

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: CS/SB 674

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Background Screening

DATE: February 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.			TR	
3.			CJ	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 674 strengthens and facilitates the background screening provisions for persons required by law to undergo criminal background screening.

The bill updates the disqualifying offenses to include additional offenses involving fraudulent activity for persons screened as a part of health care facility licensure and adds offenses involving attempting, soliciting, or conspiring to commit a listed disqualifying offense for any person subject to background screening.

The 3-year waiting period after payment of court-ordered monetary amounts in order to be eligible for an exemption from disqualification for certain felony convictions is eliminated.

Screenings handled through the Care Provider Background Screening Clearinghouse (Clearinghouse) must now be initiated and registered through the Clearinghouse prior to referring the employee or potential employee for fingerprinting. Additionally, certain identifying information of the person to be fingerprinted must be submitted on behalf of all persons to be screened.

The bill provides for the submission of an individual taxpayer identification number if a social security number cannot be obtained and allows health care facilities and employers that are required to conduct background screenings to submit an attestation, rather than an affidavit, that they have complied with the screening requirements.

The statutory placement of the requirement for submission of a photograph taken at the time of fingerprinting is relocated so that it is not a requirement for all screenings but only for those handled through the Clearinghouse.

The Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to provide driver's license photographs to the Department of Health (DOH) and the Agency for Health Care Administration (AHCA) pursuant to an interagency agreement with each agency.

II. Present Situation:

Previous Legislation for Background Screening

Florida has one of the largest vulnerable populations in the country with 17.3 percent of the state's population over the age of 65.¹ In addition to the elderly, the state's vulnerable children and disabled adults 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.² 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 1³ screenings were increased to Level 2⁴ 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 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.

¹ The Older Population: 2010 Census Briefs, U.S. Census Bureau, Issued November 2011, p. 9, available at: <http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf> (Last visited Feb. 7, 2014).

² Chapter 2010-114, L.O.F.

³ 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.

⁴ 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.

The Care Provider Background Screening Clearinghouse

In 2012, the Legislature created the Clearinghouse. The Clearinghouse establishes a single data source for background screening results of persons required to be screened by law⁵ for employment in positions that provide services to children, the elderly, and disabled individuals.⁶ 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 now have their fingerprints retained for a period of 5 years. The retention of fingerprints allows the FDLE to report any new arrest/registration information to the specified state agencies. In 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.⁷

The Clearinghouse also collects 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 agency⁸ 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.⁹ 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. Currently, the clearinghouse is active and being used by the AHCA and the Department of Health (DOH).¹⁰

Current Background Screening Law

Florida licensure laws require providers licensed by the AHCA to conduct Level 2 criminal background screening for:^{11,12}

- The licensee;

⁵ 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 Families, 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.

⁶ *Clearinghouse FAQ*, found at: http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/docs/ClearinghouseFAQ.pdf, (Last visited on Feb. 7, 2014).

⁷ *Id.*

⁸ *Supra* n. 5

⁹ Section 435.12(2), F.S.

¹⁰ See the AHCA Clearinghouse website at:

http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/BGS_results.shtml, (Last visited Feb. 7, 2014).

¹¹ Section 408.809, F.S.

¹² 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, (Last visited on Feb. 7, 2014).

- 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.

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.¹³ 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.¹⁴ The 3-year waiting period would not have started for the failure to fully satisfy even the smallest related sanction, such as any 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.^{15,16}

DHSMV Driver's License Photograph Access

The DHSMV has the authority to maintain a record of driver license photographs, signature, and other data required for identification and retrieval.¹⁷ The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies¹⁸ to conduct fraud investigations, protective services, and verification of identity.

¹³ Section 435.07, F.S.

¹⁴ *Id.*

¹⁵ The term "sanction" does not currently have a formal definition in ch. 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.

¹⁶ SB 1112 Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, Mar. 13, 2013 (on file with the Senate Health Policy Committee).

¹⁷ Section 322.142(4), F.S.

¹⁸ 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.

III. Effect of Proposed Changes:

CS/SB 674 strengthens and facilitates the background screening provisions for persons required by law to undergo criminal background screening.

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 DOH and the AHCA pursuant to an interagency agreement with each agency. The images will be used to verify licensed health care practitioners and persons fingerprinted compared with photographs in the Clearinghouse.

Section 2 amends s. 408.806, F.S., relating to the licensure application process applicable to health care facilities licensed by the AHCA, to authorize the application and statement regarding compliance with background screening provisions to be an attestation rather than submitted under oath or as an affidavit. An affidavit requires signature in front of a judge, clerk, or deputy clerk of a court.¹⁹ The bill also authorizes an individual taxpayer identification number to be submitted on the application if a social security number cannot be obtained.

Section 3 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 facility. The added crimes include:

- Attempts, solicitation, and conspiracy to commit an offense listed in s. 408.809(4), F.S.;²⁰
- Felonies involving the use of false or expired credit cards;²¹
- Fraudulently obtaining goods or services from a health care provider;²²
- Crimes related to racketeering and the collection of illegal debts;²³ and
- Violating the provisions in the Florida Money Laundering Act.²⁴

This section of the bill also authorizes the statement regarding compliance with the background screening provisions to be an attestation rather than submitted as an affidavit.

The bill revises the AHCA's requirement for acceptance of screening results from outside agencies and allows federal retained prints to satisfy rescreening requirements. A technical change is made to update the statute regarding acceptance of screening results since the Clearinghouse is operational for some specified agencies and background screening results are now being retained.

Section 4 amends s. 413.208, F.S., and **Section 5** repeals an unnumbered section of a 2012 chapter law relating to the effective date for implementation of the background screening requirements for service providers registering with the Division of Vocational Rehabilitation.

¹⁹ See s. 92.50, F.S.

²⁰ As detailed in s. 777.04, F.S.

²¹ 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.

²² As detailed in s. 817.50, F.S.

²³ As detailed in s. 895.03, F.S.

²⁴ As detailed in s. 896.101, F.S.

Section 6 amends s. 435.04, F.S., to require vendors who submit fingerprints on behalf of employers to provide the first, middle, and last name, social security number, date of birth, mailing address, sex, and race of an applicant. If an applicant cannot legally obtain a social security number, then an individual taxpayer identification number must be provided instead. This section also adds attempts, solicitation, and conspiracy to commit any offense listed in s. 435.04(2), F.S.,²⁵ to the list of crimes which disqualify any applicant subject to a Level 2 background check from employment.

The requirement to obtain a photograph of the applicant at the time the fingerprints are submitted is relocated to s. 435.12, F.S., which is limited to specified agencies participating in the Clearinghouse.

Section 7 amends s. 435.05, F.S., to allow employers that are required to conduct Level 2 background screenings to attest annually or at the time of license renewal to compliance with background screening requirements rather than submit an affidavit of compliance.

Section 8 amends s. 435.07, F.S., to strike the term “sanction” from s. 435.07, 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 9 amends s. 435.12, F.S., to require employers of persons subject to background screening by specified agencies²⁶ to register and initiate all criminal history checks through the Clearinghouse 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. If an applicant cannot legally obtain a social security number, then an individual taxpayer identification number must be provided instead.

The bill authorizes the FDLE to forward notification of arrest to the AHCA once FDLE begins participating in the national retained print arrest notification program which is anticipated to occur later this year. Under this program, arrest prints will be searched against retained prints at the FBI and notification of arrests will be forwarded to the FDLE.

This section now requires 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, 2014.

²⁵ As detailed in s. 777.04, F.S.

²⁶ *Supra* n. 5

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:

Employers may see an indeterminate fiscal savings by submitting certain documents under attestation rather than as an affidavit and a reduction in costs associated with hiring new employees due to an increased pool of eligible applicants as a result of removing the 3-year waiting period after payment of all court-ordered monetary amounts before an applicant is eligible for exemption from disqualification for employment. The administrative cost associated with submitting certain identifying information for employee fingerprinting may facilitate and offset administrative costs of tracking the status of results.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 322.142, 408.806, 408.809, 413.208, 435.04, 435.05, 435.07, and 435.12.

This bill repeals Section 7 of Chapter 2012-73, Laws of Florida.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 11, 2014:

Modifies the background screening provisions to make use of the national retained print arrest notification program when the FDLE begins participation in the program.

- B. **Amendments:**

None.