

**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 Committee on Health Policy

BILL: SB 1112

INTRODUCER: Senator Garcia

SUBJECT: Background Screening

DATE: April 5, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Pre-meeting</b>
2.	_____	_____	TR	_____
3.	_____	_____	CJ	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1112 amends the Florida Statutes to:

- Allow the Department of Highway Safety and Motor Vehicles (DHSMV) to share the digital image and signature of driver licensees with the Agency for Health Care Administration (AHCA) for the purpose of verifying photographs in the Care Provider Background Screening Clearinghouse (CPBSC or Clearinghouse);
- Add certain monetary and fraud-based crimes to the list of crimes which disqualify an applicant subject to a background check from employment with a health care entity;<sup>1</sup>
- Add conspiracy, attempt, and solicitation to the list of crimes which disqualify any applicant subject to a Level 2 background check from employment;<sup>2</sup>
- Authorize an agency head to grant an exemption to disqualification if 3 years have elapsed since the applicant has completed all nonmonetary conditions for a felony offense and the applicant has paid all monetary costs associated with a disqualifying felony or misdemeanor; and
- Require certain employers to register and initiate all criminal history checks through the CPBSC before submitting fingerprints to the Florida Department of Law Enforcement (FDLE).

This bill substantially amends sections 322.142, 408.809, 435.04, 435.07, and 435.12 of the Florida Statutes.

<sup>1</sup> To be disqualified from employment, the applicant may not have the crime on their record as an unresolved arrest, been found guilty of the crime, or pled guilty or no lo contendere to the crime.

<sup>2</sup> Id.

## II. Present Situation:

### Previous Legislation

Florida has one of the largest vulnerable populations in the country with over 25 percent 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 2010, the Legislature substantially amended the requirements and procedures for background screening.<sup>3</sup> 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 1<sup>4</sup> screenings were increased to Level 2<sup>5</sup> screenings.
- By July 1, 2012, all fingerprints submitted to the 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 3 years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

### The Care Provider Background Screening Clearinghouse

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Clearinghouse. The Clearinghouse establishes a single data source for background screening results of persons required to be screened by law<sup>6</sup> for employment in positions that provide services to children, the elderly, and disabled individuals.<sup>7</sup> The Clearinghouse allows the results of criminal history checks to be shared among specified state agencies, thereby reducing duplicative screenings for individuals requiring screening across multiple state agencies. In addition applicants will now have their fingerprints retained for a period of 5 years. The retention of fingerprints will allow the FDLE to report any new arrest/registration information to the specified state agencies. In

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<sup>3</sup> Chapter 2010-114, L.O.F.

<sup>4</sup> 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 the 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.

<sup>5</sup> Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of the 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.

<sup>6</sup> Certain persons are required to be screened by specified agencies. "Specified agency" is defined in s. 435.02(5), F.S., and includes the Department of Health, the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities.

<sup>7</sup> *Clearinghouse FAQ*, found at:

[http://ahca.myflorida.com/MCHQ/Central\\_Services/Background\\_Screening/docs/ClearinghouseFAQ.pdf](http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/docs/ClearinghouseFAQ.pdf), last visited on April 5, 2013.

turn, if during that 5-year period the individual is arrested or added to a registry, a notification will be sent to the employing provider.<sup>8</sup>

The Clearinghouse also collects submitted photographs of applicants who are required to obtain Level 2 background checks. 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.

Employers of individuals subject to screening by a specified agency<sup>9</sup> 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 within 10 business days.<sup>10</sup> Currently, there is no requirement that screenings be initiated through the Clearinghouse.

The Clearinghouse is in the process of being implemented by six designated state agencies and final implementation is required to be completed by October 1, 2013. Currently, the clearinghouse is active and being used by the AHCA and the Department of Health (DOH)<sup>11</sup>

### **Current Background Screening Law**

Florida licensure laws require providers licensed by AHCA to conduct Level 2 criminal background screening for:<sup>12,13</sup>

- 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., the general licensing provisions for health care providers licensed by the AHCA, 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.

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<sup>8</sup> Supra n. 7

<sup>9</sup> Supra n. 6

<sup>10</sup> Section 435.12(2), F.S.

<sup>11</sup> According to a phone conversation with Taylor Haddock, Unit Manager of the AHCA Background Screening Unit, on April 5, 2013.

<sup>12</sup> Section 408.809, F.S.

<sup>13</sup> For a full list of all employees subject to background screening see, *Who is Required to be Screened*, found at: [http://ahca.myflorida.com/MCHQ/Central\\_Services/Background\\_Screening/docs/BGS\\_WhoRequiredToBeScreened.pdf](http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/docs/BGS_WhoRequiredToBeScreened.pdf), last visited on April 5, 2013.

Some offenses that presently would disqualify an applicant from employment are very similar to certain offenses that presently do not disqualify an applicant from employment. For example, s. 408.809(4)(k), F.S., states that felonious fraudulent use of credit cards, as described in s. 817.61, F.S., is a disqualifying offense. However, using an expired or falsified credit card to obtain goods, as described in s. 817.841, F.S., is not a disqualifying offense.

Designated agencies have the authority to grant exemptions from disqualification.<sup>14</sup> 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. This 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 3 years elapse since completion of any sentence or have been lawfully released from confinement, supervision, or sanction for the disqualifying felony.<sup>15</sup> The 3-year waiting period would reset with even the smallest related 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 after being lawfully released from confinement, supervision, or sanction.<sup>16,17</sup>

The DHSMV has the authority to maintain a record of driver license photographs, signature, and other data required for identification and retrieval.<sup>18</sup> The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 322.142, F.S., to allow the DHSMV to share a data file that includes a driver licensee's digital image and signature with the AHCA pursuant to an interagency agreement for the purpose of verifying photographs in the CPBSC.

**Section 2** amends s. 408.809, F.S., to add to the list of crimes which disqualify an applicant subject to a background check from employment with a health care entity. The added crimes include:

- Felonies involving the use of false, counterfeit, or expired credit cards;<sup>20</sup>
- Fraudulently obtaining goods or services from a health care provider;<sup>21</sup>

<sup>14</sup> Section 435.07, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> 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.

<sup>17</sup> SB 1112 Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, March 13, 2013 (on file with the Senate Health Policy Committee).

<sup>18</sup> Section 322.142(4), F.S.

<sup>19</sup> Section 322.142(4), F.S., provides that the Department of Highway Safety and Motor Vehicles 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.

<sup>20</sup> As detailed in s. 817.481, F.S. The crime is a felony if the value of the goods or services obtained in violation of s. 817.481, F.S., is \$300 or more.

<sup>21</sup> As detailed in s. 817.50, F.S.

- Crimes related to racketeering and the collection of illegal debts;<sup>22</sup> and
- Violating the provisions in the Florida Money Laundering Act.<sup>23</sup>

**Section 3** amends s. 435.04, F.S., to require vendors who submit fingerprints on behalf of employers to be able to provide the necessary information required by law, or the AHCA, in order to process the submission and to add attempts, solicitation, and conspiracy to commit any offense prohibited by law<sup>24</sup> to the list of crimes which disqualify any applicant subject to a Level 2 background check from employment.

This section, in conjunction with section 5 of the bill, move the requirement to obtain a photograph of the applicant at the time when fingerprints are submitted from s. 435.04, F.S., regarding Level 2 screening standards, to s. 435.12, F.S., which creates the Clearinghouse.

**Section 4** amends s. 435.07, F.S., to strike the term “sanction” from s. 435.07(a) and (b), F.S., and revise the conditions an agency head must consider when determining whether to grant an exemption to disqualification from employment. Under the bill, the 3-year waiting period for a felony offense applies to nonmonetary conditions imposed by the court and not to the satisfaction of monetary requirements. However, all court-ordered fees, fines, or other monetary requirements relating to a disqualifying felony or misdemeanor must be paid in full as a condition of eligibility for an exemption from disqualification of employment.

**Section 5** amends s. 435.12, F.S., to require employers of persons subject to background screening by specified agencies<sup>25</sup> to register and initiate all criminal history checks through the CPBSC before referring an employee or potential employee for electronic fingerprint submission to the FDLE. The registration submitted must include the employee’s first, middle, and last name, social security number, date of birth, mailing address, sex, and race. this section now includes the requirement of a photograph to be submitted at the time fingerprints are submitted, which is transferred from s. 435.04, F.S.

**Section 6** provides for an effective date of July 1, 2013.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

<sup>22</sup> As detailed in s. 895.03, F.S.

<sup>23</sup> As detailed in s. 896.101, F.S.

<sup>24</sup> As detailed in s. 777.04, F.S.

<sup>25</sup> Supra n. 6

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SB 1112 adds s. 777.04, F.S., regarding attempts, solicitation, and conspiracy, to the list of disqualifying offenses, but does not specify that the attempt, solicitation, or conspiracy must be for a disqualifying crime. As written, an applicant would be disqualified from employment for attempting, soliciting, or conspiring to commit a crime that would not disqualify the applicant on its own.

**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.