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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 health care licensure;
9 revising a provision requiring an affidavit; amending
10 s. 408.809, F.S.; exempting a person whose
11 fingerprints are already enrolled in a specified
12 Federal Bureau of Investigation program from the
13 requirement that such fingerprints be forwarded to the
14 bureau; requiring certain persons to submit their
15 fingerprints electronically; requiring the Department
16 of Law Enforcement to retain fingerprints when the
17 department begins participation in a certain program;
18 revising requirements for proof of compliance with
19 level 2 screening standards; revising terminology;
20 adding additional disqualifying offenses to background
21 screening requirements; adding an exemption clause
22 from disqualification for new offenses; amending s.
23 413.208, F.S.; providing applicability for background
24 screening requirements for certain registrants;
25 repealing s. 7 of chapter 2012-73, Laws of Florida,
26 relating to background screening requirements;
27 amending s. 435.04, F.S.; revising information
28 required for vendors submitting employee fingerprints;
29 adding an additional disqualifying offense to

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

48
49 Be It Enacted by the Legislature of the State of Florida:

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

53 322.142 Color photographic or digital imaged licenses.—

54 (4) The department may maintain a film negative or print
55 file. The department shall maintain a record of the digital
56 image and signature of the licensees, together with other data
57 required by the department for identification and retrieval.
58 Reproductions from the file or digital record are exempt from

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59 the provisions of s. 119.07(1) and may ~~shall~~ be made and issued
60 only:

61 (a) For departmental administrative purposes;

62 (b) For the issuance of duplicate licenses;

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

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

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

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

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

80 (h) To the Department of Children and Families pursuant to
81 an interagency agreement specifying the number of employees in
82 each of that department's regions to be granted access to the
83 records for use as verification of identity to expedite the
84 determination of eligibility for public assistance and for use
85 in public assistance fraud investigations;

86 (i) To the Agency for Health Care Administration pursuant
87 to an interagency agreement for the purpose of authorized

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88 agencies verifying photographs in the Care Provider Background
89 Screening Clearinghouse authorized under s. 435.12;

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

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

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

- 101 1. A justice or judge of this state;
- 102 2. An employee of the state courts system who works in a
103 position that is designated in writing for access by the Chief
104 Justice of the Supreme Court or a chief judge of a district or
105 circuit court, or by his or her designee; or
- 106 3. A government employee who performs functions on behalf
107 of the state courts system in a position that is designated in
108 writing for access by the Chief Justice or a chief judge, or by
109 his or her designee.

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

112 408.806 License application process.—

113 (1) An application for licensure must be made to the agency
114 on forms furnished by the agency, submitted under oath or
115 attestation, and accompanied by the appropriate fee in order to
116 be accepted and considered timely. The application must contain

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117 information required by authorizing statutes and applicable
118 rules and must include:

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

122 1. The applicant;

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

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

128 4. Each controlling interest if the applicant or
129 controlling interest is an individual.

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

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

135 (d) The total number of beds or capacity requested, as
136 applicable.

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

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

144 (g) Other information, including satisfactory inspection
145 results, that the agency finds necessary to determine the

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146 ability of the applicant to carry out its responsibilities under
147 this part, authorizing statutes, and applicable rules.

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

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

154 (a) Licensure applications.

155 (b) Required signatures.

156 (c) Payment of fees.

157 (d) Notarization or attestation of applications.

158

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

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

166 408.809 Background screening; prohibited offenses.—

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

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

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204 to operate a continuing care retirement community under chapter
205 651, provided that:

206 (a) The screening standards and disqualifying offenses for
207 the prior screening are equivalent to those specified in s.
208 435.04 and this section;

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

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

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

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

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

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

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

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

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

231 (g) ~~(f)~~ Section 817.034, relating to fraudulent acts through
232 mail, wire, radio, electromagnetic, photoelectronic, or

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233 photooptical systems.

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

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

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

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

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

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

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

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

249 (p)~~(m)~~ Section 831.02, relating to uttering forged
250 instruments.

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

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

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

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

261 (u) Section 895.03, relating to racketeering and collection

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262 of unlawful debts.

263 (v) Section 896.101, relating to the Florida Money
264 Laundering Act.

265
266 If, upon rescreening, a person who is currently employed or
267 contracted with a licensee as of June 30, 2014, and was screened
268 and qualified under ss. 435.03 and 435.04, has a disqualifying
269 offense that was not a disqualifying offense at the time of the
270 last screening, but is a current disqualifying offense and was
271 committed before the last screening, he or she may apply for an
272 exemption from the appropriate licensing agency and, if agreed
273 to by the employer, may continue to perform his or her duties
274 until the licensing agency renders a decision on the application
275 for exemption if the person is eligible to apply for an
276 exemption and the exemption request is received by the agency no
277 later than 30 days after receipt of the rescreening results by
278 the person.

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

281 413.208 Service providers; quality assurance; fitness for
282 responsibilities; background screening.—

283 (5) The background screening requirements of this section
284 apply only to registrations entered into or renewed with the
285 division after the Care Provider Background Screening
286 Clearinghouse becomes operational and retains the background
287 screening results in the clearinghouse under s. 435.12.

288 Section 5. Section 7 of chapter 2012-73, Laws of Florida,
289 is repealed.

290 Section 6. Paragraph (e) of subsection (1) of section

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291 435.04, Florida Statutes, is amended, present paragraphs (d)
292 through (yy) of subsection (2) are redesignated as paragraphs
293 (e) through (zz), respectively, and a new paragraph (d) is added
294 to that subsection, to read:

295 435.04 Level 2 screening standards.—

296 (1)

297 (e) Vendors who submit fingerprints on behalf of employers
298 must:

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

300 2. Have the ability to communicate electronically with the
301 state agency accepting screening results from the Department of
302 Law Enforcement and provide the applicant's full first name,
303 middle initial, and last name; social security number or
304 individual taxpayer identification number; date of birth;
305 mailing address; sex; and race ~~a photograph of the applicant~~
306 ~~taken at the time the fingerprints are submitted.~~

307 (2) The security background investigations under this
308 section must ensure that no persons subject to the provisions of
309 this section have been arrested for and are awaiting final
310 disposition of, have been found guilty of, regardless of
311 adjudication, or entered a plea of nolo contendere or guilty to,
312 or have been adjudicated delinquent and the record has not been
313 sealed or expunged for, any offense prohibited under any of the
314 following provisions of state law or similar law of another
315 jurisdiction:

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

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

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320 435.05 Requirements for covered employees and employers.—
321 Except as otherwise provided by law, the following requirements
322 apply to covered employees and employers:

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

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

330 435.07 Exemptions from disqualification.—Unless otherwise
331 provided by law, the provisions of this section apply to
332 exemptions from disqualification for disqualifying offenses
333 revealed pursuant to background screenings required under this
334 chapter, regardless of whether those disqualifying offenses are
335 listed in this chapter or other laws.

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

339 1. ~~(a)~~ Felonies for which at least 3 years have elapsed
340 since the applicant for the exemption has completed or been
341 lawfully released from confinement, supervision, or nonmonetary
342 condition imposed by the court ~~sanction~~ for the disqualifying
343 felony;

344 2. ~~(b)~~ Misdemeanors prohibited under any of the statutes
345 cited in this chapter or under similar statutes of other
346 jurisdictions for which the applicant for the exemption has
347 completed or been lawfully released from confinement,
348 supervision, or nonmonetary condition imposed by the court

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349 ~~sanction;~~

350 3.(e) Offenses that were felonies when committed but that
351 are now misdemeanors and for which the applicant for the
352 exemption has completed or been lawfully released from
353 confinement, supervision, or nonmonetary condition imposed by
354 the court ~~sanction~~; or

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

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

368
369 For the purposes of this subsection, the term "felonies" means
370 both felonies prohibited under any of the statutes cited in this
371 chapter or under similar statutes of other jurisdictions.

372 (2) Persons employed, or applicants for employment, by
373 treatment providers who treat adolescents 13 years of age and
374 older who are disqualified from employment solely because of
375 crimes under s. 817.563, s. 893.13, or s. 893.147 may be
376 exempted from disqualification from employment pursuant to this
377 chapter without application of the waiting period in

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378 subparagraph (1) (a) ~~paragraph (1) (a)~~.

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

381 435.12 Care Provider Background Screening Clearinghouse.—

382 (2) (a) To ensure that the information in the clearinghouse
383 is current, the fingerprints of an employee required to be
384 screened by a specified agency and included in the clearinghouse
385 must be:

386 1. Retained by the Department of Law Enforcement pursuant
387 to s. 943.05 (2) (g) and (h) and (3), and the Department of Law
388 Enforcement must report the results of searching those
389 fingerprints against state incoming arrest fingerprint
390 submissions to the Agency for Health Care Administration for
391 inclusion in the clearinghouse.

392 2. Retained by the Federal Bureau of Investigation in the
393 national retained print arrest notification program as soon as
394 the Department of Law Enforcement begins participation in such
395 program. Arrest prints will be searched against retained prints
396 at the Federal Bureau of Investigation and notification of
397 arrests will be forwarded to the Florida Department of Law
398 Enforcement and reported to the Agency for Health Care
399 Administration for inclusion in the clearinghouse.

400 3.2. Resubmitted for a Federal Bureau of Investigation
401 national criminal history check every 5 years until such time as
402 the fingerprints are retained by the Federal Bureau of
403 Investigation.

404 ~~4.3.~~ Subject to retention on a 5-year renewal basis with
405 fees collected at the time of initial submission or resubmission
406 of fingerprints.

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407 5. Submitted with a photograph of the person taken at the
408 time the fingerprints are submitted.

409 (b) Until such time as the fingerprints are enrolled in the
410 national retained print arrest notification program ~~retained~~ at
411 the Federal Bureau of Investigation, an employee with a break in
412 service of more than 90 days from a position that requires
413 screening by a specified agency must submit to a national
414 screening if the person returns to a position that requires
415 screening by a specified agency.

416 (c) An employer of persons subject to screening by a
417 specified agency must register with the clearinghouse and
418 maintain the employment status of all employees within the
419 clearinghouse. Initial employment status and any changes in
420 status must be reported within 10 business days.

421 (d) An employer must register with and initiate all
422 criminal history checks through the clearinghouse before
423 referring an employee or potential employee for electronic
424 fingerprint submission to the Department of Law Enforcement. The
425 registration must include the employee's full first name, middle
426 initial, and last name; social security number; date of birth;
427 mailing address; sex; and race. Individuals, persons,
428 applicants, and controlling interests that cannot legally obtain
429 a social security number must provide an individual taxpayer
430 identification number.

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