

By the Committee on Health Policy; and 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.; exempting a person whose fingerprints are  
11      already enrolled in a certain Federal Bureau of  
12      Investigation program from the requirement that such  
13      fingerprints be forwarded to the bureau; requiring  
14      certain persons to submit their fingerprints  
15      electronically; requiring the Department of Law  
16      Enforcement to retain fingerprints when the department  
17      begins participation in a certain program; revising  
18      requirements for proof of compliance with level 2  
19      screening standards; revising terminology; adding  
20      additional disqualifying offenses to background  
21      screening requirements; amending s. 413.208, F.S.;  
22      providing applicability for background screening  
23      requirements for certain registrants; repealing s. 7  
24      of chapter 2012-73, Laws of Florida, relating to  
25      background screening requirements; amending s. 435.04,  
26      F.S.; revising information to be required for vendors  
27      submitting employee fingerprints; adding an additional  
28      disqualifying offense to background screening  
29      requirements; amending s. 435.05, F.S.; revising a

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30 provision requiring the annual submission of an  
31 affidavit; amending s. 435.07, F.S.; revising criteria  
32 for an exemption from disqualification for an employee  
33 under certain conditions; amending s. 435.12, F.S.;  
34 requiring the fingerprints of an employee required to  
35 be screened by a specified agency and included in the  
36 clearinghouse also to be retained in the national  
37 retained print arrest notification program at a  
38 specified time; requiring simultaneous submission of a  
39 photographic image and electronic fingerprints to the  
40 Care Provider Background Screening Clearinghouse;  
41 requiring an employer to follow certain criminal  
42 history check procedures and include specified  
43 information regarding referral and registration of an  
44 employee for electronic fingerprinting with the  
45 clearinghouse; providing an effective date.

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. Subsection (4) of section 322.142, Florida  
50 Statutes, is amended to read:

51 322.142 Color photographic or digital imaged licenses.—

52 (4) The department may maintain a film negative or print  
53 file. The department shall maintain a record of the digital  
54 image and signature of the licensees, together with other data  
55 required by the department for identification and retrieval.  
56 Reproductions from the file or digital record are exempt from  
57 the provisions of s. 119.07(1) and may ~~shall~~ be made and issued  
58 only:

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- 59 (a) For departmental administrative purposes;
- 60 (b) For the issuance of duplicate licenses;
- 61 (c) In response to law enforcement agency requests;
- 62 (d) To the Department of Business and Professional  
63 Regulation and the Department of Health pursuant to an  
64 interagency agreement for the purpose of accessing digital  
65 images for reproduction of licenses issued by the Department of  
66 Business and Professional Regulation or the Department of  
67 Health;
- 68 (e) To the Department of State pursuant to an interagency  
69 agreement to facilitate determinations of eligibility of voter  
70 registration applicants and registered voters in accordance with  
71 ss. 98.045 and 98.075;
- 72 (f) To the Department of Revenue pursuant to an interagency  
73 agreement for use in establishing paternity and establishing,  
74 modifying, or enforcing support obligations in Title IV-D cases;
- 75 (g) To the Department of Children and Families pursuant to  
76 an interagency agreement to conduct protective investigations  
77 under part III of chapter 39 and chapter 415;
- 78 (h) To the Department of Children and Families pursuant to  
79 an interagency agreement specifying the number of employees in  
80 each of that department's regions to be granted access to the  
81 records for use as verification of identity to expedite the  
82 determination of eligibility for public assistance and for use  
83 in public assistance fraud investigations;
- 84 (i) To the Agency for Health Care Administration pursuant  
85 to an interagency agreement for the purpose of verifying  
86 photographs in the Care Provider Background Screening  
87 Clearinghouse authorized under s. 435.12;

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88        ~~(j)(i)~~ To the Department of Financial Services pursuant to  
89 an interagency agreement to facilitate the location of owners of  
90 unclaimed property, the validation of unclaimed property claims,  
91 and the identification of fraudulent or false claims;

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

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

99            1. A justice or judge of this state;

100            2. An employee of the state courts system who works in a  
101 position that is designated in writing for access by the Chief  
102 Justice of the Supreme Court or a chief judge of a district or  
103 circuit court, or by his or her designee; or

104            3. A government employee who performs functions on behalf  
105 of the state courts system in a position that is designated in  
106 writing for access by the Chief Justice or a chief judge, or by  
107 his or her designee.

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

110            408.806 License application process.—

111            (1) An application for licensure must be made to the agency  
112 on forms furnished by the agency, submitted under oath or  
113 attestation, and accompanied by the appropriate fee in order to  
114 be accepted and considered timely. The application must contain  
115 information required by authorizing statutes and applicable  
116 rules and must include:

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117 (a) The name, address, and social security number, or  
118 individual taxpayer identification number if a social security  
119 number cannot legally be obtained, of:

120 1. The applicant;

121 2. The administrator or a similarly titled person who is  
122 responsible for the day-to-day operation of the provider;

123 3. The financial officer or similarly titled person who is  
124 responsible for the financial operation of the licensee or  
125 provider; and

126 4. Each controlling interest if the applicant or  
127 controlling interest is an individual.

128 (b) The name, address, and federal employer identification  
129 number or taxpayer identification number of the applicant and  
130 each controlling interest if the applicant or controlling  
131 interest is not an individual.

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

133 (d) The total number of beds or capacity requested, as  
134 applicable.

135 (e) The name of the person or persons under whose  
136 management or supervision the provider will operate and the name  
137 of the administrator, if required.

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

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

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

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

152 (a) Licensure applications.

153 (b) Required signatures.

154 (c) Payment of fees.

155 (d) Notarization or attestation of applications.

156

157 Requirements for electronic submission of any documents required  
158 by this part or authorizing statutes may be established by rule.  
159 As an alternative to sending documents as required by  
160 authorizing statutes, the agency may provide electronic access  
161 to information or documents.

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

164 408.809 Background screening; prohibited offenses.—

165 (2) Every 5 years following his or her licensure,  
166 employment, or entry into a contract in a capacity that under  
167 subsection (1) would require level 2 background screening under  
168 chapter 435, each such person must submit to level 2 background  
169 rescreening as a condition of retaining such license or  
170 continuing in such employment or contractual status. For any  
171 such rescreening, the agency shall request the Department of Law  
172 Enforcement to forward the person's fingerprints to the Federal  
173 Bureau of Investigation for a national criminal history record  
174 check unless the person's fingerprints are enrolled in the

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175 Federal Bureau of Investigation's national retained print arrest  
176 notification program. If the fingerprints of such a person are  
177 not retained by the Department of Law Enforcement under s.  
178 943.05(2)(g) and (h), the person must submit fingerprints  
179 electronically ~~file a complete set of fingerprints with the~~  
180 ~~agency and the agency shall forward the fingerprints to the~~  
181 Department of Law Enforcement for state processing, and the  
182 Department of Law Enforcement shall forward the fingerprints to  
183 the Federal Bureau of Investigation for a national criminal  
184 history record check. The fingerprints shall ~~may~~ be retained by  
185 the Department of Law Enforcement under s. 943.05(2)(g) and (h)  
186 and enrolled in the national retained print arrest notification  
187 program when the Department of Law Enforcement begins  
188 participation in the program. The cost of the state and national  
189 criminal history records checks required by level 2 screening  
190 may be borne by the licensee or the person fingerprinted. Until  
191 a specified agency is fully implemented ~~the person's background~~  
192 ~~screening results are retained~~ in the clearinghouse created  
193 under s. 435.12, the agency may accept as satisfying the  
194 requirements of this section proof of compliance with level 2  
195 screening standards submitted within the previous 5 years to  
196 meet any provider or professional licensure requirements of the  
197 agency, the Department of Health, the Department of Elderly  
198 Affairs, the Agency for Persons with Disabilities, the  
199 Department of Children and Families ~~Family Services~~, or the  
200 Department of Financial Services for an applicant for a  
201 certificate of authority or provisional certificate of authority  
202 to operate a continuing care retirement community under chapter  
203 651, provided that:

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204 (a) The screening standards and disqualifying offenses for  
205 the prior screening are equivalent to those specified in s.  
206 435.04 and this section;

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

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

213 (4) In addition to the offenses listed in s. 435.04, all  
214 persons required to undergo background screening pursuant to  
215 this part or authorizing statutes must not have an arrest  
216 awaiting final disposition for, must not have been found guilty  
217 of, regardless of adjudication, or entered a plea of nolo  
218 contendere or guilty to, and must not have been adjudicated  
219 delinquent and the record not have been sealed or expunged for  
220 any of the following offenses or any similar offense of another  
221 jurisdiction:

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

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

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

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

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

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

229 (g) ~~(f)~~ Section 817.034, relating to fraudulent acts through  
230 mail, wire, radio, electromagnetic, photoelectronic, or  
231 photooptical systems.

232 (h) ~~(g)~~ Section 817.234, relating to false and fraudulent



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233 insurance claims.

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

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

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

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

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

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

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

247 (p)~~(m)~~ Section 831.02, relating to uttering forged  
248 instruments.

249 (q)~~(n)~~ Section 831.07, relating to forging bank bills,  
250 checks, drafts, or promissory notes.

251 (r)~~(o)~~ Section 831.09, relating to uttering forged bank  
252 bills, checks, drafts, or promissory notes.

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

255 (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,  
256 delivery, or possession with the intent to sell, manufacture, or  
257 deliver any counterfeit controlled substance, if the offense was  
258 a felony.

259 (u) Section 895.03, relating to racketeering and collection  
260 of unlawful debts.

261 (v) Section 896.101, relating to the Florida Money

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262 Laundering Act.

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

265 413.208 Service providers; quality assurance; fitness for  
266 responsibilities; background screening.—

267 (5) The background screening requirements of this section  
268 apply only to registrations entered into or renewed with the  
269 division after the Care Provider Background Screening  
270 Clearinghouse becomes operational and retains the background  
271 screening results in the clearinghouse under s. 435.12.

272 Section 5. Section 7 of chapter 2012-73, Laws of Florida,  
273 is repealed.

274 Section 6. Paragraph (e) of subsection (1) of section  
275 435.04, Florida Statutes, is amended, present paragraphs (d)  
276 through (yy) of subsection (2) are redesignated as paragraphs  
277 (e) through (zz), respectively, and a new paragraph (d) is added  
278 to that subsection, to read:

279 435.04 Level 2 screening standards.—

280 (1)

281 (e) Vendors who submit fingerprints on behalf of employers  
282 must:

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

284 2. Have the ability to communicate electronically with the  
285 state agency accepting screening results from the Department of  
286 Law Enforcement and provide the applicant's full first name,  
287 middle initial, and last name; social security number; date of  
288 birth; mailing address; sex; and race. Individuals, persons,  
289 applicants, and controlling interests that cannot legally obtain  
290 a social security number must provide an individual taxpayer

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291 identification number ~~a photograph of the applicant taken at the~~  
292 ~~time the fingerprints are submitted.~~

293 (2) The security background investigations under this  
294 section must ensure that no persons subject to the provisions of  
295 this section have been arrested for and are awaiting final  
296 disposition of, have been found guilty of, regardless of  
297 adjudication, or entered a plea of nolo contendere or guilty to,  
298 or have been adjudicated delinquent and the record has not been  
299 sealed or expunged for, any offense prohibited under any of the  
300 following provisions of state law or similar law of another  
301 jurisdiction:

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

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

306 435.05 Requirements for covered employees and employers.—  
307 Except as otherwise provided by law, the following requirements  
308 apply to covered employees and employers:

309 (3) Each employer licensed or registered with an agency  
310 must conduct level 2 background screening and must submit to the  
311 agency annually or at the time of license renewal, under penalty  
312 of perjury, a signed attestation ~~affidavit~~ attesting to  
313 compliance with the provisions of this chapter.

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

316 435.07 Exemptions from disqualification.—Unless otherwise  
317 provided by law, the provisions of this section apply to  
318 exemptions from disqualification for disqualifying offenses  
319 revealed pursuant to background screenings required under this

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320 chapter, regardless of whether those disqualifying offenses are  
321 listed in this chapter or other laws.

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

325 1. (a) Felonies for which at least 3 years have elapsed  
326 since the applicant for the exemption has completed or been  
327 lawfully released from confinement, supervision, or nonmonetary  
328 condition imposed by the court ~~sanction~~ for the disqualifying  
329 felony;

330 2. (b) Misdemeanors prohibited under any of the statutes  
331 cited in this chapter or under similar statutes of other  
332 jurisdictions for which the applicant for the exemption has  
333 completed or been lawfully released from confinement,  
334 supervision, or nonmonetary condition imposed by the court  
335 ~~sanction~~;

336 3. (c) Offenses that were felonies when committed but that  
337 are now misdemeanors and for which the applicant for the  
338 exemption has completed or been lawfully released from  
339 confinement, supervision, or nonmonetary condition imposed by  
340 the court ~~sanction~~; or

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

348 (b) A person applying for an exemption who was ordered to

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349 pay any amount for any fee, fine, fund, lien, civil judgment,  
350 application, costs of prosecution, trust, or restitution as part  
351 of the judgment and sentence for any disqualifying felony or  
352 misdemeanor must have paid the court-ordered amount in full  
353 before being eligible for the exemption.

354

355 For the purposes of this subsection, the term "felonies" means  
356 both felonies prohibited under any of the statutes cited in this  
357 chapter or under similar statutes of other jurisdictions.

358 (2) Persons employed, or applicants for employment, by  
359 treatment providers who treat adolescents 13 years of age and  
360 older who are disqualified from employment solely because of  
361 crimes under s. 817.563, s. 893.13, or s. 893.147 may be  
362 exempted from disqualification from employment pursuant to this  
363 chapter without application of the waiting period in  
364 subparagraph (1) (a) 1 paragraph (1) (a).

365 Section 9. Subsection (2) of section 435.12, Florida  
366 Statutes, is amended to read:

367 435.12 Care Provider Background Screening Clearinghouse.—

368 (2) (a) To ensure that the information in the clearinghouse  
369 is current, the fingerprints of an employee required to be  
370 screened by a specified agency and included in the clearinghouse  
371 must be:

372 1. Retained by the Department of Law Enforcement pursuant  
373 to s. 943.05(2) (g) and (h) and (3), and the Department of Law  
374 Enforcement must report the results of searching those  
375 fingerprints against state incoming arrest fingerprint  
376 submissions to the Agency for Health Care Administration for  
377 inclusion in the clearinghouse.

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378       2. Retained by the Federal Bureau of Investigation in the  
379 national retained print arrest notification program as soon as  
380 the Department of Law Enforcement begins participation in such  
381 program. Arrest prints will be searched against retained prints  
382 at the Federal Bureau of Investigation and notification of  
383 arrests will be forwarded to the Florida Department of Law  
384 Enforcement and reported to the Agency for Health Care  
385 Administration for inclusion in the clearinghouse.

386       3.2. Resubmitted for a Federal Bureau of Investigation  
387 national criminal history check every 5 years until such time as  
388 the fingerprints are retained by the Federal Bureau of  
389 Investigation.

390       4.3. Subject to retention on a 5-year renewal basis with  
391 fees collected at the time of initial submission or resubmission  
392 of fingerprints.

393       5. Submitted with a photograph of the person taken at the  
394 time the fingerprints are submitted.

395       (b) Until such time as the fingerprints are enrolled in the  
396 national retained print arrest notification program ~~retained~~ at  
397 the Federal Bureau of Investigation, an employee with a break in  
398 service of more than 90 days from a position that requires  
399 screening by a specified agency must submit to a national  
400 screening if the person returns to a position that requires  
401 screening by a specified agency.

402       (c) An employer of persons subject to screening by a  
403 specified agency must register with the clearinghouse and  
404 maintain the employment status of all employees within the  
405 clearinghouse. Initial employment status and any changes in  
406 status must be reported within 10 business days.

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407       (d) An employer must register with and initiate all  
408 criminal history checks through the clearinghouse before  
409 referring an employee or potential employee for electronic  
410 fingerprint submission to the Department of Law Enforcement. The  
411 registration must include the employee's full first name, middle  
412 initial, and last name; social security number; date of birth;  
413 mailing address; sex; and race. Individuals, persons,  
414 applicants, and controlling interests that cannot legally obtain  
415 a social security number must provide an individual taxpayer  
416 identification number.

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