

By Senator Garcia

36-01801-23

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1                   A bill to be entitled  
2       An act relating to provider accountability; amending  
3       s. 400.022, F.S.; revising the rights of residents of  
4       nursing home facilities; amending s. 408.809, F.S.;  
5       providing additional disqualifying offenses for  
6       purposes of background screening of employees of  
7       certain health care providers; amending s. 408.812,  
8       F.S.; creating a cause of action for ex parte  
9       injunctive relief against continued unlicensed  
10      activity relating to health care provider facilities;  
11      authorizing the Agency for Health Care Administration  
12      to petition the court for such injunctive relief;  
13      providing requirements for the petition; prohibiting  
14      courts from requiring bond in such proceedings;  
15      limiting the types of evidence that may be presented  
16      in such proceedings; providing that a denial of such  
17      injunctive relief must be by written order of the  
18      court noting the legal grounds for the denial;  
19      providing construction; providing for ex parte  
20      temporary injunctive relief under certain  
21      circumstances; requiring that temporary injunctions be  
22      effective for a fixed period not exceeding 30 days;  
23      requiring the agency to conduct an inspection of the  
24      identified premises of unlicensed activity within a  
25      specified timeframe after such temporary injunction is  
26      issued; requiring the agency to dismiss its petition  
27      if the respondent complies with the injunction;  
28      providing for a permanent injunction within a  
29      specified timeframe if the unlicensed activity

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30 continues; requiring that a full hearing be set as  
31 soon as practicable thereafter; authorizing the agency  
32 to move for an extension of the injunction until  
33 disposition of the proceedings; providing for service  
34 of an ex parte injunction; providing construction;  
35 authorizing the agency to provide any inspection  
36 records to local law enforcement agencies and state  
37 attorney offices upon request and without redaction;  
38 amending s. 435.04, F.S.; providing additional  
39 disqualifying offenses for employment background  
40 screening requirements; providing an effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Paragraph (o) of subsection (1) of section  
45 400.022, Florida Statutes, is amended to read:

46 400.022 Residents' rights.-

47 (1) All licensees of nursing home facilities shall adopt  
48 and make public a statement of the rights and responsibilities  
49 of the residents of such facilities and shall treat such  
50 residents in accordance with the provisions of that statement.  
51 The statement shall assure each resident the following:

52 (o) The right to be free from mental and physical abuse,  
53 sexual abuse, neglect, exploitation, corporal punishment,  
54 extended involuntary seclusion, and from physical and chemical  
55 restraints, except those restraints authorized in writing by a  
56 physician for a specified and limited period of time or as are  
57 necessitated by an emergency. In case of an emergency, restraint  
58 may be applied only by a qualified licensed nurse who shall set

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59 forth in writing the circumstances requiring the use of  
60 restraint, and, in the case of use of a chemical restraint, a  
61 physician shall be consulted immediately thereafter. Restraints  
62 may not be used in lieu of staff supervision or merely for staff  
63 convenience, for punishment, or for reasons other than resident  
64 protection or safety.

65 Section 2. Subsection (4) of section 408.809, Florida  
66 Statutes, is amended to read:

67 408.809 Background screening; prohibited offenses.—

68 (4) In addition to the offenses listed in s. 435.04, all  
69 persons required to undergo background screening pursuant to  
70 this part or authorizing statutes must not have an arrest  
71 awaiting final disposition for, must not have been found guilty  
72 of, regardless of adjudication, or entered a plea of nolo  
73 contendere or guilty to, and must not have been adjudicated  
74 delinquent and the record not have been sealed or expunged for  
75 any of the following offenses or any similar offense of another  
76 jurisdiction:

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

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

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

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

81 (e) Section 414.39, relating to fraud, if the offense was a  
82 felony.

83 (f) Section 741.28, relating to domestic violence.

84 (g)~~(f)~~ Section 777.04, relating to attempts, solicitation,  
85 and conspiracy to commit an offense listed in this subsection.

86 (h)~~(g)~~ Section 784.03, relating to battery, if the victim  
87 is a vulnerable adult as defined in s. 415.102 or a patient or

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88 resident of a facility licensed under chapter 395, chapter 400,  
89 or chapter 429.

90 (i) Section 815.04, relating to offenses against  
91 intellectual property.

92 (j) Section 815.06, relating to offenses against users of  
93 computers, computer systems, computer networks, and electronic  
94 devices.

95 (k)~~(h)~~ Section 817.034, relating to fraudulent acts through  
96 mail, wire, radio, electromagnetic, photoelectronic, or  
97 photooptical systems.

98 (l)~~(i)~~ Section 817.234, relating to false and fraudulent  
99 insurance claims.

100 (m)~~(j)~~ Section 817.481, relating to obtaining goods by  
101 using a false or expired credit card or other credit device, if  
102 the offense was a felony.

103 (n)~~(k)~~ Section 817.50, relating to fraudulently obtaining  
104 goods or services from a health care provider.

105 (o)~~(l)~~ Section 817.505, relating to patient brokering.

106 (p)~~(m)~~ Section 817.568, relating to criminal use of  
107 personal identification information.

108 (q)~~(n)~~ Section 817.60, relating to obtaining a credit card  
109 through fraudulent means.

110 (r)~~(o)~~ Section 817.61, relating to fraudulent use of credit  
111 cards, if the offense was a felony.

112 (s)~~(p)~~ Section 831.01, relating to forgery.

113 (t)~~(q)~~ Section 831.02, relating to uttering forged  
114 instruments.

115 (u)~~(r)~~ Section 831.07, relating to forging bank bills,  
116 checks, drafts, or promissory notes.

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117 (v)~~(s)~~ Section 831.09, relating to uttering forged bank  
118 bills, checks, drafts, or promissory notes.

119 (w) Section 831.29, relating to making or having  
120 instruments and material for counterfeiting driver licenses or  
121 identification cards.

122 (x)~~(t)~~ Section 831.30, relating to fraud in obtaining  
123 medicinal drugs.

124 (y)~~(u)~~ Section 831.31, relating to the sale, manufacture,  
125 delivery, or possession with the intent to sell, manufacture, or  
126 deliver any counterfeit controlled substance, if the offense was  
127 a felony.

128 (z) Section 831.311, relating to unlawful sale,  
129 manufacture, alteration, delivery, uttering, or possession of  
130 counterfeit-resistant prescription blanks for controlled  
131 substances.

132 (aa) Section 836.05, relating to threats and extortion.

133 (bb) Section 836.10, relating to written or electronic  
134 threats to kill or do bodily injury or conduct a mass shooting  
135 or an act of terrorism.

136 (cc) Section 873.01, relating to the prohibited purchase or  
137 sale of human organs and tissue.

138 (dd)~~(v)~~ Section 895.03, relating to racketeering and  
139 collection of unlawful debts.

140 (ee)~~(w)~~ Section 896.101, relating to the Florida Money  
141 Laundering Act.

142

143 If, upon rescreening, a person who is currently employed or  
144 contracted with a licensee and was screened and qualified under  
145 s. 435.04 has a disqualifying offense that was not a

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146 disqualifying offense at the time of the last screening, but is  
147 a current disqualifying offense and was committed before the  
148 last screening, he or she may apply for an exemption from the  
149 appropriate licensing agency and, if agreed to by the employer,  
150 may continue to perform his or her duties until the licensing  
151 agency renders a decision on the application for exemption if  
152 the person is eligible to apply for an exemption and the  
153 exemption request is received by the agency no later than 30  
154 days after receipt of the rescreening results by the person.

155 Section 3. Subsection (6) of section 408.812, Florida  
156 Statutes, is amended to read:

157 408.812 Unlicensed activity.—

158 (6) In addition to granting injunctive relief pursuant to  
159 subsection (2), if the agency determines that a person or entity  
160 is operating or maintaining a provider without obtaining a  
161 license and determines that a condition exists that poses a  
162 threat to the health, safety, or welfare of a client of the  
163 provider, the person or entity is subject to the same actions  
164 and fines imposed against a licensee as specified in this part,  
165 authorizing statutes, and agency rules.

166 (a) There is created a cause of action for an ex parte  
167 injunction against continued unlicensed activity.

168 (b) The agency may petition the circuit court for an ex  
169 parte injunction against continued unlicensed activity when  
170 agency personnel have verified, through an onsite inspection,  
171 that a person or entity is advertising, offering, or providing  
172 services for which licensure is required under this part and  
173 applicable statutes and such person or entity has previously  
174 received notification from the agency to discontinue such

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175 activity.

176 (c) A sworn petition seeking the issuance of an ex parte  
177 injunction against continued unlicensed activity must include  
178 the location of the unlicensed activity; the ownership and  
179 operators of the unlicensed provider; identification of the  
180 service provider type for which licensure is required under the  
181 applicable statutes; specific facts supporting the conclusion  
182 that the respondent engaged in unlicensed activity, specifying  
183 the date, time, and location at which the unlicensed provider  
184 was notified to discontinue such activity; whether the  
185 respondent prohibited the agency from conducting a subsequent  
186 investigation to determine compliance; any previous injunctive  
187 relief granted against the respondent; and any previous agency  
188 determinations that the respondent was previously identified as  
189 engaging in unlicensed activity.

190 (d) Bond may not be required by the court for the entry of  
191 an injunction under this subsection.

192 (e) Except as provided in s. 90.204, in an ex parte hearing  
193 for the purpose of obtaining such ex parte temporary injunction,  
194 no evidence other than verified pleadings or affidavits by  
195 agency personnel or others with first-hand knowledge of the  
196 alleged unlicensed activity may be used as evidence, unless the  
197 respondent appears at the hearing. A denial of a petition for an  
198 ex parte injunction must be by written order noting the legal  
199 grounds for denial. Nothing herein affects the agency's right to  
200 promptly amend any petition or otherwise be heard in person on  
201 any petition consistent with the Florida Rules of Civil  
202 Procedure.

203 (f) If it appears to the court that the respondent is

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204 engaged in unlicensed activity and has not discontinued that  
205 activity after notification by the agency, the court may grant  
206 an ex parte temporary injunction, pending a full hearing, and  
207 may grant any relief the court deems appropriate, including an  
208 injunction restraining the respondent from advertising,  
209 offering, or providing services for which licensure is required  
210 under this part and applicable statutes, and requiring the  
211 respondent to provide agency personnel full access to facility  
212 personnel, records, and clients for a future inspection of the  
213 premises within 20 days after the injunction is issued to verify  
214 respondent's compliance with the temporary injunction.

215 (g) An ex parte temporary injunction issued under this  
216 subsection must be effective for a fixed period not to exceed 30  
217 days.

218 (h) The agency must conduct an inspection of the identified  
219 premises within 20 days after the injunction is issued to verify  
220 the respondent's compliance with the temporary injunction. If  
221 the respondent is found to have complied with the temporary  
222 injunction, the agency must voluntarily dismiss its injunction  
223 action. If the agency finds that unlicensed activity has  
224 continued in apparent violation of the temporary injunction, the  
225 agency may file a petition for permanent injunction within 10  
226 days after such discovery, at which time a full hearing must be  
227 set as soon as practicable. Contemporaneous with the filing of a  
228 petition for permanent injunction, the agency may move for an  
229 extension of the ex parte injunction until disposition of the  
230 permanent injunction proceedings.

231 (i) Any ex parte injunction against continued unlicensed  
232 activity must be served by the sheriff of the county in which

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233 the respondent's activities are conducted.

234 (j) Remedies in this subsection are not exclusive but a  
235 supplement to any other administrative or criminal remedies for  
236 unlicensed activity.

237 (k) The agency is not required to exhaust its  
238 administrative remedies before seeking the injunctive relief  
239 provided by this subsection.

240 (l) The agency may provide any records of its inspections  
241 to local law enforcement agencies or state attorney offices upon  
242 request and without redaction.

243 Section 4. Subsection (2) of section 435.04, Florida  
244 Statutes, is amended to read:

245 435.04 Level 2 screening standards.—

246 (2) The security background investigations under this  
247 section must ensure that no persons subject to the provisions of  
248 this section have been arrested for and are awaiting final  
249 disposition of, have been found guilty of, regardless of  
250 adjudication, or entered a plea of nolo contendere or guilty to,  
251 or have been adjudicated delinquent and the record has not been  
252 sealed or expunged for, any offense prohibited under any of the  
253 following provisions of state law or similar law of another  
254 jurisdiction:

255 (a) Section 39.205, relating to failure to report child  
256 abuse, abandonment, or neglect.

257 (b) Section 316.193(3)(c)3., relating to DUI manslaughter.

258 (c) Section 393.135, relating to sexual misconduct with  
259 certain developmentally disabled clients and reporting of such  
260 sexual misconduct.

261 (d) ~~(b)~~ Section 394.4593, relating to sexual misconduct with

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262 certain mental health patients and reporting of such sexual  
263 misconduct.

264 (e)~~(e)~~ Section 415.111, relating to adult abuse, neglect,  
265 or exploitation of aged persons or disabled adults.

266 (f)~~(d)~~ Section 777.04, relating to attempts, solicitation,  
267 and conspiracy to commit an offense listed in this subsection.

268 (g)~~(e)~~ Section 782.04, relating to murder.

269 (h)~~(f)~~ Section 782.07, relating to manslaughter, aggravated  
270 manslaughter of an elderly person or disabled adult, or  
271 aggravated manslaughter of a child.

272 (i)~~(g)~~ Section 782.071, relating to vehicular homicide.

273 (j)~~(h)~~ Section 782.09, relating to killing of an unborn  
274 child by injury to the mother.

275 (k)~~(i)~~ Chapter 784, relating to assault, battery, and  
276 culpable negligence, if the offense was a felony.

277 (l)~~(j)~~ Section 784.011, relating to assault, if the victim  
278 of the offense was a minor.

279 (m)~~(k)~~ Section 784.03, relating to battery, if the victim  
280 of the offense was a minor.

281 (n)~~(l)~~ Section 787.01, relating to kidnapping.

282 (o)~~(m)~~ Section 787.02, relating to false imprisonment.

283 (p)~~(n)~~ Section 787.025, relating to luring or enticing a  
284 child.

285 (q)~~(o)~~ Section 787.04(2), relating to taking, enticing, or  
286 removing a child beyond the state limits with criminal intent  
287 pending custody proceedings.

288 (r)~~(p)~~ Section 787.04(3), relating to carrying a child  
289 beyond the state lines with criminal intent to avoid producing a  
290 child at a custody hearing or delivering the child to the

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291 designated person.

292 (s) Section 787.06, relating to human trafficking.

293 (t) Section 787.07, relating to human smuggling.

294 (u)~~(q)~~ Section 790.115(1), relating to exhibiting firearms  
295 or weapons within 1,000 feet of a school.

296 (v)~~(r)~~ Section 790.115(2)(b), relating to possessing an  
297 electric weapon or device, destructive device, or other weapon  
298 on school property.

299 (w) Section 790.166, relating to the manufacture,  
300 possession, sale, delivery, display, use, or attempted or  
301 threatened use of weapons of mass destruction or hoax weapons of  
302 mass destruction.

303 (x)~~(s)~~ Section 794.011, relating to sexual battery.

304 (y)~~(t)~~ Former s. 794.041, relating to prohibited acts of  
305 persons in familial or custodial authority.

306 (z)~~(u)~~ Section 794.05, relating to unlawful sexual activity  
307 with certain minors.

308 (aa)~~(v)~~ Chapter 796, relating to prostitution.

309 (bb)~~(w)~~ Section 798.02, relating to lewd and lascivious  
310 behavior.

311 (cc)~~(x)~~ Chapter 800, relating to lewdness and indecent  
312 exposure.

313 (dd)~~(y)~~ Section 806.01, relating to arson.

314 (ee)~~(z)~~ Section 810.02, relating to burglary.

315 (ff)~~(aa)~~ Section 810.14, relating to voyeurism, if the  
316 offense is a felony.

317 (gg)~~(bb)~~ Section 810.145, relating to video voyeurism, if  
318 the offense is a felony.

319 (hh)~~(cc)~~ Chapter 812, relating to theft, robbery, and

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320 related crimes, if the offense is a felony.

321 (ii)~~(dd)~~ Section 817.563, relating to fraudulent sale of

322 controlled substances, only if the offense was a felony.

323 (jj)~~(ee)~~ Section 825.102, relating to abuse, aggravated

324 abuse, or neglect of an elderly person or disabled adult.

325 (kk)~~(ff)~~ Section 825.1025, relating to lewd or lascivious

326 offenses committed upon or in the presence of an elderly person

327 or disabled adult.

328 (ll)~~(gg)~~ Section 825.103, relating to exploitation of an

329 elderly person or disabled adult, if the offense was a felony.

330 (mm)~~(hh)~~ Section 826.04, relating to incest.

331 (nn)~~(ii)~~ Section 827.03, relating to child abuse,

332 aggravated child abuse, or neglect of a child.

333 (oo)~~(jj)~~ Section 827.04, relating to contributing to the

334 delinquency or dependency of a child.

335 (pp)~~(kk)~~ Former s. 827.05, relating to negligent treatment

336 of children.

337 (qq)~~(ll)~~ Section 827.071, relating to sexual performance by

338 a child.

339 (rr) Section 838.015, relating to bribery.

340 (ss)~~(mm)~~ Section 843.01, relating to resisting arrest with

341 violence.

342 (tt)~~(nn)~~ Section 843.025, relating to depriving a law

343 enforcement, correctional, or correctional probation officer

344 means of protection or communication.

345 (uu)~~(oo)~~ Section 843.12, relating to aiding in an escape.

346 (vv)~~(pp)~~ Section 843.13, relating to aiding in the escape

347 of juvenile inmates in correctional institutions.

348 (ww)~~(qq)~~ Chapter 847, relating to obscene literature.

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349        (xx) Section 859.01, relating to poisoning food or water.  
350        (yy) Section 873.01, relating to the prohibited purchase or  
351 sale of human organs and tissue.  
352        (zz)~~(rr)~~ Section 874.05, relating to encouraging or  
353 recruiting another to join a criminal gang.  
354        (aaa) Section 876.32, relating to treason.  
355        (bbb)~~(ss)~~ Chapter 893, relating to drug abuse prevention  
356 and control, only if the offense was a felony or if any other  
357 person involved in the offense was a minor.  
358        (ccc)~~(tt)~~ Section 916.1075, relating to sexual misconduct  
359 with certain forensic clients and reporting of such sexual  
360 misconduct.  
361        (ddd)~~(uu)~~ Section 944.35(3), relating to inflicting cruel  
362 or inhuman treatment on an inmate resulting in great bodily  
363 harm.  
364        (eee)~~(vv)~~ Section 944.40, relating to escape.  
365        (fff)~~(ww)~~ Section 944.46, relating to harboring,  
366 concealing, or aiding an escaped prisoner.  
367        (ggg)~~(xx)~~ Section 944.47, relating to introduction of  
368 contraband into a correctional facility.  
369        (hhh) Section 951.22, relating to county detention  
370 facilities and contraband articles.  
371        (iii)~~(yy)~~ Section 985.701, relating to sexual misconduct in  
372 juvenile justice programs.  
373        (jjj)~~(zz)~~ Section 985.711, relating to contraband  
374 introduced into detention facilities.  
375        Section 5. This act shall take effect July 1, 2023.