

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1021 Background Screening
SPONSOR(S): Judiciary Committee; Health Innovation Subcommittee; Reed
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	13 Y, 0 N, As CS	Guzzo	Shaw
2) Judiciary Committee	17 Y, 0 N, As CS	Thomas	Havlicak
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions. The Clearinghouse is being implemented by six state agencies and final implementation is required to be completed by October 1, 2013. Designated agencies include the Agency for Health Care Administration (AHCA), the Department of Health, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education.

In anticipation of implementation of the Clearinghouse, the bill:

- Allows the Department of Highway Safety and Motor Vehicles to share drivers' license photographs with AHCA's Background Screening Unit through an interagency agreement;
- Updates the disqualifying offenses in chapter 435, F.S., to include criminal offenses involving theft that are similar to existing disqualifying offenses;
- Specifies demographic information that must be submitted with a request for a criminal background check to verify proper identity as required for a federal check;
- Eliminates the three-year waiting period to apply for an exemption from disqualification for a criminal offense for individuals who have completed all monetary sanctions for a felony disqualifying offense, as long as all sanctions are paid or completed before eligibility for an exemption;
- Requires the photo submitted to the Clearinghouse be taken at the time of screening; and
- Clarifies that employers must perform the registration and initiation of all criminal history background checks made through the Clearinghouse.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees, owners, operators, contractors, and volunteers. Chapter 435, F.S., outlines the screening requirements. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening.¹ Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1² screenings were increased to Level 2³ screenings.
- By July 1, 2012, all fingerprints submitted to the Florida Department of Law Enforcement (FDLE) must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies. Designated agencies include the Agency for Health Care Administration (AHCA), the Department of Health, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education. Once a person's screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees. The Clearinghouse is in the process of being implemented by the designated state agencies and final implementation is required to be completed by October 1, 2013.

Current Background Screening Law

Florida licensure laws require providers licensed by AHCA to conduct Level 2 criminal background screening for:⁴

¹ Chapter 2010-114, L.O.F.

² Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

³ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

⁴ Section 408.809, F.S.

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Current background screening standards in ch. 435, F.S., and s. 408.809, F.S., include various disqualifying offenses pertaining, but not limited to, domestic violence, patient brokering, criminal use of personal identification information, fraudulent use of credit cards, forgery, and possession/sale of illegal drugs.

There are some criminal offenses, not presently listed as disqualifying offenses, that are substantially similar to current disqualifying offenses. For example, s. 408.809(4)(k), F.S., states that fraudulent use of credit cards, if the offense was a felony, as described in s. 817.61, F.S., is a disqualifying offense. Under current background screening standards, obtaining goods by use of a false or expired credit, if the offense was a felony, as described in s. 817.841, F.S., is not considered a disqualifying offense.

The Department of Highway Safety and Motor Vehicles (DHSMV) has the authority to maintain a record of driver license photographs together with other data required for identification and retrieval.⁵ The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies.⁶

Collecting photographs at the time of screening is an important part of implementing the Clearinghouse. The requirement to submit a photograph was added to law during the 2012 Legislative Session. However, instead of being in the Clearinghouse statute of s. 435.12, F.S., the requirement currently exists in the general Level 2 screening standards of s. 435.04(1)(e), F.S.

Designated agencies have the authority to grant exemptions from disqualification.⁷ The exemptions enable people who have been convicted of a disqualifying criminal offense to present information as to why they should not be excluded from working with vulnerable individuals. The information includes specifics of the offense, how long ago the offense occurred, work history, and rehabilitation. Current law states that an applicant who applies for an exemption for a felony offense must have had three years elapse since completion of any sentence or have been lawfully released from confinement, supervision, or sanction for the disqualifying felony.⁸ The three-year waiting period would include even the smallest sanction, such as an unpaid balance of a fine. The requirement is similar for disqualifying misdemeanors, except that there is no specific time frame mandated post completion of being lawfully released from confinement, supervision, or sanction.

The term “sanction” does not currently have a formal definition in chapter 435, F.S. Numerous state agencies are bound by chapter 435, F.S., and the interpretation of the term “sanction” varies widely among the agencies.⁹

Employers of individuals subject to screening by a specified agency are required to register with the Clearinghouse and maintain the employment status of all employees with the Clearinghouse for screenings conducted after the date the state agency begins participation in the Clearinghouse. Initial employment status and any change in status must be reported by the employer within 10 business days.¹⁰ Currently, it is not a requirement that screenings be initiated through the Clearinghouse.

⁵ Section 322.142(4), F.S.

⁶ Section 322.142(4), F.S., provides that DHSMV may provide reproductions of the file or digital record to the Department of Business and Professional Regulation, the Department of State, the Department of Revenue, the Department of Children and Families, the Department of Financial Services, or to district medical examiners.

⁷ Section 435.07, F.S.

⁸ *Id.*

⁹ HB 1021 Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, March 13, 2013 (on file with the Health Innovation Subcommittee).

¹⁰ Section 435.12(2), F.S.

Effect of Proposed Changes

The bill amends s. 322.142, F.S., to authorize DHSMV to make available to AHCA a record of driver license photographs for the purpose of verifying photographs in the Clearinghouse.

The bill amends ss. 408.809 and 435.04, F.S., to provide additional disqualifying offenses. The criminal offenses added include obtaining goods by use of false or expired credit cards, if the offense was a felony (s. 817.481, F.S.), fraudulently obtaining goods or services from a health care provider (s. 817.50, F.S.), racketeering (s. 895.03, F.S.), violating the Florida Money Laundering Act (s. 896.101, F.S.), and criminal offenses that involve attempts, solicitation, and conspiracy to commit an offense (s. 777.04, F.S.) that is one of the listed disqualifying offenses.

The bill relocates language from s. 435.04(1)(e)2, F.S., to s. 435.12(2)(d), F.S. As a result, the submission of a photograph will be a requirement of the Clearinghouse, and not a requirement for all screenings conducted pursuant to chapter 435, F.S. This change will allow the agency to enter into an agreement with the DHSMV, to verify photographs of individuals that have been background screened through the Clearinghouse by comparing the submitted photograph to the driver's license photograph.

The bill amends s. 435.04(1)(e), F.S., to require vendors who submit fingerprints on behalf of employers to submit specific identifying information for the person screened, including the applicant's:

- First, middle, and last name;
- Social security number;
- Date of birth;
- Mailing address;
- Sex; and
- Race.

The bill modifies requirements relating to exemptions from disqualification. Some applicants who are otherwise qualified for an exemption are unaware of outstanding monetary sanctions related to their disqualifying offense until being notified by the agency. In some cases, the applicant's criminal case may have been closed for over a decade but the applicant may still have an outstanding monetary sanction related to the disqualifying offense. Once the outstanding monetary sanction has been paid, the applicant would not be eligible to be granted an exemption from disqualification for period of three years post completion of the sanction.

The bill amends s. 435.07, F.S., to delete the term "sanction", and replace it with "nonmonetary condition imposed by the court" to eliminate differing interpretations of the term sanction. Court ordered nonmonetary sanctions could include various types of community service and rehabilitation courses, such as anger management, theft prevention courses, and drug rehabilitation. Monetary sanctions that are court ordered could include any fee, fine, fund, lien, civil judgment, application, and costs of prosecution, trust or restitution. The bill would eliminate the three-year waiting period for individuals that have completed all monetary sanctions for a felony disqualifying offense. The three-year waiting period would still apply for any felony disqualifying offense where, confinement, supervision, or nonmonetary condition is involved. As a result, well qualified and rehabilitated employees will have an opportunity to gain lawful employment in the healthcare facilities licensed by AHCA.¹¹

Finally, the bill requires screenings to be initiated and registered by the employer through the Clearinghouse prior to referring an employee or potential employee for electronic fingerprint submission. AHCA will be able to obtain information on the initiating facility and allow screening tracking updates to be sent to the initiating facility as the information becomes available.¹² Providers

¹¹ See *supra* at FN 9.

¹² *Id.*

will be able to obtain screening results much faster than screenings not initiated through the Clearinghouse.¹³

B. SECTION DIRECTORY:

Section 1: Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.

Section 2: Amends s. 408.809, F.S., relating to background screening; prohibited offenses.

Section 3: Amends s. 435.04, F.S., relating to Level 2 screening standards.

Section 4: Amends s. 435.07, F.S., relating to exemptions from disqualification.

Section 5: Amends s. 435.12, F.S., relating to the Care Provider Background Screening Clearinghouse.

Section 6: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant.

DHSMV reports that the bill will require minimal programming revisions of which the cost will be absorbed within existing resources.

AHCA reports the bill will not have a fiscal impact on the agency.

The Florida Department of Law Enforcement reports the bill will not have a fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

¹³ *Id.*

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Health Innovation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires vendors who submit fingerprints on behalf of employers to include specific identifying information of the person screened; and
- Provides additional disqualifying offenses for criminal offenses relating to:
 - Racketeering and illegal debts; and
 - The Florida Money Laundering Act.

On April 9, 2013, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provides that the new disqualifying offense of attempting, conspiring, or soliciting to commit a crime is limited to attempting, conspiring, or soliciting to commit a listed disqualifying offense.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.