ~~or~~ has access to the client's living areas, or ~~to~~
345 ~~the client's~~ funds, or personal property, or personal
346 identification information as defined in s. 817.568. The term
347 includes coordinators, managers, and supervisors of residential
348 facilities and volunteers.

349 (2) Level 2 background screening pursuant to chapter 435
350 and this section is not required for the following direct
351 service providers:

352 (a)1. Licensed physicians, nurses, or other professionals
353 licensed by the Department of Health who have been fingerprinted
354 and undergone background screening as part of their licensure;
355 and

356 2. Attorneys in good standing with The Florida Bar; are
357 ~~not subject to background screening~~

358
359 if they are providing a service that is within the scope of
360 their licensed practice.

361 (b) Relatives. For purposes of this section, the term
362 "relative" means an individual who is the father, mother,
363 stepfather, stepmother, son, daughter, brother, sister,
364 grandmother, grandfather, great-grandmother, great-grandfather,

365 grandson, granddaughter, uncle, aunt, first cousin, nephew,
366 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
367 daughter-in-law, brother-in-law, sister-in-law, stepson,
368 stepdaughter, stepbrother, stepsister, half-brother, or half-
369 sister of the client.

370 (c) Volunteers who assist on an intermittent basis for
371 less than 20 hours per month and who are not listed on the
372 Department of Law Enforcement Career Offender Search or the Dru
373 Sjodin National Sex Offender Public Website.

374 1. The program that provides services to the elderly is
375 responsible for verifying that the volunteer is not listed on
376 either database.

377 2. Once the department is participating as a specified
378 agency in the clearinghouse created under s. 435.12, the
379 provider shall forward the volunteer information to the
380 Department of Elderly Affairs if the volunteer is not listed in
381 either database specified in subparagraph 1. The department must
382 then perform a check of the clearinghouse. If a disqualification
383 is identified in the clearinghouse, the volunteer must undergo
384 level 2 background screening pursuant to chapter 435 and this
385 section.

386 (3) Until the department is participating as a specified
387 agency in the clearinghouse created under s. 435.12, the
388 department may not require additional level 2 screening if the
389 individual is qualified for licensure or employment by the
390 Agency for Health Care Administration pursuant to the agency's
391 background screening standards under s. 408.809 and the
392 individual is providing a service that is within the scope of

393 his or her licensed practice or employment.

394 (4)~~(3)~~ Refusal on the part of an employer to dismiss a
395 manager, supervisor, or direct service provider who has been
396 found to be in noncompliance with standards of this section
397 shall result in the automatic denial, termination, or revocation
398 of the license or certification, rate agreement, purchase order,
399 or contract, in addition to any other remedies authorized by
400 law.

401 (5) Individuals serving as direct service providers on
402 July 31, 2011, must be screened by July 1, 2013. The department
403 may adopt rules to establish a schedule to stagger the
404 implementation of the required screening over a 1-year period,
405 beginning July 1, 2012, through July 1, 2013.

406 (6) An employer of a direct service provider who
407 previously qualified for employment or volunteer work under
408 Level 1 screening standards or an individual who is required to
409 be screened according to the level 2 screening standards
410 contained in chapter 435, pursuant to this section, shall be
411 rescreened every 5 years following the date of his or her last
412 background screening or exemption, unless such individual's
413 fingerprints are continuously retained and monitored by the
414 Department of Law Enforcement in the federal fingerprint
415 retention program according to the procedures specified in s.
416 943.05.

417 (7)~~(4)~~ The background screening conducted pursuant to this
418 section must ensure that, in addition to the disqualifying
419 offenses listed in s. 435.04, no person subject to the
420 provisions of this section has an arrest awaiting final

421 disposition for, has been found guilty of, regardless of
422 adjudication, or entered a plea of nolo contendere or guilty to,
423 or has been adjudicated delinquent and the record has not been
424 sealed or expunged for, any offense prohibited under any of the
425 following provisions of state law or similar law of another
426 jurisdiction:

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

428 (a)~~(b)~~ Section 409.920, relating to Medicaid provider
429 fraud.

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

431 (c)~~(d)~~ Section 817.034, relating to fraudulent acts
432 through mail, wire, radio, electromagnetic, photoelectronic, or
433 photooptical systems.

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

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

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

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

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

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

444 (j)~~(k)~~ Section 831.02, relating to uttering forged
445 instruments.

446 (k)~~(l)~~ Section 831.07, relating to forging bank bills,
447 checks, drafts, or promissory notes.

448 (l)~~(m)~~ Section 831.09, relating to uttering forged bank

449 bills, checks, drafts, or promissory notes.

450 Section 6. Section 435.02, Florida Statutes, is amended to
451 read:

452 435.02 Definitions.—For the purposes of this chapter, the
453 term:

454 (1) "Agency" means any state, county, or municipal agency
455 that grants licenses or registration permitting the operation of
456 an employer or is itself an employer or that otherwise
457 facilitates the screening of employees pursuant to this chapter.
458 If there is no state agency or the municipal or county agency
459 chooses not to conduct employment screening, "agency" means the
460 Department of Children and Family Services.

461 (2) "Employee" means any person required by law to be
462 screened pursuant to this chapter, including, but not limited
463 to, persons who are contractors, licensees, or volunteers.

464 (3) "Employer" means any person or entity required by law
465 to conduct screening of employees pursuant to this chapter.

466 (4) "Employment" means any activity or service sought to
467 be performed by an employee which requires the employee to be
468 screened pursuant to this chapter.

469 (5) "Specified agency" means the Department of Health, the
470 Department of Children and Family Services, the Agency for
471 Health Care Administration, the Department of Elderly Affairs,
472 the Department of Juvenile Justice, and the Agency for Persons
473 with Disabilities when these agencies are conducting state and
474 national criminal history background screening on persons who
475 work with children or persons who are elderly or disabled.

476 (6)~~(5)~~ "Vulnerable person" means a minor as defined in s.

477 1.01 or a vulnerable adult as defined in s. 415.102.

478 Section 7. Paragraph (e) is added to subsection (1) of
479 section 435.04, Florida Statutes, to read:

480 435.04 Level 2 screening standards.—

481 (1)

482 (e) Vendors who submit fingerprints on behalf of employers
483 must:

484 1. Meet the requirements of s. 943.053; and

485 2. Have the ability to communicate electronically with the
486 state agency accepting screening results from the Department of
487 Law Enforcement and provide a photograph of the applicant taken
488 at the time the fingerprints are submitted.

489 Section 8. Paragraph (d) is added to subsection (2) of
490 section 435.06, Florida Statutes, to read:

491 435.06 Exclusion from employment.—

492 (2)

493 (d) An employer may hire an employee to a position that
494 requires background screening before the employee completes the
495 screening process for training and orientation purposes.

496 However, the employee may not have direct contact with
497 vulnerable persons until the screening process is completed and
498 the employee demonstrates that he or she exhibits no behaviors
499 that warrant the denial or termination of employment.

500 Section 9. Section 435.12, Florida Statutes, is created to
501 read:

502 435.12 Care Provider Background Screening Clearinghouse.—

503 (1) The Agency for Health Care Administration in
504 consultation with the Department of Law Enforcement shall create

505 a secure web-based system, which shall be known as the "Care
506 Provider Background Screening Clearinghouse" or "clearinghouse,"
507 and which shall be implemented to the full extent practicable no
508 later than September 30, 2013, subject to the specified agencies
509 being funded and equipped to participate in such program. The
510 clearinghouse shall allow the results of criminal history checks
511 provided to the specified agencies for screening of persons
512 qualified as care providers under s. 943.0542 to be shared among
513 the specified agencies when a person has applied to volunteer,
514 be employed, be licensed, or enter into a contract that requires
515 a state and national fingerprint-based criminal history check.
516 The Agency for Health Care Administration and the Department of
517 Law Enforcement may adopt rules to create forms or implement
518 procedures needed to carry out this section.

519 (2) (a) To ensure that the information in the clearinghouse
520 is current, the fingerprints of an employee required to be
521 screened by a specified agency and included in the clearinghouse
522 must be:

523 1. Retained by the Department of Law Enforcement pursuant
524 to s. 943.05(2) (g) and (h) and (3), and the Department of Law
525 Enforcement must report the results of searching those
526 fingerprints against state incoming arrest fingerprint
527 submissions to the Agency for Health Care Administration for
528 inclusion in the clearinghouse.

529 2. Resubmitted for a Federal Bureau of Investigation
530 national criminal history check every 5 years until such time as
531 the fingerprints are retained by the Federal Bureau of
532 Investigation.

533 3. Subject to retention on a 5-year renewal basis with
534 fees collected at the time of initial submission or resubmission
535 of fingerprints.

536 (b) Until such time as the fingerprints are retained at
537 the Federal Bureau of Investigation, an employee with a break in
538 service of more than 90 days from a position that requires
539 screening by a specified agency must submit to a national
540 screening if the person returns to a position that requires
541 screening by a specified agency.

542 (c) An employer of persons subject to screening by a
543 specified agency must register with the clearinghouse and
544 maintain the employment status of all employees within the
545 clearinghouse. Initial employment status and any changes in
546 status must be reported within 10 business days.

547 (3) An employee who has undergone a fingerprint-based
548 criminal history check by a specified agency before the
549 clearinghouse is operational is not required to be checked again
550 solely for the purpose of entry in the clearinghouse. Every
551 employee who is or will become subject to fingerprint-based
552 criminal history checks to be eligible to be licensed, have
553 their license renewed, or meet screening or rescreening
554 requirements by a specified agency once the specified agency
555 participates in the clearinghouse shall be subject to the
556 requirements of this section with respect to entry of records in
557 the clearinghouse and retention of fingerprints for reporting
558 the results of searching against state incoming arrest
559 fingerprint submissions.

560 Section 10. Section 456.0135, Florida Statutes, is created

561 to read:

562 456.0135 General background screening provisions.—

563 (1) An application for initial licensure or license

564 renewal received on or after January 1, 2013, under chapter 458,

565 chapter 459, chapter 460, chapter 461, or chapter 464, or s.

566 465.022 shall include fingerprints pursuant to procedures

567 established by the department through a vendor approved by the

568 Department of Law Enforcement and fees imposed for the initial

569 screening and retention of fingerprints. Fingerprints must be

570 submitted electronically to the Department of Law Enforcement

571 for state processing and the Department of Law Enforcement shall

572 forward the fingerprints to the Federal Bureau of Investigation

573 for national processing. Each board, or the department if there

574 is no board, shall screen the results to determine if an

575 applicant meets licensure requirements. For any subsequent

576 renewal of the applicant's license, the department shall request

577 the Department of Law Enforcement to forward the retained

578 fingerprints of the applicant to the Federal Bureau of

579 Investigation for a national criminal history check.

580 (2) All fingerprints submitted to the Department of Law

581 Enforcement as required under subsection (1) shall be retained

582 by the Department of Law Enforcement as provided under s.

583 943.05(2)(g) and (h) and (3). The department shall notify the

584 Department of Law Enforcement regarding any person whose

585 fingerprints have been retained but who is no longer licensed.

586 (3) The costs of fingerprint processing, including the

587 cost for retaining fingerprints, shall be borne by the applicant

588 subject to the background screening.

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589 Section 11. Subsection (1) of section 464.203, Florida
590 Statutes, is amended to read:

591 464.203 Certified nursing assistants; certification
592 requirement.—

593 (1) The board shall issue a certificate to practice as a
594 certified nursing assistant to any person who demonstrates a
595 minimum competency to read and write and successfully passes the
596 required background screening pursuant to s. 400.215. If the
597 person has successfully passed the required background screening
598 pursuant to s. 400.215 or s. 408.809 within 90 days before
599 applying for a certificate to practice and the person's
600 background screening results are not retained in the
601 clearinghouse created under s. 435.12, the board shall waive the
602 requirement that the applicant successfully pass an additional
603 background screening pursuant to s. 400.215. The person must
604 also meet ~~and meets~~ one of the following requirements:

605 (a) Has successfully completed an approved training
606 program and achieved a minimum score, established by rule of the
607 board, on the nursing assistant competency examination, which
608 consists of a written portion and skills-demonstration portion
609 approved by the board and administered at a site and by
610 personnel approved by the department.

611 (b) Has achieved a minimum score, established by rule of
612 the board, on the nursing assistant competency examination,
613 which consists of a written portion and skills-demonstration
614 portion, approved by the board and administered at a site and by
615 personnel approved by the department and:

616 1. Has a high school diploma, or its equivalent; or

617 2. Is at least 18 years of age.

618 (c) Is currently certified in another state; is listed on
 619 that state's certified nursing assistant registry; and has not
 620 been found to have committed abuse, neglect, or exploitation in
 621 that state.

622 (d) Has completed the curriculum developed by the
 623 Department of Education and achieved a minimum score,
 624 established by rule of the board, on the nursing assistant
 625 competency examination, which consists of a written portion and
 626 skills-demonstration portion, approved by the board and
 627 administered at a site and by personnel approved by the
 628 department.

629 Section 12. Paragraph (h) of subsection (2) of section
 630 943.05, Florida Statutes, is amended to read:

631 943.05 Criminal Justice Information Program; duties; crime
 632 reports.—

633 (2) The program shall:

634 (h) For each agency or qualified entity that officially
 635 requests retention of fingerprints or for which retention is
 636 otherwise required by law, search all arrest fingerprint
 637 submissions received under s. 943.051 against the fingerprints
 638 retained in the statewide automated fingerprint identification
 639 system under paragraph (g).

640 1. Any arrest record that is identified with the retained
 641 fingerprints of a person subject to background screening as
 642 provided in paragraph (g) shall be reported to the appropriate
 643 agency or qualified entity.

644 2. To participate in this search process, agencies or

645 qualified entities must notify each person fingerprinted that
646 his or her fingerprints will be retained, pay an annual fee to
647 the department, and inform the department of any change in the
648 affiliation, employment, or contractual status of each person
649 whose fingerprints are retained under paragraph (g) if such
650 change removes or eliminates the agency or qualified entity's
651 basis or need for receiving reports of any arrest of that
652 person, so that the agency or qualified entity is not obligated
653 to pay the upcoming annual fee for the retention and searching
654 of that person's fingerprints to the department. The department
655 shall adopt a rule setting the amount of the annual fee to be
656 imposed upon each participating agency or qualified entity for
657 performing these searches and establishing the procedures for
658 the retention of fingerprints and the dissemination of search
659 results. The fee may be borne by the agency, qualified entity,
660 or person subject to fingerprint retention or as otherwise
661 provided by law. Consistent with the recognition of criminal
662 justice agencies expressed in s. 943.053(3), these services
663 shall be provided to criminal justice agencies for criminal
664 justice purposes free of charge. Qualified entities that elect
665 to participate in the fingerprint retention and search process
666 are required to timely remit the fee to the department by a
667 payment mechanism approved by the department. If requested by
668 the qualified entity, and with the approval of the department,
669 such fees may be timely remitted to the department by a
670 qualified entity upon receipt of an invoice for such fees from
671 the department. Failure of a qualified entity to pay the amount
672 due on a timely basis or as invoiced by the department may

673 result in the refusal by the department to permit the qualified
674 entity to continue to participate in the fingerprint retention
675 and search process until all fees due and owing are paid.

676 3. Agencies that participate in the fingerprint retention
677 and search process may adopt rules pursuant to ss. 120.536(1)
678 and 120.54 to require employers to keep the agency informed of
679 any change in the affiliation, employment, or contractual status
680 of each person whose fingerprints are retained under paragraph
681 (g) if such change removes or eliminates the agency's basis or
682 need for receiving reports of any arrest of that person, so that
683 the agency is not obligated to pay the upcoming annual fee for
684 the retention and searching of that person's fingerprints to the
685 department.

686 Section 13. Subsection (12) of section 943.053, Florida
687 Statutes, is amended, and subsection (13) is added to that
688 section, to read:

689 943.053 Dissemination of criminal justice information;
690 fees.—

691 (12) Notwithstanding any other provision of law, when a
692 criminal history check or a duty to disclose the absence of a
693 criminal history check is mandated by state law, or when a
694 privilege or benefit is conferred by state law in return for
695 exercising an option of conducting a criminal history check, the
696 referenced criminal history check, whether it is an initial or
697 renewal check, shall include a Florida criminal history provided
698 by the department as set forth in this section. Such Florida
699 criminal history information may be provided by a private vendor
700 only if that information is directly obtained from the

701 department for each request. When a national criminal history
702 check is required or authorized by state law, the national
703 criminal history check shall be submitted by and through the
704 department in the manner established by the department for such
705 checks, unless otherwise required by federal law. The fee for
706 criminal history information as established by state law or, in
707 the case of national checks, by the Federal Government, shall be
708 borne by the person or entity submitting the request, or as
709 provided by law. Criminal history information provided by any
710 other governmental entity of this state or any private entity
711 shall not be substituted for criminal history information
712 provided by the department when the criminal history check or a
713 duty to disclose the absence of a criminal history check is
714 required by statute or is made a condition of a privilege or
715 benefit by law. When fingerprints are required or permitted to
716 be used as a basis for identification in conducting such a
717 criminal history check, the fingerprints must be taken by a law
718 enforcement agency employee, a government agency employee, a
719 qualified electronic fingerprint service provider, or a private
720 employer. Fingerprints taken by the subject of the criminal
721 history check may not be accepted or used for the purpose of
722 identification in conducting the criminal history check.

723 (13) (a) For the department to accept an electronic
724 fingerprint submission from:

725 1. A private vendor engaged in the business of providing
726 electronic fingerprint submission; or

727 2. A private entity or public agency that submits the
728 fingerprints of its own employees, volunteers, contractors,

729 associates, or applicants for the purpose of conducting a
730 required or permitted criminal history background check,
731
732 the vendor, entity, or agency submitting the fingerprints must
733 enter into an agreement with the department that at a minimum
734 obligates the vendor, entity, or agency to comply with certain
735 specified standards to ensure that all persons having direct or
736 indirect responsibility for taking, identifying, and
737 electronically submitting fingerprints are qualified to do so
738 and will ensure the integrity and security of all personal
739 information gathered from the persons whose fingerprints are
740 submitted.

741 (b) Such standards shall include, but need not be limited
742 to, requiring that:

743 1. All persons responsible for taking fingerprints and
744 collecting personal identifying information from the persons
745 being fingerprinted to meet current written state and federal
746 guidelines for identity verification and for recording legible
747 fingerprints;

748 2. The department and the Federal Bureau of
749 Investigation's technical standards for the electronic
750 submission of fingerprints are satisfied;

751 3. The fingerprint images electronically submitted satisfy
752 the department's and the Federal Bureau of Investigation's
753 quality standards; and

754 4. A person may not take his or her own fingerprints for
755 submission to the department.

756 (c) The requirement for entering into an agreement with

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757 the department for this purpose does not apply to criminal
758 justice agencies as defined at s. 943.045(10).

759 (d) The agreement with the department must require the
760 vendor, entity, or agency to collect from the person or entity
761 on whose behalf the fingerprints are submitted the fees
762 prescribed by state and federal law for processing the
763 fingerprints for a criminal history check. The agreement must
764 provide that such fees be timely remitted to the department by a
765 payment mechanism approved by the department. If requested by
766 the vendor, entity, or agency, and with the approval of the
767 department, such fees may be timely remitted to the department
768 by a vendor, entity, or agency upon receipt of an invoice for
769 such fees from the department. Failure of a vendor, entity, or
770 agency to pay the amount due on a timely basis or as invoiced by
771 the department may result in the refusal by the department to
772 accept future fingerprint submissions until all fees due and
773 owing are paid.

774 Section 14. Paragraph (a) of subsection (4) of section
775 943.0585, Florida Statutes, is amended to read:

776 943.0585 Court-ordered expunction of criminal history
777 records.—The courts of this state have jurisdiction over their
778 own procedures, including the maintenance, expunction, and
779 correction of judicial records containing criminal history
780 information to the extent such procedures are not inconsistent
781 with the conditions, responsibilities, and duties established by
782 this section. Any court of competent jurisdiction may order a
783 criminal justice agency to expunge the criminal history record
784 of a minor or an adult who complies with the requirements of

785 this section. The court shall not order a criminal justice
786 agency to expunge a criminal history record until the person
787 seeking to expunge a criminal history record has applied for and
788 received a certificate of eligibility for expunction pursuant to
789 subsection (2). A criminal history record that relates to a
790 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
791 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
792 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
793 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
794 any violation specified as a predicate offense for registration
795 as a sexual predator pursuant to s. 775.21, without regard to
796 whether that offense alone is sufficient to require such
797 registration, or for registration as a sexual offender pursuant
798 to s. 943.0435, may not be expunged, without regard to whether
799 adjudication was withheld, if the defendant was found guilty of
800 or pled guilty or nolo contendere to the offense, or if the
801 defendant, as a minor, was found to have committed, or pled
802 guilty or nolo contendere to committing, the offense as a
803 delinquent act. The court may only order expunction of a
804 criminal history record pertaining to one arrest or one incident
805 of alleged criminal activity, except as provided in this
806 section. The court may, at its sole discretion, order the
807 expunction of a criminal history record pertaining to more than
808 one arrest if the additional arrests directly relate to the
809 original arrest. If the court intends to order the expunction of
810 records pertaining to such additional arrests, such intent must
811 be specified in the order. A criminal justice agency may not
812 expunge any record pertaining to such additional arrests if the

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813 order to expunge does not articulate the intention of the court
814 to expunge a record pertaining to more than one arrest. This
815 section does not prevent the court from ordering the expunction
816 of only a portion of a criminal history record pertaining to one
817 arrest or one incident of alleged criminal activity.

818 Notwithstanding any law to the contrary, a criminal justice
819 agency may comply with laws, court orders, and official requests
820 of other jurisdictions relating to expunction, correction, or
821 confidential handling of criminal history records or information
822 derived therefrom. This section does not confer any right to the
823 expunction of any criminal history record, and any request for
824 expunction of a criminal history record may be denied at the
825 sole discretion of the court.

826 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
827 criminal history record of a minor or an adult which is ordered
828 expunged by a court of competent jurisdiction pursuant to this
829 section must be physically destroyed or obliterated by any
830 criminal justice agency having custody of such record; except
831 that any criminal history record in the custody of the
832 department must be retained in all cases. A criminal history
833 record ordered expunged that is retained by the department is
834 confidential and exempt from the provisions of s. 119.07(1) and
835 s. 24(a), Art. I of the State Constitution and not available to
836 any person or entity except upon order of a court of competent
837 jurisdiction. A criminal justice agency may retain a notation
838 indicating compliance with an order to expunge.

839 (a) The person who is the subject of a criminal history
840 record that is expunged under this section or under other

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841 provisions of law, including former s. 893.14, former s. 901.33,
842 and former s. 943.058, may lawfully deny or fail to acknowledge
843 the arrests covered by the expunged record, except when the
844 subject of the record:

845 1. Is a candidate for employment with a criminal justice
846 agency;

847 2. Is a defendant in a criminal prosecution;

848 3. Concurrently or subsequently petitions for relief under
849 this section or s. 943.059;

850 4. Is a candidate for admission to The Florida Bar;

851 5. Is seeking to be employed or licensed by or to contract
852 with the Department of Children and Family Services, the Agency
853 for Health Care Administration, the Agency for Persons with
854 Disabilities, the Department of Health, the Department of
855 Elderly Affairs, or the Department of Juvenile Justice or to be
856 employed or used by such contractor or licensee in a sensitive
857 position having direct contact with children, the
858 developmentally disabled, ~~the aged~~, or the elderly ~~as provided~~
859 ~~in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.~~
860 ~~402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),~~
861 ~~chapter 916, s. 985.644, chapter 400, or chapter 429;~~

862 6. Is seeking to be employed or licensed by the Department
863 of Education, any district school board, any university
864 laboratory school, any charter school, any private or parochial
865 school, or any local governmental entity that licenses child
866 care facilities; or

867 7. Is seeking authorization from a seaport listed in s.
868 311.09 for employment within or access to one or more of such

869 seaports pursuant to s. 311.12.

870 Section 15. Paragraph (a) of subsection (4) of section
871 943.059, Florida Statutes, is amended to read:

872 943.059 Court-ordered sealing of criminal history
873 records.—The courts of this state shall continue to have
874 jurisdiction over their own procedures, including the
875 maintenance, sealing, and correction of judicial records
876 containing criminal history information to the extent such
877 procedures are not inconsistent with the conditions,
878 responsibilities, and duties established by this section. Any
879 court of competent jurisdiction may order a criminal justice
880 agency to seal the criminal history record of a minor or an
881 adult who complies with the requirements of this section. The
882 court shall not order a criminal justice agency to seal a
883 criminal history record until the person seeking to seal a
884 criminal history record has applied for and received a
885 certificate of eligibility for sealing pursuant to subsection
886 (2). A criminal history record that relates to a violation of s.
887 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
888 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
889 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
890 916.1075, a violation enumerated in s. 907.041, or any violation
891 specified as a predicate offense for registration as a sexual
892 predator pursuant to s. 775.21, without regard to whether that
893 offense alone is sufficient to require such registration, or for
894 registration as a sexual offender pursuant to s. 943.0435, may
895 not be sealed, without regard to whether adjudication was
896 withheld, if the defendant was found guilty of or pled guilty or

897 | nolo contendere to the offense, or if the defendant, as a minor,
898 | was found to have committed or pled guilty or nolo contendere to
899 | committing the offense as a delinquent act. The court may only
900 | order sealing of a criminal history record pertaining to one
901 | arrest or one incident of alleged criminal activity, except as
902 | provided in this section. The court may, at its sole discretion,
903 | order the sealing of a criminal history record pertaining to
904 | more than one arrest if the additional arrests directly relate
905 | to the original arrest. If the court intends to order the
906 | sealing of records pertaining to such additional arrests, such
907 | intent must be specified in the order. A criminal justice agency
908 | may not seal any record pertaining to such additional arrests if
909 | the order to seal does not articulate the intention of the court
910 | to seal records pertaining to more than one arrest. This section
911 | does not prevent the court from ordering the sealing of only a
912 | portion of a criminal history record pertaining to one arrest or
913 | one incident of alleged criminal activity. Notwithstanding any
914 | law to the contrary, a criminal justice agency may comply with
915 | laws, court orders, and official requests of other jurisdictions
916 | relating to sealing, correction, or confidential handling of
917 | criminal history records or information derived therefrom. This
918 | section does not confer any right to the sealing of any criminal
919 | history record, and any request for sealing a criminal history
920 | record may be denied at the sole discretion of the court.

921 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
922 | history record of a minor or an adult which is ordered sealed by
923 | a court of competent jurisdiction pursuant to this section is
924 | confidential and exempt from the provisions of s. 119.07(1) and

925 s. 24(a), Art. I of the State Constitution and is available only
 926 to the person who is the subject of the record, to the subject's
 927 attorney, to criminal justice agencies for their respective
 928 criminal justice purposes, which include conducting a criminal
 929 history background check for approval of firearms purchases or
 930 transfers as authorized by state or federal law, to judges in
 931 the state courts system for the purpose of assisting them in
 932 their case-related decisionmaking responsibilities, as set forth
 933 in s. 943.053(5), or to those entities set forth in
 934 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 935 licensing, access authorization, and employment purposes.

936 (a) The subject of a criminal history record sealed under
 937 this section or under other provisions of law, including former
 938 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 939 deny or fail to acknowledge the arrests covered by the sealed
 940 record, except when the subject of the record:

- 941 1. Is a candidate for employment with a criminal justice
 942 agency;
- 943 2. Is a defendant in a criminal prosecution;
- 944 3. Concurrently or subsequently petitions for relief under
 945 this section or s. 943.0585;
- 946 4. Is a candidate for admission to The Florida Bar;
- 947 5. Is seeking to be employed or licensed by or to contract
 948 with the Department of Children and Family Services, the Agency
 949 for Health Care Administration, the Agency for Persons with
 950 Disabilities, the Department of Health, the Department of
 951 Elderly Affairs, or the Department of Juvenile Justice or to be
 952 employed or used by such contractor or licensee in a sensitive

953 position having direct contact with children, the
 954 developmentally disabled, ~~the aged,~~ or the elderly as provided
 955 in ~~s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.~~
 956 ~~402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.~~
 957 ~~415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;~~

958 6. Is seeking to be employed or licensed by the Department
 959 of Education, any district school board, any university
 960 laboratory school, any charter school, any private or parochial
 961 school, or any local governmental entity that licenses child
 962 care facilities;

963 7. Is attempting to purchase a firearm from a licensed
 964 importer, licensed manufacturer, or licensed dealer and is
 965 subject to a criminal history check under state or federal law;
 966 or

967 8. Is seeking authorization from a Florida seaport
 968 identified in s. 311.09 for employment within or access to one
 969 or more of such seaports pursuant to s. 311.12.

970 Section 16. This act shall take effect upon becoming a
 971 law.