

By the Committees on Criminal Justice; and Health Policy; and  
Senator Bean

591-03476-14

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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. 402.301, F.S.;  
8       revising provisions relating to the exemption of  
9       certain membership organizations affiliated with  
10      national organizations from certain child care  
11      facility licensing requirements; requiring a level 2  
12      background screening for an employee of such a  
13      facility under certain circumstances; amending s.  
14      408.806, F.S.; revising the requirements for health  
15      care licensure; revising a provision requiring an  
16      affidavit; amending s. 408.809, F.S.; exempting a  
17      person whose fingerprints are already enrolled in a  
18      specified Federal Bureau of Investigation program from  
19      the requirement that such fingerprints be forwarded to  
20      the bureau; requiring certain persons to submit their  
21      fingerprints electronically; requiring the Department  
22      of Law Enforcement to retain fingerprints when the  
23      department begins participation in a certain program;  
24      revising requirements for proof of compliance with  
25      level 2 screening standards; revising terminology;  
26      adding additional disqualifying offenses to background  
27      screening requirements; adding an exemption clause  
28      from disqualification for new offenses; amending s.  
29      413.208, F.S.; providing applicability for background

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30 screening requirements for certain registrants;  
31 repealing s. 7 of chapter 2012-73, Laws of Florida,  
32 relating to background screening requirements;  
33 amending s. 435.04, F.S.; revising information  
34 required for vendors submitting employee fingerprints;  
35 adding an additional disqualifying offense to  
36 background screening requirements; amending s. 435.05,  
37 F.S.; revising a provision requiring the annual  
38 submission of an affidavit; amending s. 435.07, F.S.;  
39 revising criteria for an exemption from  
40 disqualification for an employee under certain  
41 conditions; amending s. 435.12, F.S.; requiring the  
42 fingerprints of an employee required to be screened by  
43 a specified agency and included in the clearinghouse  
44 also to be retained in the national retained print  
45 arrest notification program at a specified time;  
46 requiring simultaneous submission of a photographic  
47 image and electronic fingerprints to the Care Provider  
48 Background Screening Clearinghouse; requiring an  
49 employer to follow certain criminal history check  
50 procedures and include specified information regarding  
51 referral and registration of an employee for  
52 electronic fingerprinting with the clearinghouse;  
53 providing an effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. Subsection (4) of section 322.142, Florida  
58 Statutes, is amended to read:

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322.142 Color photographic or digital imaged licenses.—

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

(a) For departmental administrative purposes;

(b) For the issuance of duplicate licenses;

(c) In response to law enforcement agency requests;

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

(e) To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075;

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

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

(h) To the Department of Children and Families pursuant to an interagency agreement specifying the number of employees in

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88 each of that department's regions to be granted access to the  
89 records for use as verification of identity to expedite the  
90 determination of eligibility for public assistance and for use  
91 in public assistance fraud investigations;

92 (i) To the Agency for Health Care Administration pursuant  
93 to an interagency agreement for the purpose of authorized  
94 agencies verifying photographs in the Care Provider Background  
95 Screening Clearinghouse authorized under s. 435.12;

96 (j)~~(i)~~ To the Department of Financial Services pursuant to  
97 an interagency agreement to facilitate the location of owners of  
98 unclaimed property, the validation of unclaimed property claims,  
99 and the identification of fraudulent or false claims;

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

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

107 1. A justice or judge of this state;

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

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

116 Section 2. Subsection (6) of section 402.301, Florida

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117 Statutes, is amended to read:

118 402.301 Child care facilities; legislative intent and  
119 declaration of purpose and policy.—It is the legislative intent  
120 to protect the health, safety, and well-being of the children of  
121 the state and to promote their emotional and intellectual  
122 development and care. Toward that end:

123 (6) Notwithstanding any other provision of law, it is  
124 further the intent of the Legislature that membership  
125 organizations affiliated with national organizations which do  
126 not provide child care as defined in s. 402.302, whose primary  
127 purpose is providing activities that contribute to the  
128 development of good character, after school care, and  
129 delinquency prevention programs which are operated 5 days a week  
130 or more, are facility or school based ~~or good sportsmanship or~~  
131 ~~to the education or cultural development of minors in this~~  
132 ~~state, which charge only a nominal annual membership fee, which~~  
133 are not for profit, and ~~which~~ are certified by their national  
134 associations as being in compliance with the association's  
135 minimum standards and procedures shall not be considered child  
136 care facilities and therefore are not subject to the licensing  
137 requirements or the minimum standards for child care facilities.  
138 However, upon request, such a facility shall show proof of one  
139 level 2 background screening per screened employee,~~their~~  
140 ~~personnel shall not be required to be screened.~~

141 Section 3. Subsections (1) and (8) of section 408.806,  
142 Florida Statutes, are amended to read:

143 408.806 License application process.—

144 (1) An application for licensure must be made to the agency  
145 on forms furnished by the agency, submitted under oath or

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146 attestation, and accompanied by the appropriate fee in order to  
147 be accepted and considered timely. The application must contain  
148 information required by authorizing statutes and applicable  
149 rules and must include:

150 (a) The name, address, and social security number, or  
151 individual taxpayer identification number if a social security  
152 number cannot legally be obtained, of:

153 1. The applicant;

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

156 3. The financial officer or similarly titled person who is  
157 responsible for the financial operation of the licensee or  
158 provider; and

159 4. Each controlling interest if the applicant or  
160 controlling interest is an individual.

161 (b) The name, address, and federal employer identification  
162 number or taxpayer identification number of the applicant and  
163 each controlling interest if the applicant or controlling  
164 interest is not an individual.

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

166 (d) The total number of beds or capacity requested, as  
167 applicable.

168 (e) The name of the person or persons under whose  
169 management or supervision the provider will operate and the name  
170 of the administrator, if required.

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

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

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

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

185 (a) Licensure applications.

186 (b) Required signatures.

187 (c) Payment of fees.

188 (d) Notarization or attestation of applications.

189  
190 Requirements for electronic submission of any documents required  
191 by this part or authorizing statutes may be established by rule.  
192 As an alternative to sending documents as required by  
193 authorizing statutes, the agency may provide electronic access  
194 to information or documents.

195 Section 4. Subsections (2) and (4) of section 408.809,  
196 Florida Statutes, are amended to read:

197 408.809 Background screening; prohibited offenses.—

198 (2) Every 5 years following his or her licensure,  
199 employment, or entry into a contract in a capacity that under  
200 subsection (1) would require level 2 background screening under  
201 chapter 435, each such person must submit to level 2 background  
202 rescreening as a condition of retaining such license or  
203 continuing in such employment or contractual status. For any

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204 such rescreening, the agency shall request the Department of Law  
205 Enforcement to forward the person's fingerprints to the Federal  
206 Bureau of Investigation for a national criminal history record  
207 check unless the person's fingerprints are enrolled in the  
208 Federal Bureau of Investigation's national retained print arrest  
209 notification program. If the fingerprints of such a person are  
210 not retained by the Department of Law Enforcement under s.  
211 943.05(2)(g) and (h), the person must submit fingerprints  
212 electronically ~~file a complete set of fingerprints with the~~  
213 ~~agency and the agency shall forward the fingerprints to the~~  
214 Department of Law Enforcement for state processing, and the  
215 Department of Law Enforcement shall forward the fingerprints to  
216 the Federal Bureau of Investigation for a national criminal  
217 history record check. The fingerprints shall ~~may~~ be retained by  
218 the Department of Law Enforcement under s. 943.05(2)(g) and (h)  
219 and enrolled in the national retained print arrest notification  
220 program when the Department of Law Enforcement begins  
221 participation in the program. The cost of the state and national  
222 criminal history records checks required by level 2 screening  
223 may be borne by the licensee or the person fingerprinted. Until  
224 a specified agency is fully implemented ~~the person's background~~  
225 ~~screening results are retained~~ in the clearinghouse created  
226 under s. 435.12, the agency may accept as satisfying the  
227 requirements of this section proof of compliance with level 2  
228 screening standards submitted within the previous 5 years to  
229 meet any provider or professional licensure requirements of the  
230 agency, the Department of Health, the Department of Elderly  
231 Affairs, the Agency for Persons with Disabilities, the  
232 Department of Children and Families ~~Family Services~~, or the



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233 Department of Financial Services for an applicant for a  
234 certificate of authority or provisional certificate of authority  
235 to operate a continuing care retirement community under chapter  
236 651, provided that:

237 (a) The screening standards and disqualifying offenses for  
238 the prior screening are equivalent to those specified in s.  
239 435.04 and this section;

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

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

246 (4) In addition to the offenses listed in s. 435.04, all  
247 persons required to undergo background screening pursuant to  
248 this part or authorizing statutes must not have an arrest  
249 awaiting final disposition for, must not have been found guilty  
250 of, regardless of adjudication, or entered a plea of nolo  
251 contendere or guilty to, and must not have been adjudicated  
252 delinquent and the record not have been sealed or expunged for  
253 any of the following offenses or any similar offense of another  
254 jurisdiction:

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

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

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

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

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

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

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262        (g)~~(f)~~ Section 817.034, relating to fraudulent acts through  
263 mail, wire, radio, electromagnetic, photoelectronic, or  
264 photooptical systems.

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

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

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

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

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

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

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

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

280        (p)~~(m)~~ Section 831.02, relating to uttering forged  
281 instruments.

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

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

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

288        (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,  
289 delivery, or possession with the intent to sell, manufacture, or  
290 deliver any counterfeit controlled substance, if the offense was

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291 a felony.

292 (u) Section 895.03, relating to racketeering and collection  
293 of unlawful debts.

294 (v) Section 896.101, relating to the Florida Money  
295 Laundering Act.

296  
297 If, upon rescreening, a person who is currently employed or  
298 contracted with a licensee as of June 30, 2014, and was screened  
299 and qualified under ss. 435.03 and 435.04, has a disqualifying  
300 offense that was not a disqualifying offense at the time of the  
301 last screening, but is a current disqualifying offense and was  
302 committed before the last screening, he or she may apply for an  
303 exemption from the appropriate licensing agency and, if agreed  
304 to by the employer, may continue to perform his or her duties  
305 until the licensing agency renders a decision on the application  
306 for exemption if the person is eligible to apply for an  
307 exemption and the exemption request is received by the agency no  
308 later than 30 days after receipt of the rescreening results by  
309 the person.

310 Section 5. Subsection (5) is added to section 413.208,  
311 Florida Statutes, to read:

312 413.208 Service providers; quality assurance; fitness for  
313 responsibilities; background screening.—

314 (5) The background screening requirements of this section  
315 apply only to registrations entered into or renewed with the  
316 division after the Care Provider Background Screening  
317 Clearinghouse becomes operational and retains the background  
318 screening results in the clearinghouse under s. 435.12.

319 Section 6. Section 7 of chapter 2012-73, Laws of Florida,

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320 is repealed.

321 Section 7. Paragraph (e) of subsection (1) of section  
322 435.04, Florida Statutes, is amended, present paragraphs (d)  
323 through (yy) of subsection (2) are redesignated as paragraphs  
324 (e) through (zz), respectively, and a new paragraph (d) is added  
325 to that subsection, to read:

326 435.04 Level 2 screening standards.—

327 (1)

328 (e) Vendors who submit fingerprints on behalf of employers  
329 must:

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

331 2. Have the ability to communicate electronically with the  
332 state agency accepting screening results from the Department of  
333 Law Enforcement and provide the applicant's full first name,  
334 middle initial, and last name; social security number or  
335 individual taxpayer identification number; date of birth;  
336 mailing address; sex; and race ~~a photograph of the applicant~~  
337 ~~taken at the time the fingerprints are submitted.~~

338 (2) The security background investigations under this  
339 section must ensure that no persons subject to the provisions of  
340 this section have been arrested for and are awaiting final  
341 disposition of, have been found guilty of, regardless of  
342 adjudication, or entered a plea of nolo contendere or guilty to,  
343 or have been adjudicated delinquent and the record has not been  
344 sealed or expunged for, any offense prohibited under any of the  
345 following provisions of state law or similar law of another  
346 jurisdiction:

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

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349 Section 8. Subsection (3) of section 435.05, Florida  
350 Statutes, is amended to read:

351 435.05 Requirements for covered employees and employers.—  
352 Except as otherwise provided by law, the following requirements  
353 apply to covered employees and employers:

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

359 Section 9. Subsections (1) and (2) of section 435.07,  
360 Florida Statutes, are amended to read:

361 435.07 Exemptions from disqualification.—Unless otherwise  
362 provided by law, the provisions of this section apply to  
363 exemptions from disqualification for disqualifying offenses  
364 revealed pursuant to background screenings required under this  
365 chapter, regardless of whether those disqualifying offenses are  
366 listed in this chapter or other laws.

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

370 1.-(a) Felonies for which at least 3 years have elapsed  
371 since the applicant for the exemption has completed or been  
372 lawfully released from confinement, supervision, or nonmonetary  
373 condition imposed by the court ~~sanction~~ for the disqualifying  
374 felony;

375 2.-(b) Misdemeanors prohibited under any of the statutes  
376 cited in this chapter or under similar statutes of other  
377 jurisdictions for which the applicant for the exemption has

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378 completed or been lawfully released from confinement,  
379 supervision, or nonmonetary condition imposed by the court  
380 sanction;

381 3.(e) Offenses that were felonies when committed but that  
382 are now misdemeanors and for which the applicant for the  
383 exemption has completed or been lawfully released from  
384 confinement, supervision, or nonmonetary condition imposed by  
385 the court sanction; or

386 4.(d) Findings of delinquency. For offenses that would be  
387 felonies if committed by an adult and the record has not been  
388 sealed or expunged, the exemption may not be granted until at  
389 least 3 years have elapsed since the applicant for the exemption  
390 has completed or been lawfully released from confinement,  
391 supervision, or nonmonetary condition imposed by the court  
392 sanction for the disqualifying offense.

393 (b) A person applying for an exemption who was ordered to  
394 pay any amount for any fee, fine, fund, lien, civil judgment,  
395 application, costs of prosecution, trust, or restitution as part  
396 of the judgment and sentence for any disqualifying felony or  
397 misdemeanor must pay the court-ordered amount in full before he  
398 or she is eligible for the exemption.

399  
400 For the purposes of this subsection, the term "felonies" means  
401 both felonies prohibited under any of the statutes cited in this  
402 chapter or under similar statutes of other jurisdictions.

403 (2) Persons employed, or applicants for employment, by  
404 treatment providers who treat adolescents 13 years of age and  
405 older who are disqualified from employment solely because of  
406 crimes under s. 817.563, s. 893.13, or s. 893.147 may be

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407 exempted from disqualification from employment pursuant to this  
408 chapter without application of the waiting period in  
409 subparagraph (1) (a) 1 ~~paragraph (1) (a)~~.

410 Section 10. Subsection (2) of section 435.12, Florida  
411 Statutes, is amended to read:

412 435.12 Care Provider Background Screening Clearinghouse.—

413 (2) (a) To ensure that the information in the clearinghouse  
414 is current, the fingerprints of an employee required to be  
415 screened by a specified agency and included in the clearinghouse  
416 must be:

417 1. Retained by the Department of Law Enforcement pursuant  
418 to s. 943.05(2) (g) and (h) and (3), and the Department of Law  
419 Enforcement must report the results of searching those  
420 fingerprints against state incoming arrest fingerprint  
421 submissions to the Agency for Health Care Administration for  
422 inclusion in the clearinghouse.

423 2. Retained by the Federal Bureau of Investigation in the  
424 national retained print arrest notification program as soon as  
425 the Department of Law Enforcement begins participation in such  
426 program. Arrest prints will be searched against retained prints  
427 at the Federal Bureau of Investigation and notification of  
428 arrests will be forwarded to the Florida Department of Law  
429 Enforcement and reported to the Agency for Health Care  
430 Administration for inclusion in the clearinghouse.

431 3.2. Resubmitted for a Federal Bureau of Investigation  
432 national criminal history check every 5 years until such time as  
433 the fingerprints are retained by the Federal Bureau of  
434 Investigation.

435 4.3. Subject to retention on a 5-year renewal basis with

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436 fees collected at the time of initial submission or resubmission  
437 of fingerprints.

438 5. Submitted with a photograph of the person taken at the  
439 time the fingerprints are submitted.

440 (b) Until such time as the fingerprints are enrolled in the  
441 national retained print arrest notification program ~~retained~~ at  
442 the Federal Bureau of Investigation, an employee with a break in  
443 service of more than 90 days from a position that requires  
444 screening by a specified agency must submit to a national  
445 screening if the person returns to a position that requires  
446 screening by a specified agency.

447 (c) An employer of persons subject to screening by a  
448 specified agency must register with the clearinghouse and  
449 maintain the employment status of all employees within the  
450 clearinghouse. Initial employment status and any changes in  
451 status must be reported within 10 business days.

452 (d) An employer must register with and initiate all  
453 criminal history checks through the clearinghouse before  
454 referring an employee or potential employee for electronic  
455 fingerprint submission to the Department of Law Enforcement. The  
456 registration must include the employee's full first name, middle  
457 initial, and last name; social security number; date of birth;  
458 mailing address; sex; and race. Individuals, persons,  
459 applicants, and controlling interests that cannot legally obtain  
460 a social security number must provide an individual taxpayer  
461 identification number.

462 Section 11. This act shall take effect July 1, 2014.