

By Senator Bean

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1 A bill to be entitled
2 An act relating to background screening; amending s.
3 322.142, F.S.; authorizing the Department of Highway
4 Safety and Motor Vehicles to share reproductions of
5 driver license images with the Department of Health
6 and the Agency for Health Care Administration for
7 specified purposes; amending s. 408.806, F.S.;
8 revising the requirements for licensure; revising a
9 provision requiring an affidavit; amending s. 408.809,
10 F.S.; revising requirements for proof of compliance
11 with level 2 screening standards; revising
12 terminology; adding additional disqualifying offenses
13 to background screening requirements; amending s.
14 413.208, F.S.; providing applicability for background
15 screening requirements for certain registrants;
16 repealing s. 7 of chapter 2012-73, Laws of Florida,
17 relating to background screening requirements;
18 amending s. 435.04, F.S.; revising information to be
19 required for vendors submitting employee fingerprints;
20 adding an additional disqualifying offense to
21 background screening requirements; amending s. 435.05,
22 F.S.; revising a provision requiring the annual
23 submission of an affidavit; amending s. 435.07, F.S.;
24 revising criteria for an exemption from
25 disqualification for an employee under certain
26 conditions; amending s. 435.12, F.S.; requiring
27 simultaneous submission of a photographic image and
28 electronic fingerprints to the Care Provider
29 Background Screening Clearinghouse; requiring an

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30 employer to follow certain criminal history check
31 procedures and include specified information regarding
32 referral and registration of an employee for
33 electronic fingerprinting with the clearinghouse;
34 providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Subsection (4) of section 322.142, Florida
39 Statutes, is amended to read:

40 322.142 Color photographic or digital imaged licenses.—

41 (4) The department may maintain a film negative or print
42 file. The department shall maintain a record of the digital
43 image and signature of the licensees, together with other data
44 required by the department for identification and retrieval.
45 Reproductions from the file or digital record are exempt from
46 the provisions of s. 119.07(1) and may ~~shall~~ be made and issued
47 only:

48 (a) For departmental administrative purposes;

49 (b) For the issuance of duplicate licenses;

50 (c) In response to law enforcement agency requests;

51 (d) To the Department of Business and Professional
52 Regulation and the Department of Health pursuant to an
53 interagency agreement for the purpose of accessing digital
54 images for reproduction of licenses issued by the Department of
55 Business and Professional Regulation or the Department of
56 Health;

57 (e) To the Department of State pursuant to an interagency
58 agreement to facilitate determinations of eligibility of voter

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59 registration applicants and registered voters in accordance with
60 ss. 98.045 and 98.075;

61 (f) To the Department of Revenue pursuant to an interagency
62 agreement for use in establishing paternity and establishing,
63 modifying, or enforcing support obligations in Title IV-D cases;

64 (g) To the Department of Children and Families pursuant to
65 an interagency agreement to conduct protective investigations
66 under part III of chapter 39 and chapter 415;

67 (h) To the Department of Children and Families pursuant to
68 an interagency agreement specifying the number of employees in
69 each of that department's regions to be granted access to the
70 records for use as verification of identity to expedite the
71 determination of eligibility for public assistance and for use
72 in public assistance fraud investigations;

73 (i) To the Agency for Health Care Administration pursuant
74 to an interagency agreement for the purpose of verifying
75 photographs in the Care Provider Background Screening
76 Clearinghouse authorized under s. 435.12;

77 (j)~~(i)~~ To the Department of Financial Services pursuant to
78 an interagency agreement to facilitate the location of owners of
79 unclaimed property, the validation of unclaimed property claims,
80 and the identification of fraudulent or false claims;

81 (k)~~(j)~~ To district medical examiners pursuant to an
82 interagency agreement for the purpose of identifying a deceased
83 individual, determining cause of death, and notifying next of
84 kin of any investigations, including autopsies and other
85 laboratory examinations, authorized in s. 406.11; or

86 (l)~~(k)~~ To the following persons for the purpose of
87 identifying a person as part of the official work of a court:

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- 88 1. A justice or judge of this state;
- 89 2. An employee of the state courts system who works in a
90 position that is designated in writing for access by the Chief
91 Justice of the Supreme Court or a chief judge of a district or
92 circuit court, or by his or her designee; or
- 93 3. A government employee who performs functions on behalf
94 of the state courts system in a position that is designated in
95 writing for access by the Chief Justice or a chief judge, or by
96 his or her designee.

97 Section 2. Subsections (1) and (8) of section 408.806,
98 Florida Statutes, are amended to read:

99 408.806 License application process.—

100 (1) An application for licensure must be made to the agency
101 on forms furnished by the agency, submitted under oath or
102 attestation, and accompanied by the appropriate fee in order to
103 be accepted and considered timely. The application must contain
104 information required by authorizing statutes and applicable
105 rules and must include:

106 (a) The name, address, and social security number, or
107 individual taxpayer identification number if a social security
108 number cannot legally be obtained, of:

- 109 1. The applicant;
- 110 2. The administrator or a similarly titled person who is
111 responsible for the day-to-day operation of the provider;
- 112 3. The financial officer or similarly titled person who is
113 responsible for the financial operation of the licensee or
114 provider; and
- 115 4. Each controlling interest if the applicant or
116 controlling interest is an individual.

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117 (b) The name, address, and federal employer identification
118 number or taxpayer identification number of the applicant and
119 each controlling interest if the applicant or controlling
120 interest is not an individual.

121 (c) The name by which the provider is to be known.

122 (d) The total number of beds or capacity requested, as
123 applicable.

124 (e) The name of the person or persons under whose
125 management or supervision the provider will operate and the name
126 of the administrator, if required.

127 (f) If the applicant offers continuing care agreements as
128 defined in chapter 651, proof shall be furnished that the
129 applicant has obtained a certificate of authority as required
130 for operation under chapter 651.

131 (g) Other information, including satisfactory inspection
132 results, that the agency finds necessary to determine the
133 ability of the applicant to carry out its responsibilities under
134 this part, authorizing statutes, and applicable rules.

135 (h) An attestation affidavit, under penalty of perjury, as
136 required in s. 435.05(3), stating compliance with the provisions
137 of this section and chapter 435.

138 (8) The agency may establish procedures for the electronic
139 notification and submission of required information, including,
140 but not limited to:

141 (a) Licensure applications.

142 (b) Required signatures.

143 (c) Payment of fees.

144 (d) Notarization or attestation of applications.

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146 Requirements for electronic submission of any documents required
147 by this part or authorizing statutes may be established by rule.
148 As an alternative to sending documents as required by
149 authorizing statutes, the agency may provide electronic access
150 to information or documents.

151 Section 3. Subsections (2) and (4) of section 408.809,
152 Florida Statutes, are amended to read:

153 408.809 Background screening; prohibited offenses.—

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

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175 ~~person's background screening results are retained~~ in the
176 clearinghouse created under s. 435.12, the agency may accept as
177 satisfying the requirements of this section proof of compliance
178 with level 2 screening standards submitted within the previous 5
179 years to meet any provider or professional licensure
180 requirements of the agency, the Department of Health, the
181 Department of Elderly Affairs, the Agency for Persons with
182 Disabilities, the Department of Children and Families ~~Family~~
183 ~~Services~~, or the Department of Financial Services for an
184 applicant for a certificate of authority or provisional
185 certificate of authority to operate a continuing care retirement
186 community under chapter 651, provided that:

187 (a) The screening standards and disqualifying offenses for
188 the prior screening are equivalent to those specified in s.
189 435.04 and this section;

190 (b) The person subject to screening has not had a break in
191 service from a position that requires level 2 screening for more
192 than 90 days; and

193 (c) Such proof is accompanied, under penalty of perjury, by
194 an attestation ~~affidavit~~ of compliance with ~~the provisions of~~
195 chapter 435 and this section using forms provided by the agency.

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

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204 jurisdiction:

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

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

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

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

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

210 (f) Section 777.04, relating to attempts, solicitation, and
211 conspiracy to commit an offense listed in this subsection.

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

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

217 (i) Section 817.481, relating to obtaining goods by using a
218 false or expired credit card or other credit device, if the
219 offense was a felony.

220 (j) Section 817.50, relating to fraudulently obtaining
221 goods or services from a health care provider.

222 (k)~~(h)~~ Section 817.505, relating to patient brokering.

223 (l)~~(i)~~ Section 817.568, relating to criminal use of
224 personal identification information.

225 (m)~~(j)~~ Section 817.60, relating to obtaining a credit card
226 through fraudulent means.

227 (n)~~(k)~~ Section 817.61, relating to fraudulent use of credit
228 cards, if the offense was a felony.

229 (o)~~(l)~~ Section 831.01, relating to forgery.

230 (p)~~(m)~~ Section 831.02, relating to uttering forged
231 instruments.

232 (q)~~(n)~~ Section 831.07, relating to forging bank bills,

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233 checks, drafts, or promissory notes.

234 (r)~~(e)~~ Section 831.09, relating to uttering forged bank
235 bills, checks, drafts, or promissory notes.

236 (s)~~(p)~~ Section 831.30, relating to fraud in obtaining
237 medicinal drugs.

238 (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,
239 delivery, or possession with the intent to sell, manufacture, or
240 deliver any counterfeit controlled substance, if the offense was
241 a felony.

242 (u) Section 895.03, relating to racketeering and collection
243 of unlawful debts.

244 (v) Section 896.101, relating to the Florida Money
245 Laundering Act.

246 Section 4. Subsection (5) is added to section 413.208,
247 Florida Statutes, to read:

248 413.208 Service providers; quality assurance; fitness for
249 responsibilities; background screening.—

250 (5) The background screening requirements of this section
251 apply only to registrations entered into or renewed with the
252 division after the Care Provider Background Screening
253 Clearinghouse becomes operational and retains the background
254 screening results in the clearinghouse under s. 435.12.

255 Section 5. Section 7 of chapter 2012-73, Laws of Florida,
256 is repealed.

257 Section 6. Paragraph (e) of subsection (1) of section
258 435.04, Florida Statutes, is amended, present paragraphs (d)
259 through (yy) of subsection (2) are redesignated as paragraphs
260 (e) through (zz), respectively, and a new paragraph (d) is added
261 to that subsection, to read:

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262 435.04 Level 2 screening standards.—

263 (1)

264 (e) Vendors who submit fingerprints on behalf of employers
265 must:

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

267 2. Have the ability to communicate electronically with the
268 state agency accepting screening results from the Department of
269 Law Enforcement and provide the applicant's full first name,
270 middle initial, and last name; social security number; date of
271 birth; mailing address; sex; and race. Individuals, persons,
272 applicants, and controlling interests that cannot legally obtain
273 a social security number must provide an individual taxpayer
274 identification number ~~a photograph of the applicant taken at the~~
275 ~~time the fingerprints are submitted.~~

276 (2) The security background investigations under this
277 section must ensure that no persons subject to the provisions of
278 this section have been arrested for and are awaiting final
279 disposition of, have been found guilty of, regardless of
280 adjudication, or entered a plea of nolo contendere or guilty to,
281 or have been adjudicated delinquent and the record has not been
282 sealed or expunged for, any offense prohibited under any of the
283 following provisions of state law or similar law of another
284 jurisdiction:

285 (d) Section 777.04, relating to attempts, solicitation, and
286 conspiracy to commit an offense listed in this subsection.

287 Section 7. Subsection (3) of section 435.05, Florida
288 Statutes, is amended to read:

289 435.05 Requirements for covered employees and employers.—
290 Except as otherwise provided by law, the following requirements

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291 apply to covered employees and employers:

292 (3) Each employer licensed or registered with an agency
293 must conduct level 2 background screening and must submit to the
294 agency annually or at the time of license renewal, under penalty
295 of perjury, a signed attestation affidavit attesting to
296 compliance with the provisions of this chapter.

297 Section 8. Subsections (1) and (2) of section 435.07,
298 Florida Statutes, are amended to read:

299 435.07 Exemptions from disqualification.—Unless otherwise
300 provided by law, the provisions of this section apply to
301 exemptions from disqualification for disqualifying offenses
302 revealed pursuant to background screenings required under this
303 chapter, regardless of whether those disqualifying offenses are
304 listed in this chapter or other laws.

305 (1) (a) The head of the appropriate agency may grant to any
306 employee otherwise disqualified from employment an exemption
307 from disqualification for:

308 1. (a) Felonies for which at least 3 years have elapsed
309 since the applicant for the exemption has completed or been
310 lawfully released from confinement, supervision, or nonmonetary
311 condition imposed by the court ~~sanction~~ for the disqualifying
312 felony;

313 2. (b) Misdemeanors prohibited under any of the statutes
314 cited in this chapter or under similar statutes of other
315 jurisdictions for which the applicant for the exemption has
316 completed or been lawfully released from confinement,
317 supervision, or nonmonetary condition imposed by the court
318 ~~sanction~~;

319 3. (c) Offenses that were felonies when committed but that

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320 are now misdemeanors and for which the applicant for the
321 exemption has completed or been lawfully released from
322 confinement, supervision, or nonmonetary condition imposed by
323 the court ~~sanction~~; or

324 4.~~(d)~~ Findings of delinquency. For offenses that would be
325 felonies if committed by an adult and the record has not been
326 sealed or expunged, the exemption may not be granted until at
327 least 3 years have elapsed since the applicant for the exemption
328 has completed or been lawfully released from confinement,
329 supervision, or nonmonetary condition imposed by the court
330 ~~sanction~~ for the disqualifying offense.

331 (b) A person applying for an exemption who was ordered to
332 pay any amount for any fee, fine, fund, lien, civil judgment,
333 application, costs of prosecution, trust, or restitution as part
334 of the judgment and sentence for any disqualifying felony or
335 misdemeanor must have paid the court-ordered amount in full
336 before being eligible for the exemption.

337
338 For the purposes of this subsection, the term "felonies" means
339 both felonies prohibited under any of the statutes cited in this
340 chapter or under similar statutes of other jurisdictions.

341 (2) Persons employed, or applicants for employment, by
342 treatment providers who treat adolescents 13 years of age and
343 older who are disqualified from employment solely because of
344 crimes under s. 817.563, s. 893.13, or s. 893.147 may be
345 exempted from disqualification from employment pursuant to this
346 chapter without application of the waiting period in
347 subparagraph (1) (a)1 ~~paragraph (1) (a)~~.

348 Section 9. Paragraph (a) of subsection (2) of section

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349 435.12, Florida Statutes, is amended, and paragraph (d) is added
350 to that subsection, to read:

351 435.12 Care Provider Background Screening Clearinghouse.—

352 (2) (a) To ensure that the information in the clearinghouse
353 is current, the fingerprints of an employee required to be
354 screened by a specified agency and included in the clearinghouse
355 must be:

356 1. Retained by the Department of Law Enforcement pursuant
357 to s. 943.05(2)(g) and (h) and (3), and the Department of Law
358 Enforcement must report the results of searching those
359 fingerprints against state incoming arrest fingerprint
360 submissions to the Agency for Health Care Administration for
361 inclusion in the clearinghouse.

362 2. Resubmitted for a Federal Bureau of Investigation
363 national criminal history check every 5 years until such time as
364 the fingerprints are retained by the Federal Bureau of
365 Investigation.

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

369 4. Submitted with a photograph of the person taken at the
370 time the fingerprints are submitted.

371 (d) An employer must register with and initiate all
372 criminal history checks through the clearinghouse before
373 referring an employee or potential employee for electronic
374 fingerprint submission to the Department of Law Enforcement. The
375 registration must include the employee's full first name, middle
376 initial, and last name; social security number; date of birth;
377 mailing address; sex; and race. Individuals, persons,

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378 applicants, and controlling interests that cannot legally obtain
379 a social security number must provide an individual taxpayer
380 identification number.

381 Section 10. This act shall take effect July 1, 2014.