

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 463 Background Screening
SPONSOR(S): Judiciary Committee; Reed and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 674

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|------------|--|
| 1) Health Innovation Subcommittee | 11 Y, 0 N | Guzzo | Shaw |
| 2) Judiciary Committee | 17 Y, 0 N, As CS | Ham-Warren | Havlicak |
| 3) Health & Human Services Committee | | Guzzo | Calamas |

SUMMARY ANALYSIS

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions. The Clearinghouse is created under the Agency for Health Care Administration (AHCA), and was implemented by AHCA on January 1, 2013. The bill makes several changes to the provisions of the Clearinghouse. Specifically, the bill:

- Clarifies that employers must register with and initiate all criminal history checks through the clearinghouse before referring a potential employee for electronic fingerprint submission;
- Requires vendors who submit fingerprints on behalf of employers to include a photograph of the person taken at the time the fingerprints are submitted;
- Allows the Department of Highway Safety and Motor Vehicles to share driver's license photographs through interagency agreements with the Department of Health for the purpose of accessing digital images for the reproduction of licenses and with AHCA so that authorized agencies may verify photographs in the Clearinghouse; and
- Specifies demographic information that must be submitted with a request for a criminal background check as required for a federal check.

The bill also:

- Provides that the three-year waiting period to apply for an exemption from disqualification for a criminal offense does not apply to monetary sanctions for a felony disqualifying offense, so long as all sanctions are paid or completed prior to an exemption being granted;
- Updates the disqualifying offenses in s. 408.809, F.S., and ch. 435, F.S., to include criminal offenses involving theft that are similar to existing disqualifying offenses and to include the attempt, solicitation, or conspiracy to commit a disqualifying offense; and
- Revises applicability of background screening requirements for certain service providers who must register with DVR.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida has one of the largest vulnerable populations in the country with 17.3 percent of the state's population over the age of 65.¹ In addition to the elderly, the state's vulnerable children and disabled adults require special care because they are at an increased risk of abuse.

Criminal Background Screening

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees, owners, operators, contractors, and volunteers. Chapter 435, F.S., outlines the screening requirements. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening.² Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1³ screenings were increased to Level 2⁴ screenings.
- By July 1, 2012, all fingerprints submitted to the Florida Department of Law Enforcement (FDLE) must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

Florida licensure laws require providers licensed by the Agency for Health Care Administration (AHCA) to conduct Level 2 criminal background screening for:⁵

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Current background screening standards in ch. 435, F.S., and s. 408.809, F.S., include various disqualifying offenses pertaining, but not limited to, domestic violence, patient brokering, criminal use of personal identification information, fraudulent use of credit cards, forgery, and possession/sale of illegal drugs.

¹ The Older Population: 2010 Census Briefs, U.S. Census Bureau, Issued November 2011, p. 9, available at: <http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf> (Last visited March 18, 2014).

² Chapter 2010-114, L.O.F.

³ Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

⁴ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

⁵ Section 408.809, F.S.

There are some criminal offenses, not presently listed as disqualifying offenses, that are substantially similar to current disqualifying offenses. For example, s. 408.809(4)(k), F.S., states that fraudulent use of credit cards, if the offense was a felony, as described in s. 817.61, F.S., is a disqualifying offense. Under current background screening standards, obtaining goods by use of a false or expired credit, if the offense was a felony, as described in s. 817.841, F.S., is not considered a disqualifying offense.

Designated agencies have the authority to grant exemptions from disqualification.⁶ The exemptions enable people who have been convicted of a disqualifying criminal offense to present information as to why they should not be excluded from working with vulnerable individuals. The information includes specifics of the offense, how long ago the offense occurred, work history, and rehabilitation. Current law states that an applicant who applies for an exemption for a felony offense must have had at least three years elapse since completion of any sentence or lawful release from confinement, supervision, or sanction for the disqualifying felony.⁷ The three-year waiting period includes even the smallest sanction, such as an unpaid balance of a fine. The requirement is similar for disqualifying misdemeanors, except that there is no specific time frame mandated post completion of being lawfully released from confinement, supervision, or sanction. Some applicants who are otherwise qualified for an exemption are unaware of outstanding monetary sanctions related to their disqualifying offense until being notified by the agency. In some cases, the applicant's criminal case may have been closed for over a decade but the applicant may still have an outstanding monetary sanction related to the disqualifying offense. Once the outstanding monetary sanction has been paid, the applicant would not be eligible to be granted an exemption from disqualification for a period of three years after completion of the sanction.

The term "sanction" is not currently defined in chapter 435, F.S. Numerous state agencies are bound by chapter 435, F.S., and the interpretation of the term "sanction" varies widely among the agencies.⁸

Background Screening Clearinghouse

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies. Designated agencies include AHCA, the Department of Health (DOH), the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education. Once a person's screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees. Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. The Clearinghouse was initially implemented by AHCA on January 1, 2013.

The Department of Highway Safety and Motor Vehicles (DHSMV) has the authority to maintain a record of driver license photographs together with other data required for identification and retrieval.⁹ The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies.¹⁰

Collecting photographs at the time of screening is an important part of implementing the Clearinghouse. The requirement to submit a photograph was added to law during the 2012 Legislative Session. However, instead of being in the Clearinghouse statute (s. 435.12, F.S.), the requirement currently exists in the general Level 2 screening standards of s. 435.04(1)(e), F.S.

⁶ Section 435.07, F.S.

⁷ *Id.*

⁸ HB 1021 (2013) Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, March 13, 2013 (on file with the Health Innovation Subcommittee).

⁹ Section 322.142(4), F.S.

¹⁰ Section 322.142(4), F.S., provides that DHSMV may provide reproductions of the file or digital record to the Department of Business and Professional Regulation, the Department of State, the Department of Revenue, the Department of Children and Families, the Department of Financial Services, or to district medical examiners.

Employers of individuals subject to screening by a specified agency are required to register with the Clearinghouse and maintain the employment status of all employees with the Clearinghouse for screenings conducted after the date the state agency begins participation in the Clearinghouse. Initial employment status and any change in status must be reported by the employer within 10 business days.¹¹ Currently, it is not a requirement that screenings be initiated through the Clearinghouse.

Effect of Proposed Changes

The bill amends s. 322.142, F.S., to authorize DHSMV, pursuant to interagency agreements, to make available a record of driver's license photographs to DOH for the purpose of accessing digital images for reproduction of licenses issued by DOH and to AHCA so that authorized agencies may verify photographs in the Clearinghouse.

The bill amends s. 408.806, F.S., to provide that an individual taxpayer identification number may be submitted to AHCA for the purpose of background screening if the applicant cannot legally obtain a social security number. In addition, the bill provides that an attestation, rather than an affidavit, may be submitted by the applicant stating compliance with the provisions of that section and ch. 435, F.S.

The bill amends ss. 408.809 and 435.04, F.S., to add disqualifying offenses. The criminal offenses added include obtaining goods by use of false or expired credit cards or other credit device, if the offense was a felony (s. 817.481, F.S.), fraudulently obtaining goods or services from a health care provider (s. 817.50, F.S.), racketeering (s. 895.03, F.S.), violating the Florida Money Laundering Act (s. 896.101, F.S.), and criminal offenses that involve attempts, solicitation, and conspiracy to commit an offense (s. 777.04, F.S.) that is one of the listed disqualifying offenses.

The bill repeals s. 7 of chapter 2012-73, Laws of Florida, requiring background screening of certain providers of the Division of Vocational Rehabilitation whose agreements are renewed or entered into on or after October 1, 2012. The bill amends s. 413.208, F.S., to provide that background screening of these providers applies only to agreements entered into or renewed after the Clearinghouse becomes operational and retains background screening results pursuant to s. 435.12, F.S.

The bill relocates language from s. 435.04(1)(e)2, F.S., to s. 435.12(2)(d), F.S. As a result, the submission of a photograph will be a requirement of the Clearinghouse, and not a requirement for all screenings conducted pursuant to chapter 435, F.S. This change will allow the agency to enter into an agreement with the DHSMV to verify photographs of individuals that have been background screened through the Clearinghouse by comparing the submitted photograph to the driver's license photograph.

The bill amends s. 435.04(1)(e), F.S., to require vendors who submit fingerprints on behalf of employers to submit specific identifying information for the person screened, including the applicant's:

- Full first name, middle initial, and last name;
- Social security number;
- Date of birth;
- Mailing address;
- Sex; and
- Race.

The bill modifies requirements relating to exemptions from disqualification for those persons with felony convictions who struggle to satisfy the monetary portions of their sentences, but have otherwise completed all other conditions. The bill amends s. 435.07, F.S., to delete the term "sanction", and replace it with "nonmonetary condition imposed by the court" to eliminate differing interpretations of the term sanction. Court ordered nonmonetary sanctions could include various types of community service and rehabilitation courses, such as anger management, theft prevention courses, and drug rehabilitation. Monetary sanctions that are court ordered could include any fee, fine, fund, lien, civil judgment, application, and costs of prosecution or restitution. The bill provides that the three-year

¹¹ Section 435.12(2)(c), F.S.
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waiting period to apply for an exemption from disqualification for a felony criminal offense does not apply to monetary sanctions, so long as all sanctions are paid or completed prior to an exemption being granted. The three-year waiting period will still apply for any felony disqualifying offense where, confinement, supervision, or nonmonetary condition is involved.

The bill amends s. 435.12, F.S., to require all screenings be initiated and registered by the employer through the Clearinghouse prior to referring an employee or potential employee for electronic fingerprint submission. The bill requires the registration to include the same information as required by s. 435.04, F.S., as amended by section 6 of the bill. In addition, the bill requires an individual taxpayer identification number to be included for registration of individuals that cannot legally obtain a social security number. This allows AHCA to obtain information on the initiating facility and provide for screening updates to be sent to the initiating facility as the information becomes available.¹² Providers will be able to obtain screening results much faster than screenings not initiated through the Clearinghouse.¹³

The bill amends ss. 408.809 and 435.12, F.S., to eliminate the need for rescreening persons once their fingerprints are retained by the FBI as part of its national retained print arrest notification program.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.
- Section 2:** Amends s. 408.806, F.S., relating to license application process.
- Section 3:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 4:** Amends s. 413.208, F.S., relating to service providers; quality assurance; fitness for responsibilities; background screening.
- Section 5:** Repeals s. 7 of chapter 2012-73, Laws of Florida, relating to background screening requirements for registrants of the Division of Vocational Rehabilitation.
- Section 6:** Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 7:** Amends s. 435.05, F.S., relating to requirements for covered employees and employers.
- Section 8:** Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 9:** Amends s. 435.12, F.S., relating to the Care Provider Background Screening Clearinghouse.
- Section 10:** Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

¹² *Id.*

¹³ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2014, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment did not make any significant changes to the bill as filed, but lined the bill up with its Senate companion, CS/SB 674, by revising certain terminology and providing for the participation in the FBI fingerprint retention program once it is implemented.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.