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# **Criminal & Civil Justice Policy Council**

**Tuesday, February 16, 2010**

**8:00 AM**

**404 HOB**

**Larry Cretul  
Speaker**

**William Snyder  
Chair**

**Council Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Criminal & Civil Justice Policy Council**

**Start Date and Time:** Tuesday, February 16, 2010 08:00 am  
**End Date and Time:** Tuesday, February 16, 2010 10:00 am  
**Location:** 404 HOB  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 89 Pretrial Proceedings by Thompson, N.  
HB 437 Contingency Fee Agreements Between the Department of Legal Affairs and Private Attorneys by Eisnaugle

**Consideration of the following proposed council bill(s):**

PCB CCJP 10-04 -- Background Screening

**NOTICE FINALIZED on 02/09/2010 16:19 by Jones.Missy**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 89 Pretrial Proceedings

**SPONSOR(S):** Thompson and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 300

|    | REFERENCE  | ACTION    | ANALYST           | STAFF DIRECTOR     |
|----|--|-----------|-------------------|--------------------|
| 1) | Public Safety & Domestic Security Policy Committee | 12 Y, 0 N | Padgett           | Cunningham         |
| 2) | Policy Council                                     | 15 Y, 0 N | Varn              | Ciccone            |
| 3) | Criminal & Civil Justice Policy Council            |           | Padgett <i>RP</i> | Havlicak <i>RH</i> |
| 4) |  |           |                   |                    |
| 5) |  |           |                   |                    |

**SUMMARY ANALYSIS**

If a person sentenced to probation commits a new criminal offense, the person is in violation of the terms of probation. In such instances, the probation officer files an affidavit alleging a violation of probation with the court. The court may then issue a warrant for the probationer's arrest. Their probation is not violated until the probation officer files an affidavit and the judge signs an arrest warrant.

Generally, a judge may set any bond amount on the arrest warrant for a person who violates probation. The amount of the bond depends on the nature of the probation violation and the probationer's past history. Under certain circumstances listed in s. 903.0351, F.S., the judge must order pretrial detention without bail until the resolution of the probation violation or community control violation hearing.

The bill provides that the court may order pretrial detention or pretrial release of any person who is on probation or community control if the person commits a new criminal offense for which the court finds the existence of probable cause. If no affidavit of a violation of probation or community control is filed within 10 days, the order of pretrial detention or pretrial release relating to the violation is dismissed.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 948.01, F.S. provides the circumstances for which the court can place a person on probation<sup>1</sup> or community control<sup>2</sup>. Any person who is found guilty by a jury, the court sitting without a jury, or enters a plea of guilty or nolo contendere may be placed on probation or community control; regardless of whether adjudication is withheld.<sup>3</sup> The Department of Corrections (DOC) supervises all probationers sentenced in circuit court.<sup>4</sup> Section 948.03, F.S. provides a list of standard conditions of probation. In addition to the standard conditions of probation, the court may add additional conditions to the probation that it deems proper.<sup>5</sup> A condition requiring the probationer to not commit any new criminal offenses is a standard condition.<sup>6</sup>

If a person sentenced to probation commits a new criminal offense, the person is in violation of the terms of probation. In such instances, the probation officer files an affidavit alleging a violation of probation with the court.<sup>7</sup> The court may then issue a warrant for the probationer's arrest.<sup>8</sup> Their probation is not violated until the probation officer files an affidavit and the judge signs an arrest warrant.

Generally, a judge may set any bond amount on the arrest warrant for a person who violates probation. The amount of the bond depends on the nature of the probation violation and the probationer's past history. Under certain circumstances listed in s. 903.0351, F.S.<sup>9</sup>, the judge must order pretrial

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<sup>1</sup> "Probation" is defined as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Section 948.001(5), F.S.

<sup>2</sup> "Community control" is defined as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanction and imposed and enforced. Section 948.001(3), F.S.

<sup>3</sup> Section 948.01(1), F.S.

<sup>4</sup> Id.

<sup>5</sup> Section 948.03(2), F.S.

<sup>6</sup> Fl. R. Crim. Pro. 3.790 (2010).

<sup>7</sup> Section 948.06(1)(b), F.S.

<sup>8</sup> Id.

<sup>9</sup> Circumstances include detention of a person who is a violent felony offender of special concern defined in s. 948.06, F.S.; a person on felony probation who commits a qualifying act defined in s. 948.06(8)(c), F.S.; a person on felony probation that has previously

detention without bail until the resolution of the probation violation or community control violation hearing.

#### Proposed Changes

The bill provides that the court may order pretrial detention or pretrial release of any person who is on probation or community control if the person commits a new criminal offense for which the court finds the existence of probable cause. If no affidavit of a violation of probation or community control is filed within 10 days, the order of pretrial detention or pretrial release relating to the violation is dismissed.

Fort Myers Police Officer Andrew Widman was shot and killed in the line of duty on July 18, 2008 by Abel Arango while responding to a domestic dispute. Arango was on felony probation for armed robbery and grand theft at the time of the shooting. Arango was arrested in May 2008 for selling cocaine. Arango subsequently bonded out of jail. A warrant for violation of probation was issued on May 29, 2008, after Arango was out of pretrial detention on bail. In addition, an outstanding warrant from another county was not served on Arango while he was incarcerated on the cocaine charge. Neither warrant had been served on Arango at the time of shooting. Had the warrants been served, Arango would have been incarcerated with no possibility of bonding out of jail.<sup>10</sup>

#### B. SECTION DIRECTORY:

Section 1: Cites the bill as the "Officer Andrew Widman Act."

Section 2: Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 3: Provides an effective date of October 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

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been found by the court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent offender as defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S. who commits a qualifying act defined in s. 948.06(8)(c), F.S.  
<sup>10</sup> <http://www.fmpolice.com/tabId/54/itemId/92/0718-Fort-Myers-Police-Officer-Killed-in-the-Lin.aspx> (Last accessed on February 15, 2010.

#### D. FISCAL COMMENTS:

The bill could potentially increase the length of time a probationer arrested for a new offense must remain in jail. This could result in an increase in the local jail population.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This 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:

The idea of setting pretrial detention/release conditions for a potential violation of probation case, before the violation of probation affidavit is actually filed, may raise due process concerns. In the early 1980s, sections 949.10 and 949.11, F.S., contained language that is similar to that of HB 89. These sections provided that the arrest of any person who was on probation was prima facie evidence of a violation of the terms and conditions of such probation. Upon such arrest, probation was immediately temporarily revoked and such person had to remain in custody until a hearing by the Parole and Probation Commission or the court. The statutes required the hearing to be held within 10 days from the date of the arrest, and provided that the failure of the commission or the court to hold the hearing within 10 days from the date of arrest resulted in the immediate release of such person from incarceration on the temporary revocation.

Although these sections of statute were repealed in 1982, they were analyzed by various courts. In *Miller v. Toles*, 442 So.2d 177 (Fla. 1983), an offender alleged that his due process rights were violated because he was not given a hearing until the eleventh day after being placed in custody. The Florida Supreme Court agreed and stated that:

Without provision for expedited final hearings for a parolee or a probationer arrested for alleged commission of a felony, statutes governing subsequent felony arrest of felony parolee or probationer which deny the parolee or probationer arrested a preliminary probable cause hearing would be subject to constitutional attack as imposing an automatic forfeit of liberty interests upon arrest, not conviction, for a felony.

The Court acknowledged that probationers could be afforded lesser due process rights but stated that the quid pro quo for doing so was the expedited final hearing. The Court stated that without that provision, the statute would be subject to constitutional attack as imposing an automatic forfeit of liberty interests upon *arrest*, not *conviction*, for a felony.

Unlike the provisions of ss. 949.10 and 949.11, F.S., HB 89 only requires that a violation affidavit be *filed* within ten days of an offender's arrest (it would follow that the *hearing* would be more than 10 days after the offender's arrest). As such, the bill may raise due process concerns.

Additionally, there may be an issue of separation of powers to the extent that the court is assuming the role of the state (Department) by initiating the violation of probation process. Probation officers may feel obligated to file violation of probation affidavits at the direction of the court or because the court has already made an initial determination by ordering pretrial detention/release conditions.

#### B. RULE-MAKING AUTHORITY:

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 903.046, F.S. currently provides that the court may consider the defendant's past or present conduct and record of convictions in determining the bail amount for the new criminal offense.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2           An act relating to pretrial proceedings; providing a short  
 3           title; amending s. 948.06, F.S.; providing that at the  
 4           first appearance of a probationer or an offender on  
 5           community control arrested for a new offense for which the  
 6           court finds the existence of probable cause, the court may  
 7           order pretrial detention or pretrial release of the person  
 8           with or without bail to await further hearing to determine  
 9           the outcome of a violation hearing; providing for  
 10          dismissal if no affidavit alleging a violation of  
 11          probation or community control is filed within a specified  
 12          period; exempting persons subject to hearings under  
 13          specified provisions; providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. This act may be cited as the "Officer Andrew  
 18 Widman Act."

19           Section 2. Paragraphs (c) through (f) of subsection (1) of  
 20 section 948.06, Florida Statutes, are redesignated as paragraphs  
 21 (d) through (g), respectively, and a new paragraph (c) is added  
 22 to that subsection to read:

23           948.06 Violation of probation or community control;  
 24 revocation; modification; continuance; failure to pay  
 25 restitution or cost of supervision.--

26           (1)

27           (c) Notwithstanding s. 907.041, at the first appearance of  
 28 a probationer or an offender on community control arrested for a

29 new offense for which the court finds the existence of probable  
 30 cause, the court may order pretrial detention or pretrial  
 31 release of the person with or without bail to await further  
 32 hearing to determine the outcome of a violation hearing. If no  
 33 affidavit alleging a violation of probation or community control  
 34 is filed with the court within 10 days after arrest for the new  
 35 offense, the order regarding pretrial detention or pretrial  
 36 release on the uncharged violation of probation or community  
 37 control shall be dismissed. This paragraph does not apply to a  
 38 probationer or community controllee subject to a hearing on his  
 39 or her danger to the community required under subsection (4) or  
 40 paragraph (8) (e).

41 Section 3. This act shall take effect October 1, 2010.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 437                      Contingency Fee Agreements Between the Department of Legal Affairs  
and Private Attorneys  
**SPONSOR(S):** Eisnaugle and others  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** CS/SB 712

|    | REFERENCE                               | ACTION   | ANALYST        | STAFF DIRECTOR     |
|----|---|----------|----------------|--------------------|
| 1) | Civil Justice & Courts Policy Committee | 7 Y, 3 N | DeZego         | De La Paz          |
| 2) | Criminal & Civil Justice Policy Council |          | Bond <i>NB</i> | Havlicak <i>RH</i> |
| 3) |   |          |                |                    |
| 4) |   |          |                |                    |
| 5) |   |          |                |                    |

**SUMMARY ANALYSIS**

Current law allows any executive branch agency to procure legal services from a vendor on a contingency fee basis. The fee must be commercially reasonable, and cannot exceed the contingency fee limits established for Florida attorneys by the Florida Bar. The limits established by the Bar are as high as 45% of the recovery.

This bill prohibits the Department of Legal Affairs from entering into a contingency fee contract with a private attorney unless the Attorney General makes a written determination before entering such contract that contingency fee representation is both cost-effective and in the public interest. The bill further limits the amount of any contingency fee based on the amount recovered to no more 25% of the first \$10 million, with smaller percentages above \$10 million and a cap on the total fee of \$50 million. Lastly, this bill requires copies of executed contingency fee agreements, as well as payments of contingency fees, be posted on the department's website.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Attorney General is a constitutional office created by art. IV, s. 4(b) of the state constitution. The constitution does not specify the general rights and duties of the Attorney General. The courts have described the office as follows:

The office of Attorney General has existed both in this country and in England for a great while. The office is vested by the common law with a great variety of duties in the administration of the government. It has been asserted that the duties of such an office are so numerous and varied that it has not been the policy of the Legislatures of the states to specifically enumerate them; that a grant to the office of some powers by statute does not deprive the Attorney General of those belonging to the office under the common law. The Attorney General has the power and it is his duty among the many devolving upon him by the common law to prosecute all actions necessary for the protection and defense of the property and revenue of the state; to represent the state in all criminal cases before the appellate court; by proper proceedings to revoke and annul grants made by the state improperly or when forfeited by the grantee; by writ of quo warranto to determine the right of any one who claims or usurps any office, and to vacate the charter or annul the existence of a corporation for violations of its charter or for omitting to exercise its corporate powers; to enforce trusts and prevent public nuisances and the abuse of trust powers. As the chief law officer of the state, it is his duty, in the absence of express legislative restrictions to the contrary, to exercise all such power and authority as public interests may require from time to time.<sup>1</sup>

The Attorney General is the agency head of the Department of Legal Affairs.<sup>2</sup> The department executes the policies of the Attorney General.

#### Attorney General Transparency Code

In September 2007, the American Tort Reform Association (ATRA) proposed new voluntary standards designed to improve government transparency and accountability when state attorneys general hire outside counsel to litigate on behalf of state residents.<sup>3</sup> ATRA proposed various changes including contracts with vendors being posted on the Internet for public inspection, outside counsel on a

<sup>1</sup> *State ex rel. Landis v. S.H. Kress & Co.*, 115 Fla. 189, 199-201; 155 So. 823 (Fla. 1934)

<sup>2</sup> Section 20.11, F.S.

<sup>3</sup> See <http://www.atra.org/newsroom/releases.php?id=8168>. Last accessed on December 7, 2009.

contingent fee basis disclosing detailed information regarding the hours worked and fees charged, and placing all monies recovered by the Attorney General into the state treasury for appropriation by the Legislature unless stipulated otherwise.

## The Attorney General's Ability to Contract for Private Attorney Services

### *Current Law*

The Department of Legal Affairs provides civil representation and legal services on behalf of the state. Section 287.059, F.S., provides that every state agency<sup>4</sup> is required to obtain the written approval of the Attorney General as a prerequisite to contracting for private attorney services with specified exceptions, most notably the Executive Office of the Governor.<sup>5</sup>

When an agency requests approval for the use of private attorney services, the agency must first offer to contract with the Department of Legal Affairs for such attorney services at a cost pursuant to mutual agreement.<sup>6</sup> The Attorney General can, by rule, ask the agency to provide the following information:

- The nature of the services to be provided and the issues involved;
- The need for use of private attorneys rather than staff attorneys;
- The criteria by which the agency selected the private attorney;
- Competitive fees for similar attorney services;
- The agency's analysis estimating the number of hours, the costs, the total contract amount, and a risk or cost-benefit analysis;
- Which partners, associates, paralegals, research associates, or other personnel will be used and how their time will be billed; and
- Any other information which the Attorney General deems appropriate for the proper evaluation of the need for private attorney services.

Agencies are required to use the following statutory criteria when selecting outside firms:

- The magnitude or complexity of the case;
- The firm's ratings and certifications;
- The firm's minority status;
- The firm's physical proximity to the case and the agency;
- The firm's prior experience with the agency;
- The firm's prior experience with similar cases or issues;
- The firm's billing methodology and proposed rate;
- The firm's current or past adversarial position, or conflict of interest, with the agency; and
- The firm's willingness to use resources of the agency to minimize costs.<sup>7</sup>

If the Attorney General declines to provide the requested services through the Department of Legal Affairs, then the Attorney General's written approval must include a statement that the services

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<sup>4</sup> Section 287.059(1), F.S., defines "agency" or "state agency" as state officers, department, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of government, community and junior colleges, and multicounty special districts exclusive of those created by interlocal agreement or which have elected governing boards.

<sup>5</sup> Section 287.059(2), F.S., provides that written approval from the Attorney General is not required for private attorney services procured by the Executive Office of the Governor, offices under the jurisdiction of the Financial Services Commission, any department under the exclusive jurisdiction of a single Cabinet officer, provided by legal services organizations to indigent clients, necessary to represent the state in litigation involving the State Risk Management Trust Fund, procured by the university and college boards of trustees, procured by community and junior colleges, or procured by the Board of Trustees for the Florida School for the Deaf and the Blind.

<sup>6</sup> Section 287.059(3), F.S.

<sup>7</sup> Section 287.059(10), F.S.

requested cannot be provided by the office of the Attorney General or that such private attorney services are cost-effective in the opinion of the Attorney General. Once written approval has been received from the Attorney General, the general counsel is required to review the form and legality of the contract and indicate his or her approval by initialing the contract. The contract must also be signed and approved by the agency head, who must maintain custody of the contract.<sup>8</sup>

All agencies are required to use the standard fee schedule when contracting for private attorney services,<sup>9</sup> which schedule has been set by the Department of Legal Affairs in administrative rule. Rule 2-37.030, F.A.C., generally provides for the following fee schedule:

- Specialized attorney<sup>10</sup> services may be billed up to \$250 per billable hour;<sup>11</sup>
- All other attorney services may be billed up to \$200 per billable hour;
- All paralegal, legal assistant, law clerk, and research assistant services may be billed at \$40 per billable hour;
- Costs for exhibits, transcripts, and witness fees are not considered a part of the billable hour, but will be reimbursed based upon documented third party vendor charges provided prior authorization is given by the agency;
- Expenses for travel are limited to terms and rates established in s. 112.061, F.S.; and
- Non-routine<sup>12</sup> office overhead will be reimbursed based upon documented third party vendor charges provided they are justified to the agency.

Alternate billing methodologies, including contingency fee contracts, may be used when it is deemed the most cost-effective or appropriate billing methodology.<sup>13</sup> Any agency wishing to exceed the standard fee schedule must demonstrate necessity to the Attorney General through a statement of waiver which must be signed by the agency head.<sup>14</sup> The statement of waiver must demonstrate necessity to exceed the standard fee schedule based on one or more of the following criteria:

- The inability to obtain adequate legal representation within the confines of the standard schedule;
- The agency is unable to obtain attorney services with the special expertise necessary; or
- The waiver is necessary in order to provide attorney services as a result of an emergency, an immediate danger to public health, safety and welfare, or an opportunity for the state to preserve or enhance the public treasury and that failure to contract immediately for services in excess of the standard fee schedule will work to the detriment of the state.<sup>15</sup>

Contracts must contain a standard addendum developed by the Attorney General, describing in detail what is expected of both the agency and the contracted attorney.<sup>16</sup> The addendum must address the internal system of governance if multiple law firms are parties to the contract. Contracts must be originally executed for one year only, except that multi-year contracts may be entered into providing that they are subject to annual appropriations and annual written approval from the Attorney General.<sup>17</sup> The Attorney General is required to periodically prepare and distribute to all agencies a roster by geographic location of private attorneys under contract with agencies, their fees, and their primary areas of specialization.<sup>18</sup>

<sup>8</sup> Sections 287.059(4) and (5), F.S.

<sup>9</sup> Section 287.059(8), F.S.

<sup>10</sup> Rule 2-37.030(1), F.A.C., limits specialized attorney services to admiralty, copyright, patent, trademark, international communications, media, and bond and securities law.

<sup>11</sup> Rule 2-37.030(4), F.A.C., defines "billable hour" as the actual time spent providing attorney services to the agency measured in 6 to 10 minute intervals. Office overhead is included in the billable hour and not separately compensated.

<sup>12</sup> Rules 2-37.030(4), F.A.C., provides that non-routine overhead includes expenses such as long distance phone charges, facsimile transmissions, bulk mailings, bulk third party copying and computer-assisted legal research.

<sup>13</sup> Rule 2-37.030(5), F.A.C.

<sup>14</sup> Rule 2-37.040, F.A.C.

<sup>15</sup> *Id.*

<sup>16</sup> Section 287.059(11), F.S.

<sup>17</sup> Section 287.059(12), F.S.

<sup>18</sup> Section 287.059(13), F.S.

## *Proposed Changes*

This bill implements several of ATRA's proposed standards for transparency and creates s. 16.0155, F.S., which requires a special procedure regarding contingency fee contracts between the Attorney General and private attorneys. The Department of Legal Affairs is prohibited by this bill from entering into a contingency fee contract with private attorneys unless the Attorney General makes a written determination that contingency fee representation is both cost-effective and in the public interest. This bill requires the written determination to include specific findings as to each of the following factors:

- Whether sufficient and appropriate legal and financial resources exist within the department to handle the matter;
- The time and labor required to handle the matter; the novelty, complexity, and difficulty of the questions involved; and the skills required to perform the necessary attorney services adequately;
- The geographic area in which the attorney services are to be provided; and
- The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with regard to similar issues or cases.

This bill also provides that, notwithstanding the exemption from competitive bidding requirements for the purchase of legal services, the Attorney General is required to request proposals from attorneys to represent the department on a contingency fee basis, unless the Attorney General determines in writing that requesting such proposals is not feasible under the circumstances. This bill provides that the written determination is not final agency action subject to review or challenge under section 120.569, F.S.,<sup>19</sup> and section 120.57, F.S.,<sup>20</sup> and that the department is exempt from administrative bid protest provisions under section 120.57(3), F.S.

This bill requires executed contingency fee contracts to be posted on the department's website for public inspection within 5 business days after the date of execution, and remain posted for the duration of the contract, including any extensions or amendments. The amount of payment will also be posted on the department's website within 15 days after the date on which payment is made to a private attorney and remain posted for at least 180 days after payment.

## Contingency Fees

### *Current Law*

A contingency fee contract is generally defined as an arrangement with an attorney who agrees to accept his or her fee on the contingency of a successful outcome.<sup>21</sup> Section 287.059(7), F.S., allows any state agency (which includes the Department of Legal Affairs, the agency headed by the Attorney General) to enter into contingency fee contracts for legal services as long as the contract is commercially reasonable. "Commercially reasonable" is statutorily defined to mean no more than the amount permissible pursuant to rule 4-1.5 of the rules regulating The Florida Bar and case law interpreting that rule.

Any Florida attorney is bound by rule 4-1.5 of the rules regulating The Florida Bar. The rule provides that contracts for contingency fees in an action or claim for personal injury or for property damages or for death or loss of services based upon tortious conduct of another may provide for fees as agreed between the client and the lawyer, as limited by the following provisions:<sup>22</sup>

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<sup>19</sup> Section 120.569, F.S., provides an avenue for administrative review of proceedings in which the substantial interests of a party are determined by an agency.

<sup>20</sup> Section 120.57, F.S., provides an avenue for administrative review of agency action that determines the substantial interests of a party and that is based on an unadopted rule.

<sup>21</sup> Black's Law Dictionary, pg. 290, (5<sup>th</sup> Edition, 1979).

<sup>22</sup> See <http://www.floridabar.org/divexe/rrtbf.nsf/FV/A8644F215162F9DE85257164004C0429>. Last accessed December 7, 2009.



Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:

a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:

1. 33 1/3% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment:

1. 40% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:

1. 33 1/3% of any recovery up to \$1 million; plus
2. 20% of any portion of the recovery between \$1 million and \$2 million; plus
3. 15% of any portion of the recovery exceeding \$2 million.

d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

Pursuant to rule 4-1.5(4)(B)(iii) of the rules regulating The Florida Bar, art. I, s. 26 of the state constitution provides that in medical liability claims involving a contingency fee, unless waived, the claimant is entitled to receive no less than 70% of the first \$250,000.00 of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants.

Pursuant to standard fee schedule adopted by the department, the department may contract with private attorneys on a contingency fee basis not to exceed 35% through trial and not to exceed 40% through appeal, where attorney services involve litigation, except collections litigation shall not exceed 30%. The fee schedule further provides that where contingency fees involve non-litigation attorney services, the fee shall not exceed the rate in the market in which the attorney service is being provided.<sup>23</sup>

#### *Proposed Changes*

This bill provides that notwithstanding the requirement that a contingency fee contract be commercially reasonable, a contingency fee contract entered into by the department may not provide for the private attorney to receive an aggregate contingency fee in excess of:

- 25% of any recovery of up to \$10 million; plus

- 20% of any portion of such recovery between \$10 million and \$15 million; plus
- 15% of any portion of such recovery between \$15 million and \$20 million; plus
- 10% of any portion of such recovery between \$20 million and \$25 million; plus
- 5% of any portion of such recovery exceeding \$25 million.

The bill also prohibits an aggregate contingency fee that exceeds \$50 million, exclusive of reasonable costs and expenses, irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

### Record-keeping Requirements

#### *Current Law*

Section 287.059(16), F.S., requires private attorneys who are under contract to provide attorney services to the state or a state agency to maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. Such records are to be kept from the inception of the contract until at least four years after the contract terminates and are required to be available for inspection and copying upon request in accordance with chapter 119.

#### *Proposed Changes*

The bill requires that in addition to these statutory requirements, any private attorney must keep contemporaneous time records with regard to work performed on the matter by any attorneys or paralegals in increments of no greater than one-tenth of an hour. These records must be provided promptly upon request by the department.

#### B. SECTION DIRECTORY:

Section 1 creates s. 16.0155, F.S., regarding contingency fee agreements between the Department of Legal Affairs and private attorneys.

Section 2 provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

**D. FISCAL COMMENTS:**

The Department of Legal Affairs' legislative staff indicates that the department is not currently a party to any contingency fee contracts as contemplated by this bill, nor are they aware of the department ever having approved such a contract.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This 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:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to contingency fee agreements between the  
 3           Department of Legal Affairs and private attorneys;  
 4           creating s. 16.0155, F.S.; providing definitions;  
 5           prohibiting the Department of Legal Affairs of the Office  
 6           of the Attorney General from entering into a contingency  
 7           fee contract with a private attorney unless the Attorney  
 8           General makes a written determination prior to entering  
 9           into such a contract that contingency fee representation  
 10          is both cost-effective and in the public interest;  
 11          requiring that such written determination include certain  
 12          findings; requiring that the Attorney General, upon making  
 13          his or her written determination, request proposals from  
 14          private attorneys to represent the department on a  
 15          contingency-fee basis unless the Attorney General  
 16          determines in writing that requesting such proposals is  
 17          not feasible under the circumstances; providing that the  
 18          written determination does not constitute a final agency  
 19          action that is subject to review; providing that the  
 20          request for proposals and contract award are not subject  
 21          to challenge under the Administrative Procedure Act;  
 22          requiring that a private attorney maintain detailed  
 23          contemporaneous time records with regard to work performed  
 24          on the matter by any attorneys or paralegals assigned to  
 25          the matter in specified increments; requiring that a  
 26          private attorney provide such record to the department  
 27          upon request; limiting the amount of a contingency fee  
 28          that may be paid to a private attorney pursuant to a

29 contract with the department; requiring that copies of any  
 30 executed contingency fee contract and the Attorney  
 31 General's written determination to enter into such  
 32 contract be posted on the department's website within a  
 33 specified period after the date on which the contract is  
 34 executed; requiring that such information remain posted on  
 35 the website for a specified duration; requiring that any  
 36 payment of contingency fees be posted on the department's  
 37 website within a specified period after the date on which  
 38 payment of such contingency fees is made to the private  
 39 attorney; requiring that such information remain posted on  
 40 the website for a specified duration; providing an  
 41 effective date.

42

43 Be It Enacted by the Legislature of the State of Florida:

44

45 Section 1. Section 16.0155, Florida Statutes, is created  
 46 to read:

47 16.0155 Contingency fee agreements.—

48 (1) As used in this section, the term:

49 (a) "Department" means the Department of Legal Affairs.

50 (b) "Private attorney" means any private attorney or law  
 51 firm.

52 (2) The department may not enter into a contingency fee  
 53 contract with a private attorney unless the Attorney General  
 54 makes a written determination prior to entering into such a  
 55 contract that contingency fee representation is both cost-  
 56 effective and in the public interest. Any written determination

57 shall include specific findings for each of the following  
 58 factors:

59 (a) Whether there exist sufficient and appropriate legal  
 60 and financial resources within the department to handle the  
 61 matter.

62 (b) The time and labor required; the novelty, complexity,  
 63 and difficulty of the questions involved; and the skill  
 64 requisite to perform the attorney services properly.

65 (c) The geographic area where the attorney services are to  
 66 be provided.

67 (d) The amount of experience desired for the particular  
 68 kind of attorney services to be provided and the nature of the  
 69 private attorney's experience with similar issues or cases.

70 (3) If the Attorney General makes the determination  
 71 described in subsection (2), notwithstanding the exemption  
 72 provided in s. 287.057(5)(f) the Attorney General shall request  
 73 proposals from private attorneys to represent the department on  
 74 a contingency-fee basis, unless the Attorney General determines  
 75 in writing that requesting proposals is not feasible under the  
 76 circumstances. The written determination does not constitute a  
 77 final agency action subject to review pursuant to ss. 120.569  
 78 and 120.57. For purposes of this subsection only, the department  
 79 is exempt from the requirements of s. 120.57(3), and neither the  
 80 request for proposals nor the contract award are subject to  
 81 challenge pursuant to ss. 120.569 and 120.57.

82 (4) In addition to the requirements set forth in s.  
 83 287.059(16), any private attorney shall maintain detailed  
 84 contemporaneous time records for the attorneys and paralegals

85 working on the matter in increments of no greater than 1/10 of  
86 an hour and shall promptly provide these records to the  
87 department, upon request.

88 (5) Notwithstanding s. 287.059(7)(a), the department may  
89 not enter into a contingency fee contract that provides for the  
90 private attorney to receive an aggregate contingency fee in  
91 excess of:

92 (a) Twenty-five percent of any recovery of up to \$10  
93 million; plus

94 (b) Twenty percent of any portion of such recovery between  
95 \$10 million and \$15 million; plus

96 (c) Fifteen percent of any portion of such recovery  
97 between \$15 million and \$20 million; plus

98 (d) Ten percent of any portion of such recovery between  
99 \$20 million and \$25 million; plus

100 (e) Five percent of any portion of such recovery exceeding  
101 \$25 million.

102

103 In no event shall the aggregate contingency fee exceed \$50  
104 million, exclusive of reasonable costs and expenses, and  
105 irrespective of the number of lawsuits filed or the number of  
106 private attorneys retained to achieve the recovery.

107 (6) Copies of any executed contingency fee contract and  
108 the Attorney General's written determination to enter into a  
109 contingency fee contract with the private attorney shall be  
110 posted on the department's website for public inspection within  
111 5 business days after the date the contract is executed and  
112 shall remain posted on the website for the duration of the

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113 | contingency fee contract, including any extensions or amendments  
114 | thereto. Any payment of contingency fees shall be posted on the  
115 | department's website within 15 days after the payment of such  
116 | contingency fees to the private attorney and shall remain posted  
117 | on the website for at least 180 days thereafter.

118 |       Section 2. This act shall take effect July 1, 2010.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB CCJP 10-04 Background Screening  
**SPONSOR(S):** Criminal & Civil Justice Policy Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

|              | REFERENCE                               | ACTION | ANALYST           | STAFF DIRECTOR     |
|--------------|---|--------|-------------------|--------------------|
| Orig. Comm.: | Criminal & Civil Justice Policy Council |        | Thomas <i>TSO</i> | Havlicak <i>RH</i> |
| 1)           |   |        |                   |                    |
| 2)           |   |        |                   |                    |
| 3)           |   |        |                   |                    |
| 4)           |   |        |                   |                    |
| 5)           |   |        |                   |                    |

**SUMMARY ANALYSIS**

Florida law mandates criminal background screening of certain individuals applying to operate or to be employed in a business that deals primarily with vulnerable persons. Each provider, employee, or contractor required to submit to a criminal background screening may be subject to one of two types of screening requirements. A Level 1 screening simply requires a name check against state records, while a Level 2 screening requires a fingerprint search against state and national records. If a person's screening results determine he or she is not qualified to work in a position of trust due to their criminal history, he or she may apply for an exemption.

The bill substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. Key changes made by the bill:

- Require that no person required to be screened may begin work until the screening has been completed.
- Increase all Level 1 screening to Level 2 screening.
- Require all fingerprints to be submitted electronically by July 1, 2012.
- Require certain personnel that are not presently being screened to begin Level 2 screening.
- Add additional serious crimes to the list of disqualifying offenses.
- Authorize agencies to request the retention of fingerprints by the Florida Department of Law Enforcement.
- Provide that an exemption for a disqualifying felony may not be granted until at least three years from the completion of all sentencing sanctions for that felony.
- Require that all exemptions from disqualification be granted only by the agency head.

The new screening requirements will be prospective. Existing persons working with vulnerable populations are not required to be rescreened until such time they are otherwise required to be rescreened by existing law.

The fiscal impact of the bill is still being determined. It is clear the bill will have an impact on agencies, employers and employees. It should not have a significant impact directly on local governments.

The bill takes effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Currently, Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care as they are at an increased risk of abuse.

In 1995, the Florida Legislature created standard procedures for the screening of prospective employees where the Legislature had determined it necessary to conduct criminal history background checks to protect vulnerable persons. Chapter 435, F.S., outlines the screening standards for "Level 1" employment screening and "Level 2" employment screening. The Florida Department of Law Enforcement (FDLE) provides criminal history checks to the employer.

In September, 2009, the Fort Lauderdale Sun Sentinel ran a series of articles following an investigation of background screening of persons working with vulnerable populations in Florida.<sup>1</sup> The Sun Sentinel spent six months investigating Florida's background screening system for caregivers of children, the elderly and disabled. The newspaper obtained screening databases from the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), and Broward County. Among the findings are the following:

- Since 1985, DCF has granted exemptions to more than 6,500 people with criminal records to work in child care, substance abuse and mental health counseling, and with the disabled.
- Lack of proof that a nationwide criminal check on employees had been conducted is the most frequent violation found by state inspectors in day care centers. Screening problems are among the four most common violations in assisted living facilities, adult day cares and nursing agencies. Home health agencies and nursing homes are also cited, but less frequently.
- Florida seniors and disabled adults have been beaten, neglected and robbed by caregivers with criminal records.

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<sup>1</sup> Sun Sentinel. [Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes](http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html.0,3829069.html). The entire series of articles may be found at <http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html.0,3829069.html>story (accessed February 15, 2010).

- More than 3,500 people with criminal records - including rape, robbery and murder - have been allowed to work with the elderly, disabled and infirm through exemptions granted by the state over the past two decades.
- Hundreds of employees are working with vulnerable persons because employers failed to check their backgrounds or kept them on the job despite their criminal pasts.
- Facility owners and administrators require a nationwide FBI check, but not employees caring for patients. With some exceptions, they are checked only for crimes in Florida.
- For most businesses, employees can begin work before screening results come back.
- At nursing homes, some employees had worked as long as seven years without any check.

The newspaper performed analyses to determine how many exemptions have been granted, who obtained them and for what crimes. FDLE crosschecked the newspaper's list of 8,750 people granted exemptions against its criminal database and found:

- 1,818 people were re-arrested, 1,067 of them on felony charges.
- The crimes included 3,123 felonies and 3,321 misdemeanors.
- The majority of the felonies were drug- and theft-related but also included child molestation, sex offenses, murder, arson, extortion, kidnapping, and cruelty toward a child.<sup>2</sup>

### **Level 1 and Level 2 Background Screenings**

The provisions of ch. 435, F.S., apply whenever a Level 1 or Level 2 screening for employment is required by law. Screenings can be done following Level 1 or Level 2 standards, depending on what direction is provided in a specific statute.<sup>3</sup>

Level 1 screenings<sup>4</sup> 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. Anyone undergoing a Level 1 screening must not have been found guilty of any of the offenses listed below:

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, relating to abuse, neglect, or exploitation of a vulnerable adult.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, relating to vehicular homicide.
- Section 782.09, relating to killing of an unborn quick child by injury to the mother.
- Section 784.011, relating to assault, if the victim of the offense was a minor.
- Section 784.021, relating to aggravated assault.
- Section 784.03, relating to battery, if the victim of the offense was a minor.

<sup>2</sup> A full report of the FDLE results can be found at <http://www.sun-sentinel.com/media/acrobat/2009-09/49418865.pdf>.

<sup>3</sup> A Level 1 screening is referred to as a "background screening" in s. 435.03, F.S., while a Level 2 screening is referred to as a "security background investigation" in s. 435.04, F.S.

<sup>4</sup> Level 1 screenings are outlined in s. 435.03, F.S.

- Section 784.045, relating to aggravated battery.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Chapter 796, relating to prostitution.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.
- Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Chapter 847, relating to obscene literature.
- Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Has not committed an act that constitutes domestic violence as defined in s. 741.28.

A Level 2 screening<sup>5</sup> consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) 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 offenses for Level 1 or the offenses listed below:

- Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a dependency hearing.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 843.01, relating to resisting arrest with violence.
- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, relating to aiding in an escape.
- Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

<sup>5</sup> Level 2 screenings are outlined in s. 435.04, F.S.

- Section 944.47, relating to introduction of contraband into a correctional facility.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to contraband introduced into detention facilities.

Additionally, the security background investigations conducted for employees of the Department of Juvenile Justice (DJJ) must ensure that no persons have been found guilty of any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- Section 784.07, relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.
- Section 810.02, relating to burglary, if the offense is a felony.
- Section 944.40, relating to escape.

The Department of Juvenile Justice may not remove a disqualification from employment to any person who is disqualified for any offense disposed of during the most recent 7-year period.

There are two additional requirements that are unique to the Level 2 screening process. Unlike the screening standards contained in Level 1, employees undergoing a Level 2 screening are required to inform an employer immediately if they are convicted of any of the disqualifying offenses listed in the statute during the time they are employed.<sup>6</sup>

In addition to Level 1 and Level 2 disqualification offenses<sup>7</sup>, additional disqualification offenses were added to s. 408.809(5), F.S., (for screening done under the purview of AHCA) during the 2009 Legislative Session. These offenses apply to both the Level 1 and Level 2 screening. These additional offenses are:

- Any specific authorizing statutes, if the offense was a felony.
- Chapter 408, if the offense was a felony.
- Section 409.920, relating to Medicaid provider fraud, if the offense was a felony.
- Section 409.9201, relating to Medicaid fraud, if the offense was a felony.
- Section 741.28, relating to domestic violence.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 810.02, relating to burglary.
- Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, relating to false and fraudulent insurance claims.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to criminal use of personal identification information.
- Section 817.60, relating to obtaining a credit card through fraudulent means.
- Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, relating to forgery.
- Section 831.02, relating to uttering forged instruments.
- Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.
- Section 831.30, relating to fraud in obtaining medicinal drugs.
- Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

### **Level 2 Fingerprint Submission**

<sup>6</sup> *Id.* at s. 435.04(5), F.S.

<sup>7</sup> Section 435.03, and s. 435.04, F.S., respectively.

Criminal histories for Level 2 background screenings are obtained through the submission of the applicant's fingerprints to FDLE. Currently, there are two ways to submit fingerprints, through the submission of a hard copy of the applicant's fingerprint card or through the electronic submission of the applicant's fingerprints. Each type of submission has a different process and varies in the time it takes to have results returned.

The process for submitting a hard copy of fingerprints is as follows:

- (1) An applicant submits a completed hard copy fingerprint card to a regulatory agency;
- (2) The agency must forward the card to FDLE within 5 days;
- (3) FDLE screens the Florida records and reports back to the regulatory agency regarding the state criminal history check.
- (4) The FBI's response to the agency is mailed to the employer separately from FDLE's response and at a later date. Results from the FBI can take from 4 to 6 weeks.

The process for submitting an electronic copy of fingerprints is as follows:

- (1) An applicant has fingerprints taken through the use of a "livescan" device<sup>8</sup> that digitally takes their fingerprints. The prints are then securely emailed to FDLE;
- (2) FDLE processes the prints for a state check and e-mails the electronic submission to the FBI for a national check;
- (3) A bundle of both the FDLE and the FBI results are then sent to the agency within 2 to 3 days.<sup>9</sup>

Currently, due to the length of time required to respond to hard copy fingerprint submissions, a person may begin to work while awaiting the results of a Level 2 background screening.

The fee for a Level 1 screening request is \$24.00. The fee for a Level 2 screening request is \$43.25<sup>10</sup> if submitted electronically, while a hard copy submission costs \$54.25. Currently, over 75% of fingerprints are submitted electronically.<sup>11</sup>

Electronic submissions have many benefits including reduced processing time, improved quality of prints for searching, reduction in potential missed identifications, national and state results bundled together and retention of finger prints for future records. Electronic submissions that are retained by FDLE allow for easy notification to employers if the applicant is arrested. In addition, fingerprint submissions for a Level 2 screening have been found to be more accurate than a Level 1 screening (which is name-based check only). Level 1 screenings conducted in the state of Florida were found to have an error rate of 11.7%.<sup>12</sup> A name-based check does not identify any convictions outside of Florida and may contain false positives and false negatives when trying to correctly identify the applicant.

### **Exemptions from Disqualification**

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<sup>8</sup> Livescan devices may be owned by agencies or may be owned by third party vendors. Livescan is a computer device that captures electronic finger prints more accurately than hard copy, and allows for faster submission and retention of the prints. Many state agencies already have livescans in place, and FDLE has established a process to set up any new device.

<sup>9</sup> Results regarding criminal histories for both hard copy and electronic fingerprint submissions are always sent to the agency and never directly to the applicant.

<sup>10</sup> The Agency for Health Care Administration: Background Screening. Available at: [http://www.fdhc.state.fl.us/mchq/long\\_term\\_care/Background\\_Screening/index.shtml](http://www.fdhc.state.fl.us/mchq/long_term_care/Background_Screening/index.shtml).

<sup>11</sup> Criminal History Record Check Process. Florida Department of Law Enforcement. Jan. 12, 2010.

<sup>12</sup> Interstate Identification Index Name Check Efficacy. Report of the National Task Force to the U.S. Attorney General. July 1999.

If a person is disqualified from applying for employment in a facility through a Level 1 or Level 2 background screening, ch. 435, F.S., provides a mechanism for those individuals to pursue an exemption from disqualification. An agency may grant an exemption from disqualification to any applicant or employee otherwise disqualified for:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Commissions of acts of domestic violence as defined in s. 741.30.<sup>13</sup>

Once an application for exemption is received, the agency determines if a hearing is warranted. A notice is sent to the applicant to request a personal interview. The informal interview is typically conducted by telephone. The review officer poses questions regarding the applicant's criminal/abuse history, work history, and their motivations for seeking employment in a position of trust. A review committee will make a decision to grant or deny the application based on this interview and the applicant is notified by mail in 14 days.<sup>14</sup>

Pursuant to s. 435.07, F.S., an applicant seeking an exemption must demonstrate by clear and convincing evidence that they should not have been disqualified. The applicant must give sufficient evidence of rehabilitation, which could include:

- A explanation of the circumstances surrounding the criminal incident for which an exemption is sought,
- The time period that has elapsed since the incident,
- The nature of the harm caused to the victim,
- The history of the employee since the incident, or
- Any other evidence indicating that the employee will not present a danger in continued employment.<sup>15</sup>

If one agency grants an exemption, it is not binding on other agencies.<sup>16</sup>

Since 2006, nearly 44% of the total applications for exemption processed by AHCA have been granted. The Fort Lauderdale Sun Sentinel reported on the high recidivism rate among people granted exemptions. The Sun Sentinel reported that one in five people granted exemptions were re-arrested after having been granted the exemption.<sup>17</sup>

### **Effect of Proposed Changes**

The bill substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. The bill provides that "vulnerable persons" includes minors and adults whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging. Key changes made by the bill:

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<sup>13</sup> Section 435.07(1), F.S.

<sup>14</sup> A decision is contestable under the traditional administrative appeal process found in chapter 120, F.S.

<sup>15</sup> Section 435.07(3), F.S.

<sup>16</sup> Section 435.07(5), F.S.

<sup>17</sup> Sun Sentinel. Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes. <http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html,0,3829069.html>story (accessed February 10, 2010).



- Require that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified.
- Increase all Level 1 screening to Level 2 screening. This will not require existing employees to be rescreened until they otherwise come up for rescreening pursuant to existing law.
- Require all fingerprint submissions to be submitted electronically by July 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints will be required as of July 1, 2010.
- Require certain personnel that deal substantially with vulnerable persons that are not presently being screened to begin Level 2 screening. This includes homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under the Department of Elder Affairs.
- Add additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening.
- Authorize agencies to request the retention of fingerprints by FDLE. The bill also provides for rulemaking and related implementation provisions for retention of fingerprints.
- Provide that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony.
- Require that all exemptions from disqualification be granted only by the agency head.
- Rewrite present screening provisions for clarity and consistency.

Section 1 of the bill removes a reference to ch. 435, F.S., for background screening of hurricane mitigation inspectors participating in the My Safe Florida Home Program established within the Department of Financial Services. These persons will still undergo fingerprinting and criminal background screening at the state and national Level, but not pursuant to ch. 435, F.S., since they do not deal primarily with vulnerable children or adults.

Section 2 of the bill adds additional disqualifying offenses for the screening of direct service providers for persons with developmental disabilities. The additional offenses are:

- Any specific authorizing statutes, if the offense was a felony.
- Chapter 393, if the offense was a felony.
- Section 409.920, relating to Medicaid provider fraud, if the offense was a felony.
- Section 409.9201, relating to Medicaid fraud, if the offense was a felony.
- Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, relating to false and fraudulent insurance claims.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to criminal use of personal identification information.
- Section 817.60, relating to obtaining a credit card through fraudulent means.
- Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, relating to forgery.
- Section 831.02, relating to uttering forged instruments.
- Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

Section 3 (mental health personnel), section 4 (nursing homes), section 13 (intermediate care facilities for developmentally disabled persons), and section 15 (health care clinics), of the bill revise provisions

related to the screening of personnel. These screening provisions already require Level 2 screening, but are being revised for clarity and consistency. They are also being revised to conform to the screening provisions being placed in s. 408.809, F.S. By placing the procedures for screening in a single statute, s. 408.809, F.S., AHCA can achieve efficiencies and consistency in the application of screening requirements. Many of the existing provisions being deleted are duplicative of provisions in ch. 435, F.S., and are unnecessary or may conflict with changes made by this bill.

Section 5 (home health agency personnel; nurse registry personnel; and companions and homemakers), section 6 (hospices), sections 10, 11, and 12 (home medical equipment providers), section 14 (health care services pools), section 18 (employees and volunteers in summer day camps and summer 24-hour camps), section 19 (consumer directed care personnel), sections 21 and 22 (assisted living facilities), sections 23 and 24 (adult family-care homes), and sections 25 and 26 (adult day care centers), of the bill increase from Level 1 screening to Level 2 screening for relevant personnel. These provisions are also being revised for clarity and consistency and to conform to the screening provisions being placed in s. 408.809, F.S. By placing the procedures for screening in a single statute, s. 408.809, F.S., AHCA can achieve efficiencies and consistency in the application of screening requirements. Many of the existing provisions being deleted are duplicative of provisions in ch. 435, F.S., and are unnecessary or may conflict with changes made by this bill.

Section 7 (homes for special services), section 8 (transitional living facilities), section 9 (prescribed pediatric extended care centers), and section 27 (certain direct service providers under the Department of Elder Affairs), of the bill provide Level 2 background screening for personnel in these facilities. Presently, these groups do not have such screening requirements.

Sections 16 and 17 of the bill revise AHCA's general provisions relating to screening. The changes are intended to provide for consistency and clarity. The change to s. 408.806, F.S., provides for the submission of an affidavit by licensure applicants, subject to the penalty of perjury, stating that all persons subject to background screening have been screened and are qualified. Changes to s. 408.809, F.S., provide that:

- Any person whose responsibilities may require them to provide personal care or services directly to clients, or have access to client living areas, client personal property, or client funds, including contractors, must be screened. However, this change does not require a person who is employed or contracts with a licensee on or before June 30, 2010, to submit to any additional rescreening if that licensee has written evidence that the person has already been screened and qualified according to Level 1 or Level 2 standards.
- Proof of compliance with Level 2 screening standards submitted within the previous 5 years to meet requirements of AHCA, the Department of Health, the Agency for Persons with Disabilities, or the Department of Children and Family Services satisfies screening requirements if the person has not been unemployed for more than 90 days.
- Fingerprints must be provided in electronic format.
- Screening results will be reviewed by the agency and maintained in a database. The qualifying or disqualifying status of the person named in the request will be posted on a secure website accessible to all licensees [this is current law for nursing homes and is being moved from s. 400.215(1)(b), F.S.].
- An employer is not liable, upon notice of a disqualifying offense listed, for terminating the person against whom the report was issued, whether or not the person has filed for an exemption.

Section 28 provides that ch. 435, F.S., only applies to background screenings that are required by law to be conducted under the chapter. This section also provides that, in accordance with the doctrine of incorporation by reference, that a reference in the Florida Statutes to any provision in ch. 435, F.S., includes all subsequent amendments to ch. 435, F.S.

Section 29 provides:

- A definition of “employment” to clarify that its use in the chapter is limited to those activities that require the employee to be subject to screening.
- A definition of “vulnerable person” to include all minors and those adults whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.
- A revision to the definition of “licensing agency” – to “agency” – to clarify that its use includes all agencies that facilitate background screening, not just those agencies that issue licenses.

Section 30 revises the provisions related to Level 1 screening to delete the current list of disqualifying offenses and instead, incorporate the expanded list of disqualifying offenses provided by the bill for Level 2 screening in s. 435.04, F.S.

Section 31 revises the provisions related to Level 2 screening as follows:

- Require all fingerprint submissions to be submitted electronically by July 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints will be required July 1, 2010.
- Authorize an agency to contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section.
- Delete specific provisions for nursing homes, assisted living facilities, and the Department of Juvenile Justice (these are being transferred to the specific statutes on these topics).
- Deletes requirements for attestation and affidavits by employees and employers (these are being moved to s. 435.05, F.S.).

Section 31 also provides the following additional disqualifying offenses to Level 2 screening (which means they will also apply to Level 1 screening):

- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony (therefore, the bill strikes existing specific references to crimes in this chapter).
- Section 787.025, relating to luring or enticing a child.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Section 810.02, relating to burglary (presently, felony burglary is a disqualifying offense for those being screening under DJJ).
- Section 810.14, relating to voyeurism, if the offense is a felony.
- Section 810.145, relating to video voyeurism, if the offense is a felony.
- Section 944.40, relating to escape (presently, escape is a disqualifying offense for those being screening under DJJ).

- Any crime that constitutes domestic violence.

Section 32 deletes existing authority that allows employees to work pending the outcome of their background screening. This section also inserts requirements for attestation and affidavits by employees and employers that are being stricken in s. 435.04, F.S.

Section 33 provides that an employer may not hire an employee until the screening process is completed and that if an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person.

Section 34 provides that:

- An exemption from disqualification may not be granted for a disqualifying felony until at least three years after the applicant has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony.
- Only the head of an agency may grant an exemption from disqualification.
- The agency may consider as part of its deliberations of the employee's rehabilitation subsequent arrests and convictions, even if that subsequent crime is not a disqualifying offense.
- The standard of review by the administrative law judge of the agency's decision as to rehabilitation is whether the agency's intended action is an abuse of discretion.
- An exemption may not be granted from disqualification from employment for any person who has been designated as a sexual predator pursuant to s. 775.21, F.S.

Section 35 provides that each agency is responsible for collecting and paying any fee related to fingerprints retained on its behalf to FDLE. The amount of the annual fee and procedures for the submission and retention of fingerprint information and for the dissemination of search results is to be established by rule of FDLE.

Section 36 of the bill removes a reference to ch. 435, F.S., for background screening of construction contractors under the Department of Business and Professional Regulation. These persons will still undergo fingerprinting and criminal background screening at the state and national level, but not pursuant to ch. 435, F.S., since they do not deal primarily with vulnerable children or adults.

Section 37 authorizes agencies to request the retention of fingerprints by FDLE and to adopt rules that require employers to keep the agency informed of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of each person whose fingerprints are retained. This section also allows FDLE to participate in a federal fingerprint retention program once one is implemented, provided that FDLE is funded and equipped to participate.

Section 38 makes technical changes by removing obsolete references in s. 943.053, F.S.

Section 39 amends the background screening provisions of the Department of Juvenile Justice for consistency with other changes made by this bill; to remove redundant provisions; to add an additional disqualifying offense for the criminal use of personal identification information; to add the disqualifying offense of assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers (which is being struck from s. 435.04, F.S.); and to authorize the adoption of rules that describe the procedure and requirements necessary to implement the employment screening and fingerprint retention services.

Section 40 provides that the changes made by the bill are intended to be prospective in nature and that persons are not required to be rescreened who are employed or licensed on the effective date of the bill until such time they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in the bill.

Section 41 provides that the bill takes effect July 1, 2010.

**B. SECTION DIRECTORY:**

Section 1 - amends s. 215.5586, F.S., relating to the My Safe Florida Home Program.

Section 2 - adds to s. 393.0655, F.S., relating to screening of direct service providers.

Section 3 - amends s. 394.4572, F.S., relating to screening of mental health personnel.

Section 4 - amends s. 400.215, F.S., relating to personnel screening requirement.

Section 5 - amends s. 400.512, F.S., relating to screening of home health agency personnel; nurse registry personnel; and companions and homemakers.

Section 6 - amends s. 400.6065, F.S., relating to background screening.

Section 7 - amends s.400.801, F.S., relating to homes for special services.

Section 8 - adds to s. 400.805, F.S., relating to transitional living facilities.

Section 9 - creates s. 400.9065, F.S., relating to background screening.

Section 10 - amends s. 400.934, F.S., relating to minimum standards.

Section 11 - amends s. 400.953, F.S., relating to background screening of home medical equipment provider personnel.

Section 12 - repeals s. 400.955, F.S., relating to procedures for screening of home medical equipment provider personnel.

Section 13 - amends s. 400.964, F.S., relating to personnel screening requirement.

Section 14 - amends s. 400.980, F.S., relating to health care services pools.

Section 15 - amends s. 400.991, F.S., relating to license requirements; background screenings; prohibitions.

Section 16 - adds to s. 408.806, F.S., relating to license application process.

Section 17 - amends s. 408.809, F.S., relating to background screening; prohibited offenses.

Section 18 - amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.

Section 19 - amends s. 409.221, F.S., relating to consumer-directed care program.

Section 20 - amends s. 409.907, F.S., relating to medicaid provider agreements.

Section 21 - amends s. 429.14, F.S., relating to administrative penalties.

Section 22 - amends s. 429.174, F.S., relating to background screening.

Section 23 - amends s. 429.67, F.S., relating to licensure.

Section 24 - amends s. 429.69, F.S., relating to denial, revocation, and suspension of a license.

Section 25 - amends s. 429.911, F.S., relating to denial, suspension, revocation of license; emergency action; administrative fines; investigations and inspections.

Section 26 - amends s. 429.919, F.S., relating to background screening.

Section 27 - creates s. 430.60, F.S., relating to screening of direct service providers.

Section 28 - amends s. 435.01, F.S., relating to applicability of this chapter.

Section 29 - amends s. 435.02, F.S., relating to definitions.

Section 30 - amends s. 435.03, F.S., relating to Level 1 screening standards.

Section 31 - amends s. 435.04, F.S., relating to Level 2 screening standards.

Section 32 - amends s. 435.05, F.S., relating to requirements for covered employees and employers.

Section 33 - amends s. 435.06, F.S., relating to exclusion from employment.

Section 34 - amends s. 435.07, F.S., relating to exemptions from disqualification.

Section 35 - amends s. 435.08, F.S., relating to payment for processing of fingerprints and state criminal records checks.

Section 36 - amends s. 489.115, F.S., relating to certification and registration; endorsement; reciprocity; renewals; continuing education.

Section 37 - amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.

Section 38 - amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 39 - amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.

Section 40 - provides the changes made by this act are intended to be prospective in nature.

Section 41 - provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See D. FISCAL COMMENTS below.

#### **2. Expenditures:**

See D. FISCAL COMMENTS below.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

This bill should have no impact on local government revenues.

### 2. Expenditures:

Staff is not aware of any local governments that use ch. 435, F.S., for background screening, though they do perform criminal background checks on certain employees. The bill will have no fiscal impact on background screening done outside of the ch. 435, F.S., process. It may be that some local governments are associated, or help fund, local programs that do use such screening.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the number of persons who will need to undergo background screening prior to working with vulnerable persons. It also will require much of the screening to be done using Level 2 standards instead of Level 1, which has a greater cost associated with it. Level 1 costs \$24, and Level 2 costs that same \$24, plus an additional \$19.25 (electronic fingerprints) or \$30.25 (hard card fingerprints). By increasing the cost and the number of those persons required to be screened, there will be a substantial impact on agencies and employers and employees. It is anticipated that in most cases, the fees will be passed on to the employee and the employer may or may not reimburse that employee. Some agencies pay for the screening of their employees and volunteers.

## D. FISCAL COMMENTS:

The largest fiscal impact on the agencies will be the retention of fingerprints. The bill does not mandate, but does authorize, the retention of fingerprints. However, retention will go a long way in ensuring the protection of Florida's vulnerable populations. The cost of retention of fingerprints by FDLE is estimated to be \$6 per year per set of fingerprints. How this \$6 is collected will have an effect on the fiscal impact to the agencies. The first year's cost for retention is included in the existing fees, but for additional years, the \$6 will be charged. It is anticipated that to make collection feasible, and to avoid the collection of \$6 per person per year, that \$24 for retention will be collected up front at the time of screening. This will cover a 5 year period of retention, at which time the employee would be required to get rescreened (if provided for in existing law). If the cost of retention is built into the existing collection of screening fees, then there should not be an additional workload impact. However, if it becomes a separate collection issue, then this could affect workload. Also, retention will require each agency to develop a database and related software in order to maintain the list of employees that should continue to have their fingerprints retained.

There will be additional workload impact due to the increase in the number of persons who will need to undergo background screening prior to working with vulnerable persons. The bill requires present Level 1 screens to be done at Level 2, which has a greater cost associated with it. Level 1 costs \$24, and Level 2 costs that same \$24, plus an additional \$19.25 (electronic fingerprints) or \$30.25 (hard card fingerprints). By increasing the cost and the number of those persons required to be screened, there will be a substantial impact on agencies and employers and employees. It is anticipated that in most cases, the fees will be passed on to the employee and the employer may or may not reimburse that employee. Some agencies pay for the screening of their employees and volunteers. However, it is difficult to anticipate how many additional persons will need to be screened.

The following agencies have reported that the bill will have a neutral or no fiscal impact on revenues or expenditures:

- FDLE

- AHCA – but see their additional comments below
- Department of Elder Affairs
- DJJ
- Guardian ad Litem Office

The following agencies have reported that the bill will have a fiscal impact on workload:

- DCF
- Agency for Persons with Disabilities

### **Agency for Health Care Administration**

While the Agency for Health Care Administration did report that the bill's fiscal impact will be neutral, it also provided the following comments:

The Agency's background screening workload is expected to increase based upon the shift from Level 1 to Level 2 screening that will require screening currently sent directly to FDLE to be conducted through the Agency,

The workload will also increase because of the increase in the number of persons subject to screening based on the uniform definition of when screening is required (access to client living areas, property or funds).

The Agency expects to process approximately 86,000 additional screenings each year. The resources necessary to do this work will be offset by the efficiencies gained through use of electronic fingerprint (Livescan), and movement of OPS staff funding of \$142,098 within the Agency. Therefore no new resources will be required.

New screening volume: Based upon the shift to Level 2 and the additional persons required to be screened, we estimate that approximately 122,000 additional Level 2 screenings may be conducted annually. This total added to the number of Level 2 screenings currently conducted means approximately 150,000 Level 2 screenings will be processed by the Agency annually.

Background screening duties/workload: Duties involved in processing background screening checks include accepting requests, processing payments, transmitting requests to FDLE, accepting results, reviewing criminal history reports, determining eligibility for employment, providing results to providers and all related data entry.

Data from 2009 indicates that an estimated 10% of all Level 2 screenings are rejected by the FBI and must be submitted a second time. This process includes notifying the requesting health care provider that a second card must be submitted, tracking the submission of the second card and requesting a "Name Check Only" search for fingerprints rejected a second time.

Exemption workload: In 2009, 20% of all Level 2 screenings resulted in a criminal history that must be reviewed for disqualifying offenses. Of those, approximately 22% will contain a disqualifying offense. Those individuals will be eligible to apply for an exemption from disqualification.

Electronic fingerprints: Much of the manual processing currently required with submission of fingerprint cards directly to the Agency would be eliminated with the requirement to submit requests through LiveScan. However, the number of criminal history reports to review will increase as will the number of applications for exemption from disqualification. It is expected that the efficiencies of electronic fingerprinting will decrease some data entry and other manual processes of screening.



Shift existing OPS funding: In January 2010, the Division of Medicaid provided \$142,098 in OPS funds to the Background Screening section to consolidate background screening within the Agency. These resources assist with the direct staff screening requirements of certain Medicaid providers which in some cases are duplicative of screenings for licensure, bringing efficiency to Agency background screening duties. Moving the OPS funding to Health Quality Assurance will secure the necessary resources to support the additional Level 2 workload in the bill. Funds would be moved from Org. Code 6850000000 to 68304030000.

### **The Department of Children and Families**

DCF has reported it anticipates a workload and fiscal impact by the bill. Staff is working with the agency to determine how great the impact will be. The Department understands the importance of retention of fingerprints, but this appears to be where the greatest impact will result. While the bill does not mandate the retention of fingerprints, it is a goal of the Department to be able to implement this provision. DCF also provided the following information:

In order for the agencies to be able to notify FDLE which prints are to be retained, the agency will need to have a database of the persons being both screened and employed. The bill also contains language indicating the appropriate agency is responsible for collecting and paying fees related to fingerprint retention to FDLE. The department would likely need additional staff to manage this process and ensure collection and payment is provided timely. Since the process would need to be developed, the cost is indeterminate at this time.

Until each agency has a database of the current employees of facilities and providers and which fees are to be paid by whom, an estimate of the total impact is indeterminate. Although DCF can estimate the cost to DCF for FDLE to retain the fingerprints for the 13,500 DCF employees at \$81,500 per year, DCF does not currently have data on the number of employees of the licensees and providers whose employees will be impacted by this bill.

Some specifics are available, however.

**Mental Health:** The publicly operated state mental health treatment facilities have a total of 3,980.5 full-time equivalent positions which are required to be screened. At \$6 per year per employee, the cost for retaining the prints of these employees would be \$23,883. Per contract, the privatized state mental health treatment facilities have a total of 1,345.70 positions. The estimated additional cost associated with retention of prints to these contractors would be \$8,074.20 annually. These additional costs would likely result in the contractors making requests to increase the amount of their contracts with the department.

The additional fee for retaining fingerprints will also impact contracted mental health providers in the community. There are approximately 233 community mental health providers that contract with the department whose employees are required to be screened. As stated earlier, the department does not currently have an estimate regarding the number of staff employed in these agencies. However, the cost of retaining fingerprints for these employees would likely be passed on to the department through negotiated contract increases with these providers.

The total known annual cost for retaining the fingerprints for Mental Health facilities is \$75,211 plus the increased unknown costs to the community mental health providers. The cost to the department of creating a process for tracking the employees at mental health facilities and providers for the purpose of notifying FDLE which prints to retain and for collecting the fee from the facilities and providers and submission to FDLE is indeterminate.

**Child Care / Summer Camps:** The pre-employment screening requirement may have a fiscal impact on the operation of a child care provider in terms of filling vacant positions in a timely manner, which may result in additional licensing sanctions.

## **Agency for Persons with Disabilities**

The Agency for Persons with Disabilities has reported it anticipates some fiscal impact by the bill. Staff is still working with the agency to determine how great the impact will be. The Agency understands the importance of retention of fingerprints, but this appears to be where the greatest impact will result. While the bill does not mandate the retention of fingerprints, it is a goal of the Agency to be able to implement this provision.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill provides specific rulemaking direction in several places in the bill related to implementation of fingerprints screening, retention of fingerprints, and the electronic submission of fingerprints. All rulemaking is directed to be accomplished pursuant to ch. 120, F.S. It has been recommended that an additional general rulemaking provision be added to ch. 435, F.S., that grants agencies clear broad authority for rulemaking since the references in the bill are fairly specific.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

It has been recommended that an additional general rulemaking provision be added to ch. 435, F.S., that grants agencies clear broad authority for rulemaking since the references in the bill are fairly specific.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

BILL

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to background screening; amending s.  
 3 215.5586, F.S.; removing reference to chapter 435, F.S.,  
 4 for background screening of hurricane mitigation  
 5 inspectors; amending s. 393.0655, F.S.; adding additional  
 6 disqualifying offenses for the screening of direct service  
 7 providers for persons with developmental disabilities;  
 8 amending s. 394.4572, F.S.; revising background screening  
 9 requirements for mental health personnel; amending s.  
 10 400.215, F.S.; revising background screening requirements  
 11 for nursing homes; amending s. 400.512, F.S.; revising  
 12 background screening requirements for home health agency  
 13 personnel, nurse registry personnel, and companions and  
 14 homemakers; amending s. 400.6065, F.S.; revising  
 15 background screening requirements for hospices; amending  
 16 s. 400.801, F.S.; revising background screening  
 17 requirements for homes for special services; amending s.  
 18 400.805, F.S.; revising background screening requirements  
 19 for transitional living facilities; creating s. 400.9065,  
 20 F.S.; providing background screening requirements for  
 21 prescribed pediatric extended care centers; amending s.  
 22 400.934, F.S.; revising minimum standards for home medical  
 23 equipment providers; amending s. 400.953, F.S.; revising  
 24 background screening requirements for home medical  
 25 equipment providers; repealing s. 400.955, F.S., relating  
 26 to the procedures for screening of home medical equipment  
 27 provider personnel; amending s. 400.964, F.S.; revising  
 28 background screening requirements for intermediate care

BILL ORIGINAL YEAR

29 facilities for developmentally disabled persons; amending  
 30 s. 400.980, F.S.; revising background screening  
 31 requirements for health care services pools; amending s.  
 32 400.991, F.S.; revising background screening requirements  
 33 for health care clinics; amending s. 408.806, F.S.; adding  
 34 a requirement for an affidavit relating to background  
 35 screening to the license application process under the  
 36 Agency for Health Care Administration; amending s.  
 37 408.809, F.S.; revising background screening requirements  
 38 under the Agency for Health Care Administration; requiring  
 39 electronic submission of fingerprints; amending s.  
 40 409.175, F.S.; revising background screening requirements  
 41 for employees and volunteers in summer day camps and  
 42 summer 24-hour camps; amending s. 409.221, F.S.; revising  
 43 background screening requirements for persons who render  
 44 consumer directed care; amending s. 409.907, F.S.;;  
 45 revising background screening requirements for Medicaid  
 46 providers; amending s. 429.14, F.S.; revising  
 47 administrative penalty provisions relating to assisted  
 48 living facilities; amending s. 429.174, F.S.; revising  
 49 background screening requirements for assisted living  
 50 facilities; amending s. 429.67, F.S.; revising licensure  
 51 requirements for adult family-care homes; amending s.  
 52 429.69, F.S.; revising background screening requirements  
 53 for adult family-care homes; amending s. 429.911, F.S.;;  
 54 revising administrative penalty provisions relating to  
 55 adult day care centers; amending s. 429.919, F.S.;;  
 56 revising background screening requirements for adult day

BILL

ORIGINAL

YEAR

57 | care centers; creating s. 430.60, F.S.; providing  
 58 | background screening requirements under the Department of  
 59 | Elder Affairs; amending s. 435.01, F.S.; revising  
 60 | provisions related to the applicability of the chapter;  
 61 | amending s. 435.02, F.S.; revising and adding definitions;  
 62 | amending s. 435.03, F.S.; revising level 1 screening  
 63 | standards; adding disqualifying offenses; amending s.  
 64 | 435.04, F.S.; revising level 2 screening standards;  
 65 | requiring electronic submission of fingerprints after a  
 66 | certain date; authorizing agencies to contract for  
 67 | electronic fingerprinting; adding disqualifying offenses;  
 68 | amending s. 435.05, F.S.; revising requirements for  
 69 | covered employees and employers; amending s. 435.06, F.S.;  
 70 | revising provisions relating to exclusion from employment;  
 71 | providing that an employer may not hire, select, or  
 72 | otherwise allow an employee contact with any vulnerable  
 73 | person until the screening process is completed; amending  
 74 | s. 435.07, F.S.; revising provisions relating to  
 75 | exemptions from disqualification; amending s. 435.08,  
 76 | F.S.; revising provisions relating to the payment for  
 77 | processing of fingerprints and criminal records checks;  
 78 | amending s. 489.115, F.S.; removing reference to chapter  
 79 | 435, F.S., for background screening of construction  
 80 | contractors; amending s. 943.05, F.S.; revising provisions  
 81 | relating to the Criminal Justice Information Program under  
 82 | the Florida Department of Law Enforcement; authorizing  
 83 | agencies to request the retention by the department of  
 84 | certain fingerprints; amending s. 943.053, F.S.; removing

BILL

ORIGINAL

YEAR

85 |       obsolete references relating to the dissemination of  
 86 |       criminal justice information; amending s. 985.644, F.S.;  
 87 |       revising background screening requirements for the  
 88 |       Department of Juvenile Justice; providing for prospective  
 89 |       application of the act; providing an effective date.

90

91 | Be It Enacted by the Legislature of the State of Florida:

92

93 |       Section 1. Paragraph (b) of subsection (1) of section  
 94 |       215.5586, Florida Statutes, is amended to read:

95 |       215.5586 My Safe Florida Home Program.—There is  
 96 |       established within the Department of Financial Services the My  
 97 |       Safe Florida Home Program. The department shall provide fiscal  
 98 |       accountability, contract management, and strategic leadership  
 99 |       for the program, consistent with this section. This section does  
 100 |       not create an entitlement for property owners or obligate the  
 101 |       state in any way to fund the inspection or retrofitting of  
 102 |       residential property in this state. Implementation of this  
 103 |       program is subject to annual legislative appropriations. It is  
 104 |       the intent of the Legislature that the My Safe Florida Home  
 105 |       Program provide trained and certified inspectors to perform  
 106 |       inspections for owners of site-built, single-family, residential  
 107 |       properties and grants to eligible applicants as funding allows.  
 108 |       The program shall develop and implement a comprehensive and  
 109 |       coordinated approach for hurricane damage mitigation that may  
 110 |       include the following:

111 |       (1) HURRICANE MITIGATION INSPECTIONS.—

112 |       (b) To qualify for selection by the department as a wind

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113 certification entity to provide hurricane mitigation  
 114 inspections, the entity shall, at a minimum, meet the following  
 115 requirements:

116 1. Use hurricane mitigation inspectors who:

117 a. Are certified as a building inspector under s. 468.607;

118 b. Are licensed as a general or residential contractor  
 119 under s. 489.111;

120 c. Are licensed as a professional engineer under s.  
 121 471.015 and who have passed the appropriate equivalency test of  
 122 the building code training program as required by s. 553.841;

123 d. Are licensed as a professional architect under s.  
 124 481.213; or

125 e. Have at least 2 years of experience in residential  
 126 construction or residential building inspection and have  
 127 received specialized training in hurricane mitigation  
 128 procedures. Such training may be provided by a class offered  
 129 online or in person.

130 2. Use hurricane mitigation inspectors who also:

131 a. Have undergone drug testing and ~~level-2~~ background  
 132 screening checks pursuant to s. 435.04. The department may  
 133 conduct criminal record checks of inspectors used by wind  
 134 certification entities. Inspectors must submit a set of the  
 135 fingerprints to the department for state and national criminal  
 136 history checks and must pay the fingerprint processing fee set  
 137 forth in s. 624.501. The fingerprints shall be sent by the  
 138 department to the Department of Law Enforcement and forwarded to  
 139 the Federal Bureau of Investigation for processing. The results  
 140 shall be returned to the department for screening. The

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141 fingerprints shall be taken by a law enforcement agency,  
 142 designated examination center, or other department-approved  
 143 entity; and

144 b. Have been certified, in a manner satisfactory to the  
 145 department, to conduct the inspections.

146 3. Provide a quality assurance program including a  
 147 reinspection component.

148 Section 2. Subsection (5) is added to section 393.0655,  
 149 Florida Statutes, to read:

150 393.0655 Screening of direct service providers.—

151 (5) The background screening conducted under this section  
 152 must ensure that, in addition to the disqualifying offenses  
 153 listed in s. 435.04, no persons subject to the provisions of  
 154 this section have been found guilty of, regardless of  
 155 adjudication, or entered a plea of nolo contendere or guilty to,  
 156 any offense prohibited under any of the following provisions of  
 157 the Florida Statutes or under any similar statute of another  
 158 jurisdiction:

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

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

161 (c) Section 409.920, relating to Medicaid provider fraud,  
 162 if the offense was a felony.

163 (d) Section 409.9201, relating to Medicaid fraud, if the  
 164 offense was a felony.

165 (e) Section 817.034, relating to fraudulent acts through  
 166 mail, wire, radio, electromagnetic, photoelectronic, or  
 167 photooptical systems.

168 (f) Section 817.234, relating to false and fraudulent



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169 insurance claims.  
 170 (g) Section 817.505, relating to patient brokering.  
 171 (h) Section 817.568, relating to criminal use of personal  
 172 identification information.  
 173 (i) Section 817.60, relating to obtaining a credit card  
 174 through fraudulent means.  
 175 (j) Section 817.61, relating to fraudulent use of credit  
 176 cards, if the offense was a felony.  
 177 (k) Section 831.01, relating to forgery.  
 178 (l) Section 831.02, relating to uttering forged  
 179 instruments.  
 180 (m) Section 831.07, relating to forging bank bills,  
 181 checks, drafts, or promissory notes.  
 182 (n) Section 831.09, relating to uttering forged bank  
 183 bills, checks, drafts, or promissory notes.  
 184 Section 3. Section 394.4572, Florida Statutes, is amended  
 185 to read:  
 186 394.4572 Screening of mental health personnel.—  
 187 (1)(a) The department and the Agency for Health Care  
 188 Administration shall require level 2 background ~~employment~~  
 189 ~~screening pursuant to ch. 435~~ for mental health personnel ~~using~~  
 190 ~~the standards for level 2 screening set forth in chapter 435.~~  
 191 "Mental health personnel" includes all program directors,  
 192 professional clinicians, staff members, and volunteers working  
 193 in public or private mental health programs and facilities who  
 194 have direct contact with ~~unmarried patients under the age of 18~~  
 195 ~~years~~. For purposes of this chapter, employment screening of  
 196 mental health personnel shall also include, but is not limited

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197 to, employment screening as provided under chapter 435 and s.  
 198 408.809.

199 (b) Students in the health care professions who are  
 200 interning in a mental health facility licensed under chapter  
 201 395, where the primary purpose of the facility is not the  
 202 treatment of minors, are exempt from the fingerprinting and  
 203 screening requirements, provided they are under direct  
 204 supervision in the actual physical presence of a licensed health  
 205 care professional.

206 (c) Mental health personnel working in a facility licensed  
 207 under chapter 395 who have less than 15 hours per week of direct  
 208 contact with patients ~~or who are health care professionals~~  
 209 ~~licensed by the Agency for Health Care Administration or a board~~  
 210 ~~thereunder~~ are exempt from the fingerprinting and screening  
 211 requirements, except for persons working in mental health  
 212 facilities where the primary purpose of the facility is the  
 213 treatment of minors.

214 (d) A volunteer who assists on an intermittent basis for  
 215 less than 40 hours per month is exempt from the fingerprinting  
 216 and screening requirements, provided the volunteer is under  
 217 direct and constant supervision by persons who meet the  
 218 screening requirements of paragraph (a).

219 (2) The department or the Agency for Health Care  
 220 Administration may grant exemptions from disqualification as  
 221 provided in ch. 435 s. 435.06.

222 ~~(3) Prospective mental health personnel who have~~  
 223 ~~previously been fingerprinted or screened pursuant to this~~  
 224 ~~chapter, chapter 393, chapter 397, chapter 402, or chapter 409,~~

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225 ~~or teachers who have been fingerprinted pursuant to chapter~~  
 226 ~~1012, who have not been unemployed for more than 90 days~~  
 227 ~~thereafter, and who under the penalty of perjury attest to the~~  
 228 ~~completion of such fingerprinting or screening and to compliance~~  
 229 ~~with the provisions of this section and the standards for level~~  
 230 ~~1 screening contained in chapter 435, shall not be required to~~  
 231 ~~be refingerprinted or rescreened in order to comply with any~~  
 232 ~~screening requirements of this part.~~

233 Section 4. Section 400.215, Florida Statutes, is amended  
 234 to read:

235 400.215 Personnel screening requirement.-

236 (1) The agency shall require level 2 background screening  
 237 for personnel as required in s. 408.809(1)(e) pursuant to as  
 238 ~~provided in chapter 435 and s. 408.809 for all employees or~~  
 239 ~~prospective employees of facilities licensed under this part who~~  
 240 ~~are expected to, or whose responsibilities may require them to:~~

- 241 ~~(a) Provide personal care or services to residents;~~
- 242 ~~(b) Have access to resident living areas; or~~
- 243 ~~(c) Have access to resident funds or other personal~~  
 244 ~~property.~~

245 (2) ~~Employers and employees shall comply with the~~  
 246 ~~requirements of s. 435.05.~~

247 ~~(a) Notwithstanding the provisions of s. 435.05(1),~~  
 248 ~~facilities must have in their possession evidence that level 1~~  
 249 ~~screening has been completed before allowing an employee to~~  
 250 ~~begin working with patients as provided in subsection (1). All~~  
 251 ~~information necessary for conducting background screening using~~  
 252 ~~level 1 standards as specified in s. 435.03 shall be submitted~~

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253 | ~~by the nursing facility to the agency. Results of the background~~  
 254 | ~~screening shall be provided by the agency to the requesting~~  
 255 | ~~nursing facility.~~

256 |       ~~(b) Employees qualified under the provisions of paragraph~~  
 257 | ~~(a) who have not maintained continuous residency within the~~  
 258 | ~~state for the 5 years immediately preceding the date of request~~  
 259 | ~~for background screening must complete level 2 screening, as~~  
 260 | ~~provided in chapter 435. Such employees may work in a~~  
 261 | ~~conditional status up to 180 days pending the receipt of written~~  
 262 | ~~findings evidencing the completion of level 2 screening. Level 2~~  
 263 | ~~screening shall not be required of employees or prospective~~  
 264 | ~~employees who attest in writing under penalty of perjury that~~  
 265 | ~~they meet the residency requirement. Completion of level 2~~  
 266 | ~~screening shall require the employee or prospective employee to~~  
 267 | ~~furnish to the nursing facility a full set of fingerprints to~~  
 268 | ~~enable a criminal background investigation to be conducted. The~~  
 269 | ~~nursing facility shall submit the completed fingerprint card to~~  
 270 | ~~the agency. The agency shall establish a record of the request~~  
 271 | ~~in the database provided for in paragraph (c) and forward the~~  
 272 | ~~request to the Department of Law Enforcement, which is~~  
 273 | ~~authorized to submit the fingerprints to the Federal Bureau of~~  
 274 | ~~Investigation for a national criminal history records check. The~~  
 275 | ~~results of the national criminal history records check shall be~~  
 276 | ~~returned to the agency, which shall maintain the results in the~~  
 277 | ~~database provided for in paragraph (c). The agency shall notify~~  
 278 | ~~the administrator of the requesting nursing facility or the~~  
 279 | ~~administrator of any other facility licensed under chapter 393,~~  
 280 | ~~chapter 394, chapter 395, chapter 397, chapter 429, or this~~

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281 ~~chapter, as requested by such facility, as to whether or not the~~  
 282 ~~employee has qualified under level 1 or level 2 screening. An~~  
 283 ~~employee or prospective employee who has qualified under level 2~~  
 284 ~~screening and has maintained such continuous residency within~~  
 285 ~~the state shall not be required to complete a subsequent level 2~~  
 286 ~~screening as a condition of employment at another facility.~~

287 ~~(c) The agency shall establish and maintain a database of~~  
 288 ~~background screening information which shall include the results~~  
 289 ~~of both level 1 and level 2 screening. The Department of Law~~  
 290 ~~Enforcement shall timely provide to the agency, electronically,~~  
 291 ~~the results of each statewide screening for incorporation into~~  
 292 ~~the database. The agency shall, upon request from any facility,~~  
 293 ~~agency, or program required by or authorized by law to screen~~  
 294 ~~its employees or applicants, notify the administrator of the~~  
 295 ~~facility, agency, or program of the qualifying or disqualifying~~  
 296 ~~status of the employee or applicant named in the request.~~

297 ~~(d) Applicants and employees shall be excluded from~~  
 298 ~~employment pursuant to s. 435.06.~~

299 ~~(3) The applicant is responsible for paying the fees~~  
 300 ~~associated with obtaining the required screening. Payment for~~  
 301 ~~the screening shall be submitted to the agency. The agency shall~~  
 302 ~~establish a schedule of fees to cover the costs of level 1 and~~  
 303 ~~level 2 screening. Facilities may reimburse employees for these~~  
 304 ~~costs. The Department of Law Enforcement shall charge the agency~~  
 305 ~~for a level 1 or level 2 screening a rate sufficient to cover~~  
 306 ~~the costs of such screening pursuant to s. 943.053(3). The~~  
 307 ~~agency shall, as allowable, reimburse nursing facilities for the~~  
 308 ~~cost of conducting background screening as required by this~~

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309 section. This reimbursement will not be subject to any rate  
 310 ceilings or payment targets in the Medicaid Reimbursement plan.

311 ~~(4) (a) As provided in s. 435.07, the agency may grant an~~  
 312 ~~exemption from disqualification to an employee or prospective~~  
 313 ~~employee who is subject to this section and who has not received~~  
 314 ~~a professional license or certification from the Department of~~  
 315 ~~Health.~~

316 ~~(b) As provided in s. 435.07, the appropriate regulatory~~  
 317 ~~board within the Department of Health, or that department itself~~  
 318 ~~when there is no board, may grant an exemption from~~  
 319 ~~disqualification to an employee or prospective employee who is~~  
 320 ~~subject to this section and who has received a professional~~  
 321 ~~license or certification from the Department of Health or a~~  
 322 ~~regulatory board within that department.~~

323 ~~(5) Any provision of law to the contrary notwithstanding,~~  
 324 ~~persons who have been screened and qualified as required by this~~  
 325 ~~section and who have not been unemployed for more than 180 days~~  
 326 ~~thereafter, and who under penalty of perjury attest to not~~  
 327 ~~having been convicted of a disqualifying offense since the~~  
 328 ~~completion of such screening, shall not be required to be~~  
 329 ~~rescreened. An employer may obtain, pursuant to s. 435.10,~~  
 330 ~~written verification of qualifying screening results from the~~  
 331 ~~previous employer or other entity which caused such screening to~~  
 332 ~~be performed.~~

333 ~~(6) The agency and the Department of Health shall have~~  
 334 ~~authority to adopt rules pursuant to the Administrative~~  
 335 ~~Procedure Act to implement this section.~~

336 ~~(7) All employees shall comply with the requirements of~~

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337 ~~this section by October 1, 1998. No current employee of a~~  
 338 ~~nursing facility as of the effective date of this act shall be~~  
 339 ~~required to submit to rescreening if the nursing facility has in~~  
 340 ~~its possession written evidence that the person has been~~  
 341 ~~screened and qualified according to level 1 standards as~~  
 342 ~~specified in s. 435.03(1). Any current employee who meets the~~  
 343 ~~level 1 requirement but does not meet the 5-year residency~~  
 344 ~~requirement as specified in this section must provide to the~~  
 345 ~~employing nursing facility written attestation under penalty of~~  
 346 ~~perjury that the employee has not been convicted of a~~  
 347 ~~disqualifying offense in another state or jurisdiction. All~~  
 348 ~~applicants hired on or after October 1, 1998, shall comply with~~  
 349 ~~the requirements of this section.~~

350 ~~(8) There is no monetary or unemployment liability on the~~  
 351 ~~part of, and no cause of action for damages arising against an~~  
 352 ~~employer that, upon notice of a disqualifying offense listed~~  
 353 ~~under chapter 435 or an act of domestic violence, terminates the~~  
 354 ~~employee against whom the report was issued, whether or not the~~  
 355 ~~employee has filed for an exemption with the Department of~~  
 356 ~~Health or the Agency for Health Care Administration.~~

357 Section 5. Section 400.512, Florida Statutes, is amended  
 358 to read:

359 400.512 Screening of home health agency personnel; nurse  
 360 registry personnel; and companions and homemakers.—The agency  
 361 shall require level 2 background screening for personnel as  
 362 required in s. 408.809(1)(e) pursuant to ch. 435 and s. 408.809  
 363 ~~employment or contractor screening as provided in chapter 435,~~  
 364 ~~using the level 1 standards for screening set forth in that~~

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365 ~~chapter, for home health agency personnel; persons referred for~~  
 366 ~~employment by nurse registries; and persons employed by~~  
 367 ~~companion or homemaker services registered under s. 400.509.~~

368 ~~(1) (a) The Agency for Health Care Administration may, upon~~  
 369 ~~request, grant exemptions from disqualification from employment~~  
 370 ~~or contracting under this section as provided in s. 435.07,~~  
 371 ~~except for health care practitioners licensed by the Department~~  
 372 ~~of Health or a regulatory board within that department.~~

373 ~~(b) The appropriate regulatory board within the Department~~  
 374 ~~of Health, or that department itself when there is no board,~~  
 375 ~~may, upon request of the licensed health care practitioner,~~  
 376 ~~grant exemptions from disqualification from employment or~~  
 377 ~~contracting under this section as provided in s. 435.07.~~

378 ~~(2) The administrator of each home health agency, the~~  
 379 ~~managing employee of each nurse registry, and the managing~~  
 380 ~~employee of each companion or homemaker service registered under~~  
 381 ~~s. 400.509 must sign an affidavit annually, under penalty of~~  
 382 ~~perjury, stating that all personnel hired or contracted with or~~  
 383 ~~registered on or after October 1, 2000, who enter the home of a~~  
 384 ~~patient or client in their service capacity have been screened.~~

385 ~~(3) As a prerequisite to operating as a home health~~  
 386 ~~agency, nurse registry, or companion or homemaker service under~~  
 387 ~~s. 400.509, the administrator or managing employee,~~  
 388 ~~respectively, must submit to the agency his or her name and any~~  
 389 ~~other information necessary to conduct a complete screening~~  
 390 ~~according to this section. The agency shall submit the~~  
 391 ~~information to the Department of Law Enforcement for state~~  
 392 ~~processing. The agency shall review the record of the~~



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393 ~~administrator or manager with respect to the offenses specified~~  
 394 ~~in this section and shall notify the owner of its findings. If~~  
 395 ~~disposition information is missing on a criminal record, the~~  
 396 ~~administrator or manager, upon request of the agency, must~~  
 397 ~~obtain and supply within 30 days the missing disposition~~  
 398 ~~information to the agency. Failure to supply missing information~~  
 399 ~~within 30 days or to show reasonable efforts to obtain such~~  
 400 ~~information will result in automatic disqualification.~~

401 ~~(4) Proof of compliance with the screening requirements of~~  
 402 ~~chapter 435 shall be accepted in lieu of the requirements of~~  
 403 ~~this section if the person has been continuously employed or~~  
 404 ~~registered without a breach in service that exceeds 180 days,~~  
 405 ~~the proof of compliance is not more than 2 years old, and the~~  
 406 ~~person has been screened by the Department of Law Enforcement. A~~  
 407 ~~home health agency, nurse registry, or companion or homemaker~~  
 408 ~~service registered under s. 400.509 shall directly provide proof~~  
 409 ~~of compliance to another home health agency, nurse registry, or~~  
 410 ~~companion or homemaker service registered under s. 400.509. The~~  
 411 ~~recipient home health agency, nurse registry, or companion or~~  
 412 ~~homemaker service registered under s. 400.509 may not accept any~~  
 413 ~~proof of compliance directly from the person who requires~~  
 414 ~~screening. Proof of compliance with the screening requirements~~  
 415 ~~of this section shall be provided upon request to the person~~  
 416 ~~screened by the home health agencies; nurse registries; or~~  
 417 ~~companion or homemaker services registered under s. 400.509.~~

418 ~~(5) There is no monetary liability on the part of, and no~~  
 419 ~~cause of action for damages arises against, a licensed home~~  
 420 ~~health agency, licensed nurse registry, or companion or~~

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421 ~~homemaker service registered under s. 400.509, that, upon notice~~  
 422 ~~that the employee or contractor has been found guilty of,~~  
 423 ~~regardless of adjudication, or entered a plea of nolo contendere~~  
 424 ~~or guilty to, any offense prohibited under s. 435.03 or under~~  
 425 ~~any similar statute of another jurisdiction, terminates the~~  
 426 ~~employee or contractor, whether or not the employee or~~  
 427 ~~contractor has filed for an exemption with the agency in~~  
 428 ~~accordance with chapter 435 and whether or not the time for~~  
 429 ~~filing has expired.~~

430 ~~(6) The costs of processing the statewide correspondence~~  
 431 ~~criminal records checks must be borne by the home health agency;~~  
 432 ~~the nurse registry; or the companion or homemaker service~~  
 433 ~~registered under s. 400.509, or by the person being screened, at~~  
 434 ~~the discretion of the home health agency, nurse registry, or s.~~  
 435 ~~400.509 registrant.~~

436 Section 6. Section 400.6065, Florida Statutes, is amended  
 437 to read:

438 400.6065 Background screening.—The agency shall require  
 439 level 2 background employment or contractor screening for  
 440 personnel as required in s. 408.809(1)(e) pursuant to ch. 435  
 441 and s. 408.809 as provided in chapter 435, using the level 1  
 442 standards for screening set forth in that chapter, for hospice  
 443 personnel.

444 Section 7. Subsection (2) of section 400.801, Florida  
 445 Statutes, is amended to read:

446 400.801 Homes for special services.—

447 (2) (a) The requirements of part II of chapter 408 apply to  
 448 the provision of services that require licensure pursuant to

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449 this section and part II of chapter 408 and entities licensed by  
 450 or applying for such licensure from the agency pursuant to this  
 451 section. A license issued by the agency is required in order to  
 452 operate a home for special services in this state.

453 (b) The agency shall require level 2 background screening  
 454 for personnel as required in s. 408.809(1)(e) pursuant to ch.  
 455 435 and s. 408.809.

456 Section 8. Paragraph (d) is added to subsection (2) of  
 457 section 400.805, Florida Statutes, to read:

458 400.805 Transitional living facilities.—

459 (2)(d) The agency shall require level 2 background  
 460 screening for personnel as required in s. 408.809(1)(e) pursuant  
 461 to ch. 435 and s. 408.809.

462 Section 9. Section 400.9065, Florida Statutes, is created  
 463 to read:

464 400.9065 Background screening.—The agency shall require  
 465 level 2 background screening for personnel as required in s.  
 466 408.809(1)(e) pursuant to ch. 435 and s. 408.809.

467 Section 10. Subsection (16) of section 400.934, Florida  
 468 Statutes, is amended to read:

469 400.934 Minimum standards.—As a requirement of licensure,  
 470 home medical equipment providers shall:

471 (16) Establish procedures for maintaining a record of the  
 472 employment history, including background screening as required  
 473 by s. 400.953, pt. II of ch. 408, and ch. 435, of all home  
 474 medical equipment provider personnel. A home medical equipment  
 475 provider must require its personnel to submit an employment  
 476 history to the home medical equipment provider and must verify

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477 the employment history for at least the previous 5 years, unless  
 478 through diligent efforts such verification is not possible.  
 479 There is no monetary liability on the part of, and no cause of  
 480 action for damages arising against a former employer, a  
 481 prospective employee, or a prospective independent contractor  
 482 with a licensed home medical equipment provider, who reasonably  
 483 and in good faith communicates his or her honest opinions about  
 484 a former employee's job performance. This subsection does not  
 485 affect the official immunity of an officer or employee of a  
 486 public corporation.

487 Section 11. Section 400.953, Florida Statutes, is amended  
 488 to read:

489 400.953 Background screening of home medical equipment  
 490 provider personnel.—The agency shall require level 2 background  
 491 screening for personnel as required in s. 408.809(1)(e) pursuant  
 492 to ch. 435 and s. 408.809 ~~employment screening as provided in~~  
 493 ~~chapter 435, using the level 1 standards for screening set forth~~  
 494 ~~in that chapter, for home medical equipment provider personnel.~~

495 ~~(1) The agency may grant exemptions from disqualification~~  
 496 ~~from employment under this section as provided in s. 435.07.~~

497 ~~(2) The general manager of each home medical equipment~~  
 498 ~~provider must sign an affidavit annually, under penalty of~~  
 499 ~~perjury, stating that all home medical equipment provider~~  
 500 ~~personnel hired on or after July 1, 1999, who enter the home of~~  
 501 ~~a patient in the capacity of their employment have been screened~~  
 502 ~~and that its remaining personnel have worked for the home~~  
 503 ~~medical equipment provider continuously since before July 1,~~  
 504 ~~1999.~~

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505 ~~(3) Proof of compliance with the screening requirements of~~  
 506 ~~s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,~~  
 507 ~~s. 402.313, s. 409.175, s. 464.008, or s. 985.644 or this part~~  
 508 ~~must be accepted in lieu of the requirements of this section if~~  
 509 ~~the person has been continuously employed in the same type of~~  
 510 ~~occupation for which he or she is seeking employment without a~~  
 511 ~~breach in service that exceeds 180 days, the proof of compliance~~  
 512 ~~is not more than 2 years old, and the person has been screened~~  
 513 ~~by the Department of Law Enforcement. An employer or contractor~~  
 514 ~~shall directly provide proof of compliance to another employer~~  
 515 ~~or contractor, and a potential employer or contractor may not~~  
 516 ~~accept any proof of compliance directly from the person~~  
 517 ~~requiring screening. Proof of compliance with the screening~~  
 518 ~~requirements of this section shall be provided, upon request, to~~  
 519 ~~the person screened by the home medical equipment provider.~~

520 ~~(4) There is no monetary liability on the part of, and no~~  
 521 ~~cause of action for damages arising against, a licensed home~~  
 522 ~~medical equipment provider that, upon notice that an employee~~  
 523 ~~has been found guilty of, regardless of adjudication, or entered~~  
 524 ~~a plea of nolo contendere or guilty to, any offense prohibited~~  
 525 ~~under s. 435.03 or under any similar statute of another~~  
 526 ~~jurisdiction, terminates the employee, whether or not the~~  
 527 ~~employee has filed for an exemption with the agency and whether~~  
 528 ~~or not the time for filing has expired.~~

529 ~~(5) The costs of processing the statewide correspondence~~  
 530 ~~criminal records checks must be borne by the home medical~~  
 531 ~~equipment provider or by the person being screened, at the~~  
 532 ~~discretion of the home medical equipment provider.~~

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533 ~~(6) Neither the agency nor the home medical equipment~~  
 534 ~~provider may use the criminal records or juvenile records of a~~  
 535 ~~person for any purpose other than determining whether that~~  
 536 ~~person meets minimum standards of good moral character for home~~  
 537 ~~medical equipment provider personnel.~~

538 ~~(7) (a) It is a misdemeanor of the first degree, punishable~~  
 539 ~~as provided in s. 775.082 or s. 775.083, for any person~~  
 540 ~~willfully, knowingly, or intentionally to:~~

541 ~~1. Fail, by false statement, misrepresentation,~~  
 542 ~~impersonation, or other fraudulent means, to disclose in any~~  
 543 ~~application for paid employment a material fact used in making a~~  
 544 ~~determination as to the person's qualifications to be an~~  
 545 ~~employee under this section;~~

546 ~~2. Operate or attempt to operate an entity licensed under~~  
 547 ~~this part with persons who do not meet the minimum standards for~~  
 548 ~~good moral character as contained in this section; or~~

549 ~~3. Use information from the criminal records obtained~~  
 550 ~~under this section for any purpose other than screening that~~  
 551 ~~person for employment as specified in this section, or release~~  
 552 ~~such information to any other person for any purpose other than~~  
 553 ~~screening for employment under this section.~~

554 ~~(b) It is a felony of the third degree, punishable as~~  
 555 ~~provided in s. 775.082, s. 775.083, or s. 775.084, for any~~  
 556 ~~person willfully, knowingly, or intentionally to use information~~  
 557 ~~from the juvenile records of a person obtained under this~~  
 558 ~~section for any purpose other than screening for employment~~  
 559 ~~under this section.~~

560 Section 12. Section 400.955, Florida Statutes, is

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561 repealed.

562 Section 13. Section 400.964, Florida Statutes, is amended  
563 to read:

564 400.964 Personnel screening requirement.—

565 ~~(1) The agency shall require level 2 background screening~~  
566 for personnel as required in s. 408.809(1)(e) pursuant to ch.  
567 435 and s. 408.809 as provided in chapter 435 for all employees  
568 or prospective employees of facilities licensed under this part  
569 who are expected to be, or whose responsibilities are such that  
570 they would be considered to be, a direct service provider.

571 ~~(2) Employers and employees shall comply with the~~  
572 ~~requirements of chapter 435.~~

573 ~~(3) Applicants and employees shall be excluded from~~  
574 ~~employment pursuant to s. 435.06.~~

575 ~~(4) The applicant is responsible for paying the fees~~  
576 ~~associated with obtaining the required screening. Payment for~~  
577 ~~the screening must be submitted to the agency as prescribed by~~  
578 ~~the agency.~~

579 ~~(5) Notwithstanding any other provision of law, persons~~  
580 ~~who have been screened and qualified as required by this section~~  
581 ~~and who have not been unemployed for more than 180 days~~  
582 ~~thereafter, and who under penalty of perjury attest to not~~  
583 ~~having been convicted of a disqualifying offense since the~~  
584 ~~completion of such screening are not required to be rescreened.~~  
585 ~~An employer may obtain, pursuant to s. 435.10, written~~  
586 ~~verification of qualifying screening results from the previous~~  
587 ~~employer or other entity that caused such screening to be~~  
588 ~~performed.~~

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589 ~~(6) The agency may adopt rules to administer this section.~~

590 ~~(7) All employees must comply with the requirements of~~  
 591 ~~this section by October 1, 2000. A person employed by a facility~~  
 592 ~~licensed pursuant to this part as of the effective date of this~~  
 593 ~~act is not required to submit to rescreening if the facility has~~  
 594 ~~in its possession written evidence that the person has been~~  
 595 ~~screened and qualified according to level 1 standards as~~  
 596 ~~specified in s. 435.03. Any current employee who meets the level~~  
 597 ~~1 requirement but does not meet the 5-year residency requirement~~  
 598 ~~must provide to the employing facility written attestation under~~  
 599 ~~penalty of perjury that the employee has not been convicted of a~~  
 600 ~~disqualifying offense in another state or jurisdiction. All~~  
 601 ~~applicants hired on or after October 1, 1999, must comply with~~  
 602 ~~the requirements of this section.~~

603 ~~(8) There is no monetary or unemployment liability on the~~  
 604 ~~part of, and no cause of action for damages arises against an~~  
 605 ~~employer that, upon notice of a disqualifying offense listed~~  
 606 ~~under chapter 435 or an act of domestic violence, terminates the~~  
 607 ~~employee, whether or not the employee has filed for an exemption~~  
 608 ~~with the Department of Health or the Agency for Health Care~~  
 609 ~~Administration.~~

610 Section 14. Subsection (3) of section 400.980, Florida  
 611 Statutes, is amended to read:

612 400.980 Health care services pools.-

613 (3) ~~Upon receipt of a completed, signed, and dated~~  
 614 ~~application,~~ The agency shall require level 2 background  
 615 screening for personnel as required in s. 408.809(1)(e) pursuant  
 616 to ch. 435 and s. 408.809, ~~in accordance with the level 1~~



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617 ~~standards for screening set forth in chapter 435, of every~~  
 618 ~~individual who will have contact with patients.~~

619 Section 15. Subsection (5) of section 400.991, Florida  
 620 Statutes, is amended to read:

621 400.991 License requirements; background screenings;  
 622 prohibitions.-

623 (5) ~~Each applicant for licensure shall comply with the~~  
 624 ~~following requirements:~~

625 (a) As used in this subsection, the term "applicant" means  
 626 individuals owning or controlling, directly or indirectly, 5  
 627 percent or more of an interest in a clinic; the medical or  
 628 clinic director, or a similarly titled person who is responsible  
 629 for the day-to-day operation of the licensed clinic; the  
 630 financial officer or similarly titled individual who is  
 631 responsible for the financial operation of the clinic; and  
 632 licensed health care practitioners at the clinic.

633 ~~(a)(b) Upon receipt of a completed, signed, and dated~~  
 634 ~~application,~~ The agency shall require level 2 background  
 635 screening for applicants and personnel as required in s.  
 636 408.809(1)(e) pursuant to ch. 435 and s. 408.809 of the  
 637 ~~applicant, in accordance with the level 2 standards for~~  
 638 ~~screening set forth in chapter 435. Proof of compliance with the~~  
 639 ~~level 2 background screening requirements of chapter 435 which~~  
 640 ~~has been submitted within the previous 5 years in compliance~~  
 641 ~~with any other health care licensure requirements of this state~~  
 642 ~~is acceptable in fulfillment of this paragraph. Applicants who~~  
 643 ~~own less than 10 percent of a health care clinic are not~~  
 644 ~~required to submit fingerprints under this section.~~

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645           (b)~~(e)~~ Each applicant must submit to the agency, with the  
 646 application, a description and explanation of any exclusions,  
 647 permanent suspensions, or terminations of an applicant from the  
 648 Medicare or Medicaid programs. Proof of compliance with the  
 649 requirements for disclosure of ownership and control interest  
 650 under the Medicaid or Medicare programs may be accepted in lieu  
 651 of this submission. The description and explanation may indicate  
 652 whether such exclusions, suspensions, or terminations were  
 653 voluntary or not voluntary on the part of the applicant.

654           ~~(d) A license may not be granted to a clinic if the~~  
 655 ~~applicant has been found guilty of, regardless of adjudication,~~  
 656 ~~or has entered a plea of nolo contendere or guilty to, any~~  
 657 ~~offense prohibited under the level 2 standards for screening set~~  
 658 ~~forth in chapter 435, or a violation of insurance fraud under s.~~  
 659 ~~817.234, within the past 5 years. If the applicant has been~~  
 660 ~~convicted of an offense prohibited under the level 2 standards~~  
 661 ~~or insurance fraud in any jurisdiction, the applicant must show~~  
 662 ~~that his or her civil rights have been restored prior to~~  
 663 ~~submitting an application.~~

664           Section 16. Paragraph (h) is added to subsection (1) of  
 665 section 408.806, Florida Statutes, to read:

666           408.806 License application process.—

667           (1) An application for licensure must be made to the  
 668 agency on forms furnished by the agency, submitted under oath,  
 669 and accompanied by the appropriate fee in order to be accepted  
 670 and considered timely. The application must contain information  
 671 required by authorizing statutes and applicable rules and must  
 672 include:

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673 (h) An affidavit, under penalty of perjury, stating that  
 674 all persons subject to background screening as required by this  
 675 part, authorizing statutes, and applicable rules, have been  
 676 screened and are qualified.

677 Section 17. Section 408.809, Florida Statutes, is amended  
 678 to read:

679 408.809 Background screening; prohibited offenses.—

680 (1) Level 2 background screening pursuant to chapter 435  
 681 must be conducted through the agency on each of the following  
 682 persons, who shall be considered an employee for the purposes of  
 683 conducting screening under chapter 435:

684 (a) The licensee, if an individual.

685 (b) The administrator or a similarly titled person who is  
 686 responsible for the day-to-day operation of the provider.

687 (c) The financial officer or similarly titled individual  
 688 who is responsible for the financial operation of the licensee  
 689 or provider.

690 (d) Any person who is a controlling interest if the agency  
 691 has reason to believe that such person has been convicted of any  
 692 offense prohibited by s. 435.04. For each controlling interest  
 693 who has been convicted of any such offense, the licensee shall  
 694 submit to the agency a description and explanation of the  
 695 conviction at the time of license application.

696 (e) Any person, as required by authorizing statutes,  
 697 seeking employment or contracting with a licensee or provider  
 698 who is expected to, or whose responsibilities may require them  
 699 to, provide personal care or services directly to clients.

700 However, the changes made by this act do not require a person

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701 who is employed or contracts with a licensee on or before June  
 702 30, 2010, to submit to rescreening until such time as they are  
 703 otherwise required to be rescreened pursuant to law if that  
 704 licensee has in its possession written evidence that the person  
 705 has been screened and qualified according to standards specified  
 706 in s. 435.03 or s. 435.04.

707 (2) Proof of compliance with level 2 screening standards  
 708 submitted within the previous 5 years to meet any provider or  
 709 professional licensure requirements of the agency, the  
 710 Department of Health, the Agency for Persons with Disabilities,  
 711 or the Department of Children and Family Services satisfies the  
 712 requirements of this section, provided the person subject to  
 713 screening has not been unemployed for more than 90 days and that  
 714 such proof is accompanied, under penalty of perjury, by an  
 715 affidavit of compliance with the provisions of chapter 435 and  
 716 this section using forms provided by the agency. Proof of  
 717 compliance with the background screening requirements of the  
 718 Department of Financial Services submitted within the previous 5  
 719 years for an applicant for a certificate of authority to operate  
 720 a continuing care retirement community under chapter 651  
 721 satisfies the Department of Law Enforcement and Federal Bureau  
 722 of Investigation portions of a level 2 background check.

723 (3) All fingerprints must be provided in electronic  
 724 format. Screening results shall be reviewed by the agency with  
 725 respect to the offenses specified in s. 435.04 and this section  
 726 and maintained in a database. The qualifying or disqualifying  
 727 status of the person named in the request will be posted on a  
 728 secure website accessible to all licensees. A provisional

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729 ~~license may be granted to an applicant when each individual~~  
 730 ~~required by this section to undergo background screening has met~~  
 731 ~~the standards for the Department of Law Enforcement background~~  
 732 ~~check but the agency has not yet received background screening~~  
 733 ~~results from the Federal Bureau of Investigation. A standard~~  
 734 ~~license may be granted to the licensee upon the agency's receipt~~  
 735 ~~of a report of the results of the Federal Bureau of~~  
 736 ~~Investigation background screening for each individual required~~  
 737 ~~by this section to undergo background screening that confirms~~  
 738 ~~that all standards have been met or upon the granting of an~~  
 739 ~~exemption from disqualification by the agency as set forth in~~  
 740 ~~chapter 435.~~

741       (4) ~~When a person is newly employed in a capacity that~~  
 742 ~~requires screening under this section, the licensee must notify~~  
 743 ~~the agency of the change within the time period specified in the~~  
 744 ~~authorizing statute or rules and must submit to the agency~~  
 745 ~~information necessary to conduct level 2 screening or provide~~  
 746 ~~evidence of compliance with background screening requirements of~~  
 747 ~~this section. The person may serve in his or her capacity~~  
 748 ~~pending the agency's receipt of the report from the Federal~~  
 749 ~~Bureau of Investigation if he or she has met the standards for~~  
 750 ~~the Department of Law Enforcement background check. However, the~~  
 751 ~~person may not continue to serve in his or her capacity if the~~  
 752 ~~report indicates any violation of background screening standards~~  
 753 ~~unless an exemption from disqualification has been granted by~~  
 754 ~~the agency as set forth in chapter 435.~~

755       (5) ~~Effective October 1, 2009, in addition to the offenses~~  
 756 ~~listed in ss. 435.03 and 435.04, all persons required to undergo~~

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757 background screening pursuant to this part or authorizing  
 758 statutes must not have been found guilty of, regardless of  
 759 adjudication, or entered a plea of nolo contendere or guilty to,  
 760 any of the following offenses or any similar offense of another  
 761 jurisdiction:

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

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

764 (c) Section 409.920, relating to Medicaid provider fraud,  
 765 if the offense was a felony.

766 (d) Section 409.9201, relating to Medicaid fraud, if the  
 767 offense was a felony.

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

769 (f) Chapter 784, relating to assault, battery, and  
 770 culpable negligence, if the offense was a felony.

771 (g) Section 810.02, relating to burglary.

772 (h) Section 817.034, relating to fraudulent acts through  
 773 mail, wire, radio, electromagnetic, photoelectronic, or  
 774 photooptical systems.

775 (i) Section 817.234, relating to false and fraudulent  
 776 insurance claims.

777 (j) Section 817.505, relating to patient brokering.

778 (k) Section 817.568, relating to criminal use of personal  
 779 identification information.

780 (l) Section 817.60, relating to obtaining a credit card  
 781 through fraudulent means.

782 (m) Section 817.61, relating to fraudulent use of credit  
 783 cards, if the offense was a felony.

784 (n) Section 831.01, relating to forgery.

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785 (o) Section 831.02, relating to uttering forged  
786 instruments.

787 (p) Section 831.07, relating to forging bank bills,  
788 checks, drafts, or promissory notes.

789 (q) Section 831.09, relating to uttering forged bank  
790 bills, checks, drafts, or promissory notes.

791 (r) Section 831.30, relating to fraud in obtaining  
792 medicinal drugs.

793 (s) Section 831.31, relating to the sale, manufacture,  
794 delivery, or possession with the intent to sell, manufacture, or  
795 deliver any counterfeit controlled substance, if the offense was  
796 a felony.

797  
798 A person who serves as a controlling interest of or is employed  
799 by a licensee on September 30, 2009, is not required by law to  
800 submit to rescreening if that licensee has in its possession  
801 written evidence that the person has been screened and qualified  
802 according to the standards specified in s. 435.03 or s. 435.04.  
803 However, if such person has a disqualifying offense listed in  
804 this section, he or she may apply for an exemption from the  
805 appropriate licensing agency before September 30, 2009, and if  
806 agreed to by the employer, may continue to perform his or her  
807 duties until the licensing agency renders a decision on the  
808 application for exemption for offenses listed in this section.  
809 Exemptions from disqualification may be granted pursuant to s.  
810 435.07.

811 (5) ~~(6)~~ The costs associated with obtaining the required  
812 screening must be borne either by the licensee or the person

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813 subject to screening. Licensees may reimburse persons for these  
 814 costs. The Florida Department of Law Enforcement shall charge  
 815 the agency for screening a rate sufficient to cover the costs of  
 816 such screening pursuant to s. 943.053(3). The agency shall  
 817 establish a schedule of fees to cover the costs of screening.  
 818 ~~The attestations required under ss. 435.04(5) and 435.05(3) must~~  
 819 ~~be submitted at the time of license renewal, notwithstanding the~~  
 820 ~~provisions of ss. 435.04(5) and 435.05(3) which require annual~~  
 821 ~~submission of an affidavit of compliance with background~~  
 822 ~~screening requirements.~~

823 (6) (a) As provided in ch. 435, the agency may grant an  
 824 exemption from disqualification to a person who is subject to  
 825 this section and who has not received a professional license or  
 826 certification from the Department of Health if that person is  
 827 providing a service that is within the scope of their licensed  
 828 practice.

829 (b) As provided in ch. 435, the appropriate regulatory  
 830 board within the Department of Health, or the department itself  
 831 when there is no board, may grant an exemption from  
 832 disqualification to a person who is subject to this section and  
 833 who has received a professional license or certification from  
 834 the Department of Health or a regulatory board within that  
 835 department and that person is providing a service within the  
 836 scope of their licensed practice.

837 (7) The agency and the Department of Health may adopt  
 838 rules pursuant to ch. 120 to implement this section, ch. 435,  
 839 and authorizing statutes requiring background screening, and to  
 840 implement and adopt criteria relating to retaining fingerprints



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841 pursuant to s. 943.05(2).

842 (8) There is no monetary or unemployment liability on the  
 843 part of, and no cause of action for damages arising against an  
 844 employer that, upon notice of a disqualifying offense listed  
 845 under chapter 435 or this section, terminates the person against  
 846 whom the report was issued, whether or not the person has filed  
 847 for an exemption with the Department of Health or the Agency for  
 848 Health Care Administration.

849 Section 18. Paragraph (k) of subsection (2) of section  
 850 409.175, Florida Statutes, is amended to read:

851 409.175 Licensure of family foster homes, residential  
 852 child-caring agencies, and child-placing agencies; public  
 853 records exemption.—

854 (2) As used in this section, the term:

855 (k) "Screening" means the act of assessing the background  
 856 of personnel and includes, but is not limited to, employment  
 857 history checks as provided in chapter 435, using the level 2  
 858 standards for screening set forth in that chapter. Screening for  
 859 employees and volunteers in summer day camps and summer 24-hour  
 860 camps and screening for all volunteers included under the  
 861 definition of "personnel" shall be conducted as provided in  
 862 chapter 435, using the level 2 ~~level 1~~ standards set forth in  
 863 that chapter.

864 Section 19. Paragraph (i) of subsection (4) of section  
 865 409.221, Florida Statutes, is amended to read:

866 409.221 Consumer-directed care program.—

867 (4) CONSUMER-DIRECTED CARE.—

868 (i) Background screening requirements.—All persons who

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869 render care under this section must undergo level 2 background  
 870 screening pursuant to ch. 435 shall comply with the requirements  
 871 ~~of s. 435.05. Persons shall be excluded from employment pursuant~~  
 872 ~~to s. 435.06.~~

873 ~~1. Persons excluded from employment may request an~~  
 874 ~~exemption from disqualification, as provided in s. 435.07.~~  
 875 ~~Persons not subject to certification or professional licensure~~  
 876 ~~may request an exemption from the agency. In considering a~~  
 877 ~~request for an exemption, the agency shall comply with the~~  
 878 ~~provisions of s. 435.07.~~

879 ~~2.~~ The agency shall, as allowable, reimburse consumer-  
 880 employed caregivers for the cost of conducting background  
 881 screening as required by this section.

882  
 883 For purposes of this section, a person who has undergone  
 884 screening, who is qualified for employment under this section  
 885 and applicable rule, and who has not been unemployed for more  
 886 than 90 ~~180~~ days following such screening is not required to be  
 887 rescreened. Such person must attest under penalty of perjury to  
 888 not having been convicted of a disqualifying offense since  
 889 completing such screening.

890 Section 20. Subsection (8) of section 409.907, Florida  
 891 Statutes, is amended to read:

892 409.907 Medicaid provider agreements.—The agency may make  
 893 payments for medical assistance and related services rendered to  
 894 Medicaid recipients only to an individual or entity who has a  
 895 provider agreement in effect with the agency, who is performing  
 896 services or supplying goods in accordance with federal, state,

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897 | and local law, and who agrees that no person shall, on the  
 898 | grounds of handicap, race, color, or national origin, or for any  
 899 | other reason, be subjected to discrimination under any program  
 900 | or activity for which the provider receives payment from the  
 901 | agency.

902 |       (8) (a) Each provider, or each principal of the provider if  
 903 | the provider is a corporation, partnership, association, or  
 904 | other entity, seeking to participate in the Medicaid program  
 905 | must submit a complete set of his or her fingerprints to the  
 906 | agency for the purpose of conducting a criminal history record  
 907 | check. Principals of the provider include any officer, director,  
 908 | billing agent, managing employee, or affiliated person, or any  
 909 | partner or shareholder who has an ownership interest equal to 5  
 910 | percent or more in the provider. However, a director of a not-  
 911 | for-profit corporation or organization is not a principal for  
 912 | purposes of a background investigation as required by this  
 913 | section if the director: serves solely in a voluntary capacity  
 914 | for the corporation or organization, does not regularly take  
 915 | part in the day-to-day operational decisions of the corporation  
 916 | or organization, receives no remuneration from the not-for-  
 917 | profit corporation or organization for his or her service on the  
 918 | board of directors, has no financial interest in the not-for-  
 919 | profit corporation or organization, and has no family members  
 920 | with a financial interest in the not-for-profit corporation or  
 921 | organization; and if the director submits an affidavit, under  
 922 | penalty of perjury, to this effect to the agency and the not-  
 923 | for-profit corporation or organization submits an affidavit,  
 924 | under penalty of perjury, to this effect to the agency as part

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925 of the corporation's or organization's Medicaid provider  
 926 agreement application. Notwithstanding the above, the agency may  
 927 require a background check for any person reasonably suspected  
 928 by the agency to have been convicted of a crime. This subsection  
 929 shall not apply to:

- 930 1. A hospital licensed under chapter 395;
- 931 2. A nursing home licensed under chapter 400;
- 932 3. A hospice licensed under chapter 400;
- 933 4. An assisted living facility licensed under chapter 429;
- 934 5. A unit of local government, except that requirements of  
 935 this subsection apply to nongovernmental providers and entities  
 936 when contracting with the local government to provide Medicaid  
 937 services. The actual cost of the state and national criminal  
 938 history record checks must be borne by the nongovernmental  
 939 provider or entity; or
- 940 6. Any business that derives more than 50 percent of its  
 941 revenue from the sale of goods to the final consumer, and the  
 942 business or its controlling parent either is required to file a  
 943 form 10-K or other similar statement with the Securities and  
 944 Exchange Commission or has a net worth of \$50 million or more.

945 (b) Background screening shall be conducted in accordance  
 946 with ch. 435 and s. 408.809. ~~The agency shall submit the~~  
 947 ~~fingerprints to the Department of Law Enforcement. The~~  
 948 ~~department shall conduct a state criminal-background~~  
 949 ~~investigation and forward the fingerprints to the Federal Bureau~~  
 950 ~~of Investigation for a national criminal-history record check.~~  
 951 The cost of the state and national criminal record check shall  
 952 be borne by the provider.

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953           (c) ~~The agency may permit a provider to participate in the~~  
 954 ~~Medicaid program pending the results of the criminal record~~  
 955 ~~check. However, such permission is fully revocable if the record~~  
 956 ~~check reveals any crime-related history as provided in~~  
 957 ~~subsection (10).~~

958           (d) Proof of compliance with the requirements of level 2  
 959 screening under s. 435.04 conducted within 12 months prior to  
 960 the date that the Medicaid provider application is submitted to  
 961 the agency shall fulfill the requirements of this subsection.  
 962 ~~Proof of compliance with the requirements of level 1 screening~~  
 963 ~~under s. 435.03 conducted within 12 months prior to the date~~  
 964 ~~that the Medicaid provider application is submitted to the~~  
 965 ~~agency shall meet the requirement that the Department of Law~~  
 966 ~~Enforcement conduct a state criminal history record check.~~

967           Section 21. Subsection (1) of section 429.14, Florida  
 968 Statutes, is amended to read:

969           429.14 Administrative penalties.—

970           (1) In addition to the requirements of part II of chapter  
 971 408, the agency may deny, revoke, and suspend any license issued  
 972 under this part and impose an administrative fine in the manner  
 973 provided in chapter 120 against a licensee ~~of an assisted living~~  
 974 ~~facility~~ for a violation of any provision of this part, part II  
 975 of chapter 408, or applicable rules, or for any of the following  
 976 actions by a licensee ~~of an assisted living facility~~, for the  
 977 actions of any person subject to level 2 background screening  
 978 under s. 408.809, or for the actions of any facility employee:

979           (a) An intentional or negligent act seriously affecting  
 980 the health, safety, or welfare of a resident of the facility.

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981 (b) The determination by the agency that the owner lacks  
 982 the financial ability to provide continuing adequate care to  
 983 residents.

984 (c) Misappropriation or conversion of the property of a  
 985 resident of the facility.

986 (d) Failure to follow the criteria and procedures provided  
 987 under part I of chapter 394 relating to the transportation,  
 988 voluntary admission, and involuntary examination of a facility  
 989 resident.

990 (e) A citation of any of the following deficiencies as  
 991 specified in s. 429.19:

- 992 1. One or more cited class I deficiencies.
- 993 2. Three or more cited class II deficiencies.
- 994 3. Five or more cited class III deficiencies that have  
 995 been cited on a single survey and have not been corrected within  
 996 the times specified.

997 (f) Failure to comply with the ~~A determination that a~~  
 998 ~~person subject to level 2 background screening under s. 408.809~~  
 999 ~~does not meet the screening standards of this part, ch. 435, or~~  
 1000 ~~pt. II of ch. 408 s. 435.04 or that the facility is retaining an~~  
 1001 ~~employee subject to level 1 background screening standards under~~  
 1002 ~~s. 429.174 who does not meet the screening standards of s.~~  
 1003 ~~435.03 and for whom exemptions from disqualification have not~~  
 1004 ~~been provided by the agency.~~

1005 (g) ~~A determination that an employee, volunteer,~~  
 1006 ~~administrator, or owner, or person who otherwise has access to~~  
 1007 ~~the residents of a facility does not meet the criteria specified~~  
 1008 ~~in s. 435.03(2), and the owner or administrator has not taken~~

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1009 ~~action to remove the person. Exemptions from disqualification~~  
 1010 ~~may be granted as set forth in s. 435.07. No administrative~~  
 1011 ~~action may be taken against the facility if the person is~~  
 1012 ~~granted an exemption.~~

1013 ~~(h)~~ Violation of a moratorium.

1014 ~~(h)~~(i) Failure of the license applicant, the licensee  
 1015 during relicensure, or a licensee that holds a provisional  
 1016 license to meet the minimum license requirements of this part,  
 1017 or related rules, at the time of license application or renewal.

1018 ~~(i)~~(j) An intentional or negligent life-threatening act in  
 1019 violation of the uniform firesafety standards for assisted  
 1020 living facilities or other firesafety standards that threatens  
 1021 the health, safety, or welfare of a resident of a facility, as  
 1022 communicated to the agency by the local authority having  
 1023 jurisdiction or the State Fire Marshal.

1024 ~~(j)~~(k) Knowingly operating any unlicensed facility or  
 1025 providing without a license any service that must be licensed  
 1026 under this chapter or chapter 400.

1027 ~~(k)~~(l) Any act constituting a ground upon which  
 1028 application for a license may be denied.

1029 Section 22. Section 429.174, Florida Statutes, is amended  
 1030 to read:

1031 429.174 Background screening; ~~exemptions.~~ The agency shall  
 1032 require level 2 background screening for personnel as required  
 1033 in s. 408.809(1)(e) pursuant to ch. 435 and s. 408.809. The  
 1034 ~~owner or administrator of an assisted living facility must~~  
 1035 ~~conduct level 1 background screening, as set forth in chapter~~  
 1036 ~~435, on all employees hired on or after October 1, 1998, who~~

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1037 ~~perform personal services as defined in s. 429.02(16). The~~  
 1038 ~~agency may exempt an individual from employment disqualification~~  
 1039 ~~as set forth in chapter 435. Such persons shall be considered as~~  
 1040 ~~having met this requirement if:~~

1041 ~~(1) Proof of compliance with level 1 screening~~  
 1042 ~~requirements obtained to meet any professional license~~  
 1043 ~~requirements in this state is provided and accompanied, under~~  
 1044 ~~penalty of perjury, by a copy of the person's current~~  
 1045 ~~professional license and an affidavit of current compliance with~~  
 1046 ~~the background screening requirements.~~

1047 ~~(2) The person required to be screened has been~~  
 1048 ~~continuously employed in the same type of occupation for which~~  
 1049 ~~the person is seeking employment without a breach in service~~  
 1050 ~~which exceeds 180 days, and proof of compliance with the level 1~~  
 1051 ~~screening requirement which is no more than 2 years old is~~  
 1052 ~~provided. Proof of compliance shall be provided directly from~~  
 1053 ~~one employer or contractor to another, and not from the person~~  
 1054 ~~screened. Upon request, a copy of screening results shall be~~  
 1055 ~~provided by the employer retaining documentation of the~~  
 1056 ~~screening to the person screened.~~

1057 ~~(3) The person required to be screened is employed by a~~  
 1058 ~~corporation or business entity or related corporation or~~  
 1059 ~~business entity that owns, operates, or manages more than one~~  
 1060 ~~facility or agency licensed under this chapter, and for whom a~~  
 1061 ~~level 1 screening was conducted by the corporation or business~~  
 1062 ~~entity as a condition of initial or continued employment.~~

1063 Section 23. Subsection (4) of section 429.67, Florida  
 1064 Statutes, is amended to read:



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1065 429.67 Licensure.—

1066 (4) ~~Upon receipt of a completed license application or~~  
 1067 ~~license renewal, and the fee,~~ The agency shall require level 2  
 1068 ~~initiate a level 1 background screening for personnel as~~  
 1069 ~~required in s. 408.809(1)(e), including as provided under~~  
 1070 ~~chapter 435 on the adult family-care home provider, the~~  
 1071 ~~designated relief person, and all adult household members,~~  
 1072 ~~pursuant to ch. 435 and s. 408.809 and all staff members.~~

1073 ~~(a) Proof of compliance with level 1 screening standards~~  
 1074 ~~which has been submitted within the previous 5 years to meet any~~  
 1075 ~~facility or professional licensure requirements of the agency or~~  
 1076 ~~the Department of Health satisfies the requirements of this~~  
 1077 ~~subsection. Such proof must be accompanied, under penalty of~~  
 1078 ~~perjury, by a copy of the person's current professional license~~  
 1079 ~~and an affidavit of current compliance with the background~~  
 1080 ~~screening requirements.~~

1081 ~~(b) The person required to be screened must have been~~  
 1082 ~~continuously employed in the same type of occupation for which~~  
 1083 ~~the person is seeking employment without a breach in service~~  
 1084 ~~that exceeds 180 days, and proof of compliance with the level 1~~  
 1085 ~~screening requirement which is no more than 2 years old must be~~  
 1086 ~~provided. Proof of compliance shall be provided directly from~~  
 1087 ~~one employer or contractor to another, and not from the person~~  
 1088 ~~screened. Upon request, a copy of screening results shall be~~  
 1089 ~~provided to the person screened by the employer retaining~~  
 1090 ~~documentation of the screening.~~

1091 Section 24. Section 429.69, Florida Statutes, is amended  
 1092 to read:

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1093 429.69 Denial, revocation, and suspension of a license.—In  
 1094 addition to the requirements of part II of chapter 408, the  
 1095 agency may deny, suspend, and revoke a license for any of the  
 1096 following reasons:

1097 (1) Failure to comply with the of any of the persons  
 1098 ~~required to undergo~~ background screening standards of this part,  
 1099 pt. II of ch. 408, or ch. 435 under s. 429.67 to meet the level  
 1100 ~~1 screening standards of s. 435.03, unless an exemption from~~  
 1101 ~~disqualification has been provided by the agency.~~

1102 (2) Failure to correct cited fire code violations that  
 1103 threaten the health, safety, or welfare of residents.

1104 Section 25. Paragraph (c) of subsection (2) of section  
 1105 429.911, Florida Statutes, is amended to read:

1106 429.911 Denial, suspension, revocation of license;  
 1107 emergency action; administrative fines; investigations and  
 1108 inspections.—

1109 (2) Each of the following actions by the owner of an adult  
 1110 day care center or by its operator or employee is a ground for  
 1111 action by the agency against the owner of the center or its  
 1112 operator or employee:

1113 (c) A Failure to comply with the of persons subject to  
 1114 level 2 background screening standards of this part, pt. II of  
 1115 ch. 408, or ch. 435 under s. 408.809 to meet the screening  
 1116 ~~standards of s. 435.04, or the retention by the center of an~~  
 1117 ~~employee subject to level 1 background screening standards under~~  
 1118 ~~s. 429.174 who does not meet the screening standards of s.~~  
 1119 ~~435.03 and for whom exemptions from disqualification have not~~  
 1120 ~~been provided by the agency.~~

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1121 Section 26. Section 429.919, Florida Statutes, is amended  
 1122 to read:

1123 429.919 Background screening.—The agency shall require  
 1124 level 2 background screening for personnel as required in s.  
 1125 408.809(1) (e) pursuant to ch. 435 and s. 408.809. ~~The owner or~~  
 1126 ~~administrator of an adult day care center must conduct level 1~~  
 1127 ~~background screening as set forth in chapter 435 on all~~  
 1128 ~~employees hired on or after October 1, 1998, who provide basic~~  
 1129 ~~services or supportive and optional services to the~~  
 1130 ~~participants. Such persons satisfy this requirement if:~~

1131 ~~(1) Proof of compliance with level 1 screening~~  
 1132 ~~requirements obtained to meet any professional license~~  
 1133 ~~requirements in this state is provided and accompanied, under~~  
 1134 ~~penalty of perjury, by a copy of the person's current~~  
 1135 ~~professional license and an affidavit of current compliance with~~  
 1136 ~~the background screening requirements.~~

1137 ~~(2) The person required to be screened has been~~  
 1138 ~~continuously employed, without a breach in service that exceeds~~  
 1139 ~~180 days, in the same type of occupation for which the person is~~  
 1140 ~~seeking employment and provides proof of compliance with the~~  
 1141 ~~level 1 screening requirement which is no more than 2 years old.~~  
 1142 ~~Proof of compliance must be provided directly from one employer~~  
 1143 ~~or contractor to another, and not from the person screened. Upon~~  
 1144 ~~request, a copy of screening results shall be provided to the~~  
 1145 ~~person screened by the employer retaining documentation of the~~  
 1146 ~~screening.~~

1147 ~~(3) The person required to be screened is employed by a~~  
 1148 ~~corporation or business entity or related corporation or~~

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1149 ~~business entity that owns, operates, or manages more than one~~  
 1150 ~~facility or agency licensed under chapter 400 or this chapter,~~  
 1151 ~~and for whom a level 1 screening was conducted by the~~  
 1152 ~~corporation or business entity as a condition of initial or~~  
 1153 ~~continued employment.~~

1154 Section 27. Section 430.60, Florida Statutes, is created  
 1155 to read:

1156 430.60 Screening of direct service providers.-

1157 (1) (a) Level 2 background screening pursuant to ch. 435 is  
 1158 required for direct service providers. Background screening  
 1159 shall include employment history checks as provided in s.  
 1160 435.03(1) and local criminal records checks through local law  
 1161 enforcement agencies.

1162 (b) For purposes of this section, "direct service  
 1163 provider" means a person 18 years of age or older who is  
 1164 unrelated to his or her clients and who has direct face-to-face  
 1165 contact with a client while providing services to the client,  
 1166 has access to a client's living areas or to a client's funds or  
 1167 personal property, including coordinators, and managers and  
 1168 supervisors of residential facilities and volunteers.

1169 (2) Licensed physicians, nurses, or other professionals  
 1170 licensed by the Department of Health are not subject to  
 1171 background screening pursuant to this section if they are  
 1172 providing a service that is within the scope of their licensed  
 1173 practice.

1174 (3) Refusal on the part of an employer to dismiss a  
 1175 manager, supervisor, or direct service provider who has been  
 1176 found to be in noncompliance with standards of this section

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1177 shall result in automatic denial, termination, or revocation of  
 1178 the license or certification, rate agreement, purchase order, or  
 1179 contract, in addition to any other remedies authorized by law.

1180 (4) The background screening conducted pursuant to this  
 1181 section must ensure that, in addition to the disqualifying  
 1182 offenses listed in s. 435.04, no persons subject to the  
 1183 provisions of this section have been found guilty of, regardless  
 1184 of adjudication, or entered a plea of nolo contendere or guilty  
 1185 to, any offense prohibited under any of the following provisions  
 1186 of the Florida Statutes or under any similar statute of another  
 1187 jurisdiction:

1188 (a) Any authorizing statutes, if the offense was a felony.

1189 (b) This chapter, if the offense was a felony.

1190 (c) Section 409.920, relating to Medicaid provider fraud,  
 1191 if the offense was a felony.

1192 (d) Section 409.9201, relating to Medicaid fraud, if the  
 1193 offense was a felony.

1194 (e) Section 817.034, relating to fraudulent acts through  
 1195 mail, wire, radio, electromagnetic, photoelectronic, or  
 1196 photooptical systems.

1197 (f) Section 817.234, relating to false and fraudulent  
 1198 insurance claims.

1199 (g) Section 817.505, relating to patient brokering.

1200 (h) Section 817.568, relating to criminal use of personal  
 1201 identification information.

1202 (i) Section 817.60, relating to obtaining a credit card  
 1203 through fraudulent means.

1204 (j) Section 817.61, relating to fraudulent use of credit

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1205 cards, if the offense was a felony.  
 1206 (k) Section 831.01, relating to forgery.  
 1207 (l) Section 831.02, relating to uttering forged  
 1208 instruments.  
 1209 (m) Section 831.07, relating to forging bank bills,  
 1210 checks, drafts, or promissory notes.  
 1211 (n) Section 831.09, relating to uttering forged bank  
 1212 bills, checks, drafts, or promissory notes.  
 1213 Section 28. Section 435.01, Florida Statutes, is amended  
 1214 to read:  
 1215 435.01 Applicability of this chapter.—  
 1216 (a) Unless otherwise provided by law, whenever a  
 1217 background screening for employment or a background security  
 1218 check is required by law to be conducted pursuant to this  
 1219 chapter for employment, unless otherwise provided by law, the  
 1220 provisions of this chapter shall apply.  
 1221 (b) Unless expressly provided otherwise, a reference in  
 1222 any section of the Florida Statutes to ch. 435 or to any section  
 1223 or sections or portion of a section of ch. 435 includes, and  
 1224 shall be understood as including, all subsequent amendments to  
 1225 ch. 435 or to the referenced section or sections or portions of  
 1226 a section. The purpose of this chapter is to facilitate uniform  
 1227 background screening and, to this end, a reference to this  
 1228 chapter, or to any section or subdivision within this chapter,  
 1229 constitutes a general reference under the doctrine of  
 1230 incorporation by reference.  
 1231 Section 29. Section 435.02, Florida Statutes, is amended  
 1232 to read:

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1233 435.02 Definitions.—For the purposes of this chapter:

1234 (1) "Employee" means any person required by law to be  
1235 screened pursuant to the provisions of this chapter.

1236 (2) "Employer" means any person or entity required by law  
1237 to conduct screening of employees pursuant to this chapter.

1238 (3) "Employment" means any activity or service sought to  
1239 be performed by an employee that requires the employee to be  
1240 subject to screening pursuant to this chapter.

1241 (4) "Licensing Agency" means any state, municipality, or  
1242 county agency that ~~which~~ grants licenses or registration  
1243 permitting the operation of an employer or is itself an  
1244 employer, or otherwise facilitates the screening of employees  
1245 pursuant to this chapter. When there is no state ~~licensing~~  
1246 agency or the municipal or county ~~licensing~~ agency chooses not  
1247 to conduct employment screening, "~~licensing~~ agency" means the  
1248 Department of Children and Family Services.

1249 (5) "Vulnerable person" means a minor as defined in s.  
1250 1.01 or a vulnerable adult as defined in s. 415.102.

1251 Section 30. Section 435.03, Florida Statutes, is amended  
1252 to read:

1253 435.03 Level 1 screening standards.—

1254 (1) All employees required by law to be screened pursuant  
1255 to this section must ~~shall be required to~~ undergo background  
1256 screening as a condition of employment and continued employment  
1257 that includes. ~~For the purposes of this subsection, level 1~~  
1258 ~~screenings shall include,~~ but need not be limited to, employment  
1259 history checks and statewide criminal correspondence checks  
1260 through the Florida Department of Law Enforcement, and may

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1261 include local criminal records checks through local law  
 1262 enforcement agencies.

1263       (2) Any person required by law to be screened pursuant to  
 1264 this section ~~for whom employment screening is required by~~  
 1265 ~~statute~~ must not have been found guilty of, regardless of  
 1266 adjudication, or entered a plea of nolo contendere or guilty to,  
 1267 any offense prohibited under any provision of s. 435.04(2) ~~of~~  
 1268 ~~the following provisions of the Florida Statutes~~ or under any  
 1269 similar statute of another jurisdiction.†

1270       ~~(a) Section 393.135, relating to sexual misconduct with~~  
 1271 ~~certain developmentally disabled clients and reporting of such~~  
 1272 ~~sexual misconduct.~~

1273       ~~(b) Section 394.4593, relating to sexual misconduct with~~  
 1274 ~~certain mental health patients and reporting of such sexual~~  
 1275 ~~misconduct.~~

1276       ~~(c) Section 415.111, relating to abuse, neglect, or~~  
 1277 ~~exploitation of a vulnerable adult.~~

1278       ~~(d) Section 782.04, relating to murder.~~

1279       ~~(e) Section 782.07, relating to manslaughter, aggravated~~  
 1280 ~~manslaughter of an elderly person or disabled adult, or~~  
 1281 ~~aggravated manslaughter of a child.~~

1282       ~~(f) Section 782.071, relating to vehicular homicide.~~

1283       ~~(g) Section 782.09, relating to killing of an unborn quick~~  
 1284 ~~child by injury to the mother.~~

1285       ~~(h) Section 784.011, relating to assault, if the victim of~~  
 1286 ~~the offense was a minor.~~

1287       ~~(i) Section 784.021, relating to aggravated assault.~~

1288       ~~(j) Section 784.03, relating to battery, if the victim of~~



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| 1289 | <del>the offense was a minor.</del>  |      |
| 1290 | <del>(k) Section 784.045, relating to aggravated battery.</del>            |      |
| 1291 | <del>(l) Section 787.01, relating to kidnapping.</del>                     |      |
| 1292 | <del>(m) Section 787.02, relating to false imprisonment.</del>             |      |
| 1293 | <del>(n) Section 794.011, relating to sexual battery.</del>                |      |
| 1294 | <del>(o) Former s. 794.041, relating to prohibited acts of</del>           |      |
| 1295 | <del>persons in familial or custodial authority.</del>                     |      |
| 1296 | <del>(p) Chapter 796, relating to prostitution.</del>                      |      |
| 1297 | <del>(q) Section 798.02, relating to lewd and lascivious</del>             |      |
| 1298 | <del>behavior.</del>   |      |
| 1299 | <del>(r) Chapter 800, relating to lewdness and indecent</del>              |      |
| 1300 | <del>exposure.</del>   |      |
| 1301 | <del>(s) Section 806.01, relating to arson.</del>                          |      |
| 1302 | <del>(t) Chapter 812, relating to theft, robbery, and related</del>        |      |
| 1303 | <del>crimes, if the offense was a felony.</del>                            |      |
| 1304 | <del>(u) Section 817.563, relating to fraudulent sale of</del>             |      |
| 1305 | <del>controlled substances, only if the offense was a felony.</del>        |      |
| 1306 | <del>(v) Section 825.102, relating to abuse, aggravated abuse,</del>       |      |
| 1307 | <del>or neglect of an elderly person or disabled adult.</del>              |      |
| 1308 | <del>(w) Section 825.1025, relating to lewd or lascivious</del>            |      |
| 1309 | <del>offenses committed upon or in the presence of an elderly person</del> |      |
| 1310 | <del>or disabled adult.</del>  |      |
| 1311 | <del>(x) Section 825.103, relating to exploitation of an</del>             |      |
| 1312 | <del>elderly person or disabled adult, if the offense was a felony.</del>  |      |
| 1313 | <del>(y) Section 826.04, relating to incest.</del>                         |      |
| 1314 | <del>(z) Section 827.03, relating to child abuse, aggravated</del>         |      |
| 1315 | <del>child abuse, or neglect of a child.</del>                             |      |
| 1316 | <del>(aa) Section 827.04, relating to contributing to the</del>            |      |

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1317 ~~delinquency or dependency of a child.~~  
 1318 ~~(bb) Former s. 827.05, relating to negligent treatment of~~  
 1319 ~~children.~~  
 1320 ~~(cc) Section 827.071, relating to sexual performance by a~~  
 1321 ~~child.~~  
 1322 ~~(dd) Chapter 847, relating to obscene literature.~~  
 1323 ~~(ee) Chapter 893, relating to drug abuse prevention and~~  
 1324 ~~control, only if the offense was a felony or if any other person~~  
 1325 ~~involved in the offense was a minor.~~  
 1326 ~~(ff) Section 916.1075, relating to sexual misconduct with~~  
 1327 ~~certain forensic clients and reporting of such sexual~~  
 1328 ~~misconduct.~~  
 1329 (3) The security background investigations under this  
 1330 section must ensure that no persons subject to the provisions of  
 1331 this section have been found guilty of, regardless of  
 1332 adjudication, or entered a plea of nolo contendere or guilty to,  
 1333 any offense that constitutes domestic violence as defined in s.  
 1334 741.28, whether such act was committed in Florida or in another  
 1335 jurisdiction. Standards must also ensure that the person:  
 1336 ~~(a) For employees and employers licensed or registered~~  
 1337 ~~pursuant to chapter 400 or chapter 429, and for employees and~~  
 1338 ~~employers of developmental disabilities centers as defined in s.~~  
 1339 ~~393.063, intermediate care facilities for the developmentally~~  
 1340 ~~disabled as defined in s. 400.960, and mental health treatment~~  
 1341 ~~facilities as defined in s. 394.455, meets the requirements of~~  
 1342 ~~this chapter.~~  
 1343 ~~(b) Has not committed an act that constitutes domestic~~  
 1344 ~~violence as defined in s. 741.28.~~

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1345 Section 31. Section 435.04, Florida Statutes, is amended  
 1346 to read:

1347 435.04 Level 2 screening standards.—

1348 (1) (a) All employees required by law to be screened  
 1349 pursuant to this section must ~~in positions designated by law as~~  
 1350 ~~positions of trust or responsibility shall be required to~~  
 1351 undergo security background investigations as a condition of  
 1352 employment and continued employment that includes. ~~For the~~  
 1353 ~~purposes of this subsection, security background investigations~~  
 1354 ~~shall include,~~ but need not be limited to, fingerprinting for  
 1355 ~~all purposes and~~ statewide criminal history checks ~~in this~~  
 1356 ~~subsection, statewide criminal and juvenile records checks~~  
 1357 through the Florida Department of Law Enforcement, and federal  
 1358 criminal records checks through the Federal Bureau of  
 1359 Investigation, and may include local criminal records checks  
 1360 through local law enforcement agencies.

1361 (b) Fingerprints submitted pursuant to this section on or  
 1362 after July 1, 2012, must be submitted by the employee or  
 1363 employer using a Federal Bureau of Investigation authorized  
 1364 electronic fingerprint submission format.

1365 (c) An agency may contract with one or more vendors to  
 1366 perform all or part of the electronic fingerprinting pursuant to  
 1367 this section. Such contracts must ensure that the owners and  
 1368 personnel of the vendor performing the electronic fingerprinting  
 1369 are qualified and will ensure the integrity and security of all  
 1370 personal information.

1371 (d) An agency may require, by rule adopted pursuant to ch.  
 1372 120, that fingerprints submitted pursuant to this section must

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1373 be submitted by the employee or employer using a Federal Bureau  
 1374 of Investigation authorized electronic fingerprint submission  
 1375 format on a date prior to July 1, 2012.

1376 (2) The security background investigations under this  
 1377 section must ensure that no persons subject to the provisions of  
 1378 this section have been found guilty of, regardless of  
 1379 adjudication, or entered a plea of nolo contendere or guilty to,  
 1380 any offense prohibited under any of the following provisions of  
 1381 the Florida Statutes or under any similar statute of another  
 1382 jurisdiction:

1383 (a) Section 393.135, relating to sexual misconduct with  
 1384 certain developmentally disabled clients and reporting of such  
 1385 sexual misconduct.

1386 (b) Section 394.4593, relating to sexual misconduct with  
 1387 certain mental health patients and reporting of such sexual  
 1388 misconduct.

1389 (c) Section 415.111, relating to adult abuse, neglect, or  
 1390 exploitation of aged persons or disabled adults.

1391 (d) Section 782.04, relating to murder.

1392 (e) Section 782.07, relating to manslaughter, aggravated  
 1393 manslaughter of an elderly person or disabled adult, or  
 1394 aggravated manslaughter of a child.

1395 (f) Section 782.071, relating to vehicular homicide.

1396 (g) Section 782.09, relating to killing of an unborn quick  
 1397 child by injury to the mother.

1398 (h) Chapter 784, relating to assault, battery, and  
 1399 culpable negligence, if the offense was a felony.

1400 (i)~~(h)~~ Section 784.011, relating to assault, if the victim

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1401 of the offense was a minor.  
 1402 ~~(i)~~ Section 784.021, relating to aggravated assault.  
 1403 (j) Section 784.03, relating to battery, if the victim of  
 1404 the offense was a minor.  
 1405 ~~(k)~~ Section 784.045, relating to aggravated battery.  
 1406 ~~(l)~~ Section 784.075, relating to battery on a detention or  
 1407 commitment facility staff.  
 1408 (k) ~~(m)~~ Section 787.01, relating to kidnapping.  
 1409 (l) ~~(n)~~ Section 787.02, relating to false imprisonment.  
 1410 (m) Section 787.025, relating to luring or enticing a  
 1411 child.  
 1412 (n) ~~(o)~~ Section 787.04(2), relating to taking, enticing, or  
 1413 removing a child beyond the state limits with criminal intent  
 1414 pending custody proceedings.  
 1415 (o) ~~(p)~~ Section 787.04(3), relating to carrying a child  
 1416 beyond the state lines with criminal intent to avoid producing a  
 1417 child at a custody hearing or delivering the child to the  
 1418 designated person.  
 1419 (p) ~~(q)~~ Section 790.115(1), relating to exhibiting firearms  
 1420 or weapons within 1,000 feet of a school.  
 1421 (q) ~~(r)~~ Section 790.115(2)(b), relating to possessing an  
 1422 electric weapon or device, destructive device, or other weapon  
 1423 on school property.  
 1424 (r) ~~(s)~~ Section 794.011, relating to sexual battery.  
 1425 (s) ~~(t)~~ Former s. 794.041, relating to prohibited acts of  
 1426 persons in familial or custodial authority.  
 1427 (t) Section 794.05, relating to unlawful sexual activity  
 1428 with certain minors.

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|------|---|------|
| 1429 | (u) Chapter 796, relating to prostitution.                                    |      |
| 1430 | (v) Section 798.02, relating to lewd and lascivious                           |      |
| 1431 | behavior.   |      |
| 1432 | (w) Chapter 800, relating to lewdness and indecent                            |      |
| 1433 | exposure.   |      |
| 1434 | (x) Section 806.01, relating to arson.  |      |
| 1435 | <u>(y) Section 810.02, relating to burglary.</u>                              |      |
| 1436 | <u>(z) Section 810.14, relating to voyeurism, if the offense</u>              |      |
| 1437 | <u>is a felony.</u>   |      |
| 1438 | <u>(aa) Section 810.145, relating to video voyeurism, if the</u>              |      |
| 1439 | <u>offense is a felony.</u>   |      |
| 1440 | <u>(bb)</u> <del>(y)</del> Chapter 812, relating to theft, robbery, and       |      |
| 1441 | related crimes, if the offense is a felony.                                   |      |
| 1442 | <u>(cc)</u> <del>(z)</del> Section 817.563, relating to fraudulent sale of    |      |
| 1443 | controlled substances, only if the offense was a felony.                      |      |
| 1444 | <u>(dd)</u> <del>(aa)</del> Section 825.102, relating to abuse, aggravated    |      |
| 1445 | abuse, or neglect of an elderly person or disabled adult.                     |      |
| 1446 | <u>(ee)</u> <del>(bb)</del> Section 825.1025, relating to lewd or lascivious  |      |
| 1447 | offenses committed upon or in the presence of an elderly person               |      |
| 1448 | or disabled adult.  |      |
| 1449 | <u>(ff)</u> <del>(ee)</del> Section 825.103, relating to exploitation of an   |      |
| 1450 | elderly person or disabled adult, if the offense was a felony.                |      |
| 1451 | <u>(gg)</u> <del>(dd)</del> Section 826.04, relating to incest.               |      |
| 1452 | <u>(hh)</u> <del>(ee)</del> Section 827.03, relating to child abuse,          |      |
| 1453 | aggravated child abuse, or neglect of a child.                                |      |
| 1454 | <u>(ii)</u> <del>(ff)</del> Section 827.04, relating to contributing to the   |      |
| 1455 | delinquency or dependency of a child.   |      |
| 1456 | <u>(jj)</u> <del>(gg)</del> Former s. 827.05, relating to negligent treatment |      |

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|------|---|------|
| 1457 | of children.  |      |
| 1458 | <u>(kk)</u> <del>(hh)</del> Section 827.071, relating to sexual performance   |      |
| 1459 | by a child.   |      |
| 1460 | <u>(ll)</u> <del>(ii)</del> Section 843.01, relating to resisting arrest with |      |
| 1461 | violence.   |      |
| 1462 | <u>(mm)</u> <del>(jj)</del> Section 843.025, relating to depriving a law      |      |
| 1463 | enforcement, correctional, or correctional probation officer                  |      |
| 1464 | means of protection or communication.   |      |
| 1465 | <u>(nn)</u> <del>(kk)</del> Section 843.12, relating to aiding in an escape.  |      |
| 1466 | <u>(oo)</u> <del>(ll)</del> Section 843.13, relating to aiding in the escape  |      |
| 1467 | of juvenile inmates in correctional institutions.                             |      |
| 1468 | <u>(pp)</u> <del>(mm)</del> Chapter 847, relating to obscene literature.      |      |
| 1469 | <u>(qq)</u> <del>(nn)</del> Section 874.05(1), relating to encouraging or     |      |
| 1470 | recruiting another to join a criminal gang.                                   |      |
| 1471 | <u>(rr)</u> <del>(oo)</del> Chapter 893, relating to drug abuse prevention    |      |
| 1472 | and control, only if the offense was a felony or if any other                 |      |
| 1473 | person involved in the offense was a minor.                                   |      |
| 1474 | <u>(ss)</u> <del>(pp)</del> Section 916.1075, relating to sexual misconduct   |      |
| 1475 | with certain forensic clients and reporting of such sexual                    |      |
| 1476 | misconduct.   |      |
| 1477 | <u>(tt)</u> <del>(qq)</del> Section 944.35(3), relating to inflicting cruel   |      |
| 1478 | or inhuman treatment on an inmate resulting in great bodily                   |      |
| 1479 | harm.   |      |
| 1480 | <u>(uu)</u> Section 944.40, relating to escape.                               |      |
| 1481 | <u>(vv)</u> <del>(rr)</del> Section 944.46, relating to harboring,            |      |
| 1482 | concealing, or aiding an escaped prisoner.                                    |      |
| 1483 | <u>(ww)</u> <del>(ss)</del> Section 944.47, relating to introduction of       |      |
| 1484 | contraband into a correctional facility.                                      |      |

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1485 ~~(xx)-(tt)~~ Section 985.701, relating to sexual misconduct in  
 1486 juvenile justice programs.

1487 ~~(yy)-(uu)~~ Section 985.711, relating to contraband  
 1488 introduced into detention facilities.

1489 (3) The security background investigations under this  
 1490 section must ensure that no persons subject to the provisions of  
 1491 this section have been found guilty of, regardless of  
 1492 adjudication, or entered a plea of nolo contendere or guilty to,  
 1493 any offense that constitutes domestic violence as defined in s.  
 1494 741.28, whether such act was committed in Florida or in another  
 1495 jurisdiction. ~~The security background investigations conducted~~  
 1496 ~~under this section for employees of the Department of Juvenile~~  
 1497 ~~Justice must ensure that no persons subject to the provisions of~~  
 1498 ~~this section have been found guilty of, regardless of~~  
 1499 ~~adjudication, or entered a plea of nolo contendere or guilty to,~~  
 1500 ~~any offense prohibited under any of the following provisions of~~  
 1501 ~~the Florida Statutes or under any similar statute of another~~  
 1502 ~~jurisdiction:~~

1503 ~~(a) Section 784.07, relating to assault or battery of law~~  
 1504 ~~enforcement officers, firefighters, emergency medical care~~  
 1505 ~~providers, public transit employees or agents, or other~~  
 1506 ~~specified officers.~~

1507 ~~(b) Section 810.02, relating to burglary, if the offense~~  
 1508 ~~is a felony.~~

1509 ~~(c) Section 944.40, relating to escape.~~

1510

1511 ~~The Department of Juvenile Justice may not remove a~~  
 1512 ~~disqualification from employment or grant an exemption to any~~



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1513 ~~person who is disqualified under this section for any offense~~  
 1514 ~~disposed of during the most recent 7-year period.~~

1515 ~~(4) Standards must also ensure that the person:~~

1516 ~~(a) For employees or employers licensed or registered~~  
 1517 ~~pursuant to chapter 400 or chapter 429, does not have a~~  
 1518 ~~confirmed report of abuse, neglect, or exploitation as defined~~  
 1519 ~~in s. 415.102(6), which has been uncontested or upheld under s.~~  
 1520 ~~415.103.~~

1521 ~~(b) Has not committed an act that constitutes domestic~~  
 1522 ~~violence as defined in s. 741.30.~~

1523 ~~(5) Under penalty of perjury, all employees in such~~  
 1524 ~~positions of trust or responsibility shall attest to meeting the~~  
 1525 ~~requirements for qualifying for employment and agreeing to~~  
 1526 ~~inform the employer immediately if convicted of any of the~~  
 1527 ~~disqualifying offenses while employed by the employer. Each~~  
 1528 ~~employer of employees in such positions of trust or~~  
 1529 ~~responsibilities which is licensed or registered by a state~~  
 1530 ~~agency shall submit to the licensing agency annually or at the~~  
 1531 ~~time of license renewal, under penalty of perjury, an affidavit~~  
 1532 ~~of compliance with the provisions of this section.~~

1533 Section 32. Section 435.05, Florida Statutes, is amended  
 1534 to read:

1535 435.05 Requirements for covered employees and employers.—  
 1536 Except as otherwise provided by law, the following requirements  
 1537 shall apply to covered employees and employers:

1538 (1) (a) Every person required by law to be screened  
 1539 pursuant to the provisions of this chapter must ~~employed in a~~  
 1540 ~~position for which employment screening is required must, within~~

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1541 | ~~5 working days after starting to work,~~ submit to the employer a  
 1542 | complete set of information necessary to conduct a screening  
 1543 | under this chapter section.

1544 | (b) For level 1 screening, the employer must submit the  
 1545 | information necessary for screening to the Florida Department of  
 1546 | Law Enforcement within 5 working days after receiving it. The  
 1547 | Florida Department of Law Enforcement will conduct a search of  
 1548 | its records and will respond to the employer or agency. The  
 1549 | employer will inform the employee whether screening has revealed  
 1550 | any disqualifying information.

1551 | (c) For level 2 screening, the employer or ~~licensing~~  
 1552 | agency must submit the information necessary for screening to  
 1553 | the Florida Department of Law Enforcement within 5 working days  
 1554 | after receiving it. The Florida Department of Law Enforcement  
 1555 | will perform a criminal history check of its ~~conduct a search of~~  
 1556 | ~~its criminal and juvenile~~ records and will request that the  
 1557 | Federal Bureau of Investigation perform a national criminal  
 1558 | history check ~~conduct a search~~ of its records for each employee  
 1559 | for whom the request is made. The Florida Department of Law  
 1560 | Enforcement will respond to the employer or ~~licensing~~ agency,  
 1561 | and the employer or ~~licensing~~ agency will inform the employee  
 1562 | whether screening has revealed disqualifying information.

1563 | (d) The person whose background is being checked must  
 1564 | supply any missing criminal or other necessary information upon  
 1565 | request to the requesting employer or agency within 30 days  
 1566 | ~~after the employer makes a~~ of receiving the request for the  
 1567 | information ~~or be subject to automatic disqualification~~.

1568 | (2) Every employee must attest, subject to penalty of

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1569 perjury, to meeting the requirements for qualifying for  
 1570 employment pursuant to this chapter and agreeing to inform the  
 1571 employer immediately if arrested for any of the disqualifying  
 1572 offenses while employed by the employer. ~~Unless otherwise~~  
 1573 ~~prohibited by state or federal law, new employees may be placed~~  
 1574 ~~on probationary status pending a determination of compliance~~  
 1575 ~~with minimum standards set forth in this chapter.~~

1576 (3) Each employer that is licensed or registered with an  
 1577 agency and is required by law to conduct level 2 background  
 1578 screening must submit to the agency ~~sign an affidavit~~ annually  
 1579 or at the time of license renewal, under penalty of perjury, a  
 1580 signed affidavit attesting to compliance with the provisions of  
 1581 this chapter stating that all covered employees have been  
 1582 ~~screened or are newly hired and are awaiting the results of the~~  
 1583 ~~required screening checks.~~

1584 Section 33. Section 435.06, Florida Statutes, is amended  
 1585 to read:

1586 435.06 Exclusion from employment.—

1587 (1) When an employer or ~~licensing~~ agency has reasonable  
 1588 cause to believe that grounds exist for the denial or  
 1589 termination of employment of any employee as a result of  
 1590 background screening, it shall notify the employee in writing,  
 1591 stating the specific record that ~~which~~ indicates noncompliance  
 1592 with the standards in this chapter ~~section~~. It shall be the  
 1593 responsibility of the affected employee to contest his or her  
 1594 disqualification or to request exemption from disqualification.  
 1595 The only basis for contesting the disqualification shall be  
 1596 proof of mistaken identity.

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1597           (2) (a) An employer may not hire, select, or otherwise  
 1598 allow an employee contact with any vulnerable person that would  
 1599 place the employee in a role that would require background  
 1600 screening until such time as the screening process is completed  
 1601 and demonstrates the absence of any grounds for the denial or  
 1602 termination of employment. If the screening process shows any  
 1603 grounds for the denial or termination of employment, the  
 1604 employer may not hire, select, or otherwise allow the employee  
 1605 contact with any vulnerable person that would place the employee  
 1606 in a role that would require background screening unless the  
 1607 employee is granted an exemption for the disqualification by the  
 1608 agency as provided under s. 435.07.

1609           (b) If at any time, an employer becomes aware that an  
 1610 employee has been arrested for a disqualifying offense, the  
 1611 employer must remove the employee from contact with any  
 1612 vulnerable person that would place the employee in a role that  
 1613 would require background screening until such time as the  
 1614 favorable disposition of the offense.

1615           (c) The employer must either terminate the employment of  
 1616 any of its personnel found to be in noncompliance with the  
 1617 minimum standards of this chapter ~~for good moral character~~  
 1618 ~~contained in this section~~ or place the employee in a position  
 1619 for which background screening is not required unless the  
 1620 employee is granted an exemption from disqualification pursuant  
 1621 to s. 435.07.

1622           (3) Any employee ~~person who is required to undergo~~  
 1623 ~~employment screening and~~ who refuses to cooperate in such  
 1624 screening or refuses to timely submit the information necessary

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1625 to complete the screening, including fingerprints when required,  
 1626 must ~~shall~~ be disqualified for employment in such position or,  
 1627 if employed, must ~~shall~~ be dismissed.

1628 Section 34. Section 435.07, Florida Statutes, is amended  
 1629 to read:

1630 435.07 Exemptions from disqualification.—Unless otherwise  
 1631 provided by law, the provisions of this section shall apply to  
 1632 exemptions from disqualification pursuant to this chapter.

1633 (1) The head of the appropriate ~~licensing~~ agency may grant  
 1634 to any employee otherwise disqualified from employment an  
 1635 exemption from disqualification for:

1636 (a) Felonies for which at least three years have elapsed  
 1637 since the applicant for the exemption has completed or been  
 1638 lawfully released from confinement, supervision, or sanction for  
 1639 the disqualifying felony ~~committed more than 3 years prior to~~  
 1640 ~~the date of disqualification;~~

1641 (b) Misdemeanors prohibited under any of the Florida  
 1642 Statutes cited in this chapter or under similar statutes of  
 1643 other jurisdictions;

1644 (c) Offenses that were felonies when committed but are now  
 1645 misdemeanors; or

1646 (d) Findings of delinquency; ~~or~~

1647 ~~(e) Commissions of acts of domestic violence as defined in~~  
 1648 ~~s. 741.30.~~

1649  
 1650 For the purposes of this subsection, the term "felonies" means  
 1651 both felonies prohibited under any of the Florida Statutes cited  
 1652 in this chapter or under similar statutes of other

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1653 | jurisdictions.

1654 |       (2) Persons employed, or applicants for employment, by  
 1655 | treatment providers who treat adolescents 13 years of age and  
 1656 | older who are disqualified from employment solely because of  
 1657 | crimes under s. 817.563, s. 893.13, or s. 893.147 may be  
 1658 | exempted from disqualification from employment pursuant to this  
 1659 | chapter section without application of the 3-year waiting period  
 1660 | in paragraph (1) (a).

1661 |       (3) (a) In order for the head of an agency ~~a licensing~~  
 1662 | ~~department~~ to grant an exemption to any employee, the employee  
 1663 | must demonstrate by clear and convincing evidence that the  
 1664 | employee should not be disqualified from employment. Employees  
 1665 | seeking an exemption have the burden of setting forth clear and  
 1666 | convincing ~~sufficient~~ evidence of rehabilitation, including, but  
 1667 | not limited to, the circumstances surrounding the criminal  
 1668 | incident for which an exemption is sought, the time period that  
 1669 | has elapsed since the incident, the nature of the harm caused to  
 1670 | the victim, and the history of the employee since the incident,  
 1671 | or any other evidence or circumstances indicating that the  
 1672 | employee will not present a danger if employment or continued  
 1673 | employment is allowed.

1674 |       (b) The agency may consider as part of its deliberations  
 1675 | of the employee's rehabilitation the fact that the employee has,  
 1676 | subsequent to the conviction for the disqualifying offense for  
 1677 | which the exemption is being sought, been arrested for, or  
 1678 | convicted of, another crime, even if that crime is not a  
 1679 | disqualifying offense.

1680 |       (c) The decision of the head of an agency ~~licensing~~

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1681 | ~~department~~ regarding an exemption may be contested through the  
 1682 | hearing procedures set forth in chapter 120. The standard of  
 1683 | review by the administrative law judge is whether the agency's  
 1684 | intended action is an abuse of discretion.

1685 |       (4) (a) Disqualification from employment under this chapter  
 1686 | ~~subsection (1)~~ may not be removed from, nor may an exemption be  
 1687 | granted to, any personnel who is found guilty of, regardless of  
 1688 | adjudication, or who has entered a plea of nolo contendere or  
 1689 | guilty to, any felony covered by s. 435.03 or s. 435.04 solely  
 1690 | by reason of any pardon, executive clemency, or restoration of  
 1691 | civil rights.

1692 |       (b) Disqualification from employment under this chapter may  
 1693 | not be removed from, nor may an exemption be granted to, any  
 1694 | person who has been designated as a sexual predator pursuant to  
 1695 | s. 775.21.

1696 |       (5) Exemptions granted by one ~~licensing~~ agency shall be  
 1697 | considered by subsequent ~~licensing~~ agencies, but are not binding  
 1698 | on the subsequent ~~licensing~~ agency.

1699 |       Section 35. Section 435.08, Florida Statutes, is amended  
 1700 | to read:

1701 |       435.08 Payment for processing of fingerprints and state  
 1702 | criminal records checks.—Either the employer or the employee is  
 1703 | responsible for paying the costs of screening. Payment shall be  
 1704 | submitted to the Florida Department of Law Enforcement with the  
 1705 | request for screening. The appropriate agency is responsible  
 1706 | for collecting and paying any fee related to fingerprints  
 1707 | retained on its behalf to the Florida Department of Law  
 1708 | Enforcement for costs resulting from the fingerprint information

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1709 retention services. The amount of the annual fee and procedures  
 1710 for the submission and retention of fingerprint information and  
 1711 for the dissemination of search results shall be established by  
 1712 rule of the Florida Department of Law Enforcement.

1713 Section 36. Subsection (9) of section 489.115, Florida  
 1714 Statutes, is amended to read:

1715 489.115 Certification and registration; endorsement;  
 1716 reciprocity; renewals; continuing education.—

1717 (9) An initial applicant shall submit, along with the  
 1718 application, a complete set of fingerprints in a form and manner  
 1719 required by the department. The fingerprints shall be submitted  
 1720 to the Department of Law Enforcement for state processing, and  
 1721 the Department of Law Enforcement shall forward them to the  
 1722 Federal Bureau of Investigation for the purpose of processing  
 1723 the fingerprint submission to determine if the applicant has a  
 1724 criminal history record ~~conducting a level 2 background check~~  
 1725 ~~pursuant to s. 435.04.~~ The department shall and the board may  
 1726 review the background results to determine if an applicant meets  
 1727 licensure requirements. The cost for the fingerprint processing  
 1728 shall be borne by the person subject to the background  
 1729 screening. These fees are to be collected by the authorized  
 1730 agencies or vendors. The authorized agencies or vendors are  
 1731 responsible for paying the processing costs to the Department of  
 1732 Law Enforcement.

1733 Section 37. Paragraphs (g) and (h) of subsection (2) of  
 1734 section 943.05, Florida Statutes, are amended, and subsection  
 1735 (4) is added to said section, to read:

1736 943.05 Criminal Justice Information Program; duties; crime



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1737 reports.—

1738 (2) The program shall:

1739 (g) Upon official written request from the agency

1740 executive director or secretary or from his or her designee, or

1741 from qualified entities participating in the volunteer and

1742 employee criminal history screening system under s. 943.0542, or

1743 as otherwise required ~~As authorized~~ by law, retain fingerprints

1744 submitted by criminal and noncriminal justice agencies to the

1745 department for a criminal history background screening in a

1746 manner provided by rule and enter the fingerprints in the

1747 statewide automated fingerprint identification system authorized

1748 by paragraph (b). Such fingerprints shall thereafter be

1749 available for all purposes and uses authorized for arrest

1750 fingerprint submissions ~~cards~~ entered into the statewide

1751 automated fingerprint identification system pursuant to s.

1752 943.051.

1753 (h)1. For such agencies that officially request retention

1754 of fingerprints or for which retention is otherwise required ~~As~~

1755 ~~authorized~~ by law, search all arrest fingerprint submissions

1756 ~~cards~~ received under s. 943.051 against the fingerprints

1757 retained in the statewide automated fingerprint identification

1758 system under paragraph (g). Any arrest record that is identified

1759 with the retained fingerprints of a person subject to background

1760 screening as provided in paragraph (g) shall be reported to the

1761 appropriate agency.

1762 2. To Agencies ~~may~~ participate in this search process,

1763 agencies or qualified entities must notify each person

1764 fingerprinted that his or her fingerprints will be retained, pay

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1765 ~~by payment of~~ an annual fee to the department, and inform by  
 1766 ~~informing~~ the department of any change in the affiliation,  
 1767 employment, or contractual status or place of affiliation,  
 1768 employment, or contracting of each person ~~the persons~~ whose  
 1769 fingerprints are retained under paragraph (g). The department  
 1770 shall adopt a rule setting the amount of the annual fee to be  
 1771 imposed upon each participating agency or qualified entity for  
 1772 performing these searches and establishing the procedures for  
 1773 the retention of fingerprints and the dissemination of search  
 1774 results. The fee may be borne by the agency, qualified entity,  
 1775 or person subject to fingerprint retention or as otherwise  
 1776 provided by law. ~~Fees may be waived or reduced by the executive~~  
 1777 ~~director for good cause shown.~~ Consistent with the recognition  
 1778 of criminal justice agencies expressed in s. 943.053(3), these  
 1779 services will be provided to criminal justice agencies for  
 1780 criminal justice purposes free of charge.

1781 3. Agencies that participate in the fingerprint retention  
 1782 and search process may adopt rules pursuant to ch. 120 that  
 1783 require employers to keep the agency informed of any change in  
 1784 the affiliation, employment, or contractual status or place of  
 1785 affiliation, employment, or contracting of each person whose  
 1786 fingerprints are retained under paragraph (g).

1787 (4) Upon notification that a federal fingerprint retention  
 1788 program is in effect, and provided that the department is funded  
 1789 and equipped to participate in such a program, the department  
 1790 shall, when a state and national criminal history record check  
 1791 and retention of submitted prints are authorized or required by  
 1792 law, retain the fingerprints as provided in paragraphs (2)(g)

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1793 and (h) and advise the Federal Bureau of Investigation to retain  
 1794 the fingerprints at the national level for searching against  
 1795 arrest fingerprint submissions received at the national level.

1796 Section 38. Subsections (6) and (11) of section 943.053,  
 1797 Florida Statutes, are amended to read:

1798 943.053 Dissemination of criminal justice information;  
 1799 fees.—

1800 (6) Notwithstanding any other provision of law, the  
 1801 department shall provide to the Florida Department of Revenue  
 1802 ~~Child Support Enforcement~~ access to Florida criminal records  
 1803 which are not exempt from disclosure under chapter 119, and to  
 1804 such information as may be lawfully available from other states  
 1805 via the National Law Enforcement Telecommunications System, for  
 1806 the purpose of locating subjects who owe or potentially owe  
 1807 support, as defined in s. 409.2554, or to whom such obligation  
 1808 is owed pursuant to Title IV-D of the Social Security Act. Such  
 1809 information may be provided to child support enforcement  
 1810 authorities in other states for these specific purposes.

1811 (11) A criminal justice agency that is authorized under  
 1812 federal rules or law to conduct a criminal history background  
 1813 check on an agency employee who is not certified by the Criminal  
 1814 Justice Standards and Training Commission under s. 943.12 may  
 1815 submit to the department the fingerprints of the noncertified  
 1816 employee to obtain state and national criminal history  
 1817 information. ~~Effective January 15, 2007,~~ The fingerprints  
 1818 submitted shall be retained and entered in the statewide  
 1819 automated fingerprint identification system authorized by s.  
 1820 943.05 and shall be available for all purposes and uses

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1821 authorized for arrest fingerprint submissions ~~cards~~ entered in  
 1822 the statewide automated fingerprint identification system  
 1823 pursuant to s. 943.051. The department shall search all arrest  
 1824 fingerprint submissions ~~cards~~ received pursuant to s. 943.051  
 1825 against the fingerprints retained in the statewide automated  
 1826 fingerprint identification system pursuant to this section. In  
 1827 addition to all purposes and uses authorized for arrest  
 1828 fingerprint submissions ~~cards~~ for which submitted fingerprints  
 1829 may be used, any arrest record that is identified with the  
 1830 retained employee fingerprints must be reported to the  
 1831 submitting employing agency.

1832 Section 39. Section 985.644, Florida Statutes, is amended  
 1833 to read:

1834 985.644 Departmental contracting powers; personnel  
 1835 standards and screening.—

1836 (1) ~~The department of Juvenile Justice or the Department~~  
 1837 ~~of Children and Family Services, as appropriate,~~ may contract  
 1838 with the Federal Government, other state departments and  
 1839 agencies, county and municipal governments and agencies, public  
 1840 and private agencies, and private individuals and corporations  
 1841 in carrying out the purposes of, and the responsibilities  
 1842 established in, this chapter.

1843 (a) ~~When the department of Juvenile Justice or the~~  
 1844 ~~Department of Children and Family Services contracts with a~~  
 1845 ~~provider for any program for children, all personnel, including~~  
 1846 ~~owners, operators, employees, and volunteers, in the facility~~  
 1847 ~~must be of good moral character.~~ Each contract entered into by  
 1848 the ~~either~~ department for services delivered on an appointment

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1849 or intermittent basis by a provider that does not have regular  
 1850 custodial responsibility for children and each contract with a  
 1851 school for before or aftercare services must ensure that the all  
 1852 owners, operators, and ~~all~~ personnel who have direct contact  
 1853 with children are subject to level 2 background screening  
 1854 pursuant to ch. 435 of good moral character.

1855 (b) A volunteer who assists the department or any program  
 1856 for children on an intermittent basis for less than 40 hours per  
 1857 month need not be screened if the volunteer is under direct and  
 1858 constant supervision by persons who meet the screening  
 1859 requirements.

1860 ~~(b) The department of Juvenile Justice and the Department~~  
 1861 ~~of Children and Family Services shall require employment~~  
 1862 ~~screening pursuant to chapter 435, using the level 2 standards~~  
 1863 ~~set forth in that chapter for personnel in programs for children~~  
 1864 ~~or youths.~~

1865 ~~(c) The Department of Juvenile Justice or the Department~~  
 1866 ~~of Children and Family Services may grant exemptions from~~  
 1867 ~~disqualification from working with children as provided in s.~~  
 1868 ~~435.07.~~

1869 ~~(2) The department may contract with the Federal~~  
 1870 ~~Government, other state departments and agencies, county and~~  
 1871 ~~municipal governments and agencies, public and private agencies,~~  
 1872 ~~and private individuals and corporations in carrying out the~~  
 1873 ~~purposes and the responsibilities of the delinquency services~~  
 1874 ~~and programs of the department.~~

1875 ~~(3)~~ The department shall adopt a rule pursuant to chapter  
 1876 120 establishing a procedure to provide notice of policy changes

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1877 that affect contracted delinquency services and programs. A  
 1878 policy is defined as an operational requirement that applies to  
 1879 only the specified contracted delinquency service or program.

1880 The procedure shall include:

- 1881 (a) Public notice of policy development.
- 1882 (b) Opportunity for public comment on the proposed policy.
- 1883 (c) Assessment for fiscal impact upon the department and
- 1884 providers.
- 1885 (d) The department's response to comments received.

1886 ~~(4) When the department contracts with a provider for any~~  
 1887 ~~delinquency service or program, all personnel, including all~~  
 1888 ~~owners, operators, employees, and volunteers in the facility or~~  
 1889 ~~providing the service or program shall be of good moral~~  
 1890 ~~character. A volunteer who assists on an intermittent basis for~~  
 1891 ~~less than 40 hours per month is not required to be screened if~~  
 1892 ~~the volunteer is under direct and constant supervision by~~  
 1893 ~~persons who meet the screening requirements.~~

1894 (3)(5)(a) All employees of the department and all personnel  
 1895 of contract providers for any program for children, including  
 1896 all owners, operators, employees, persons who have access to  
 1897 confidential juvenile records, and volunteers, must complete ~~For~~  
 1898 ~~any person employed by the department, or by a provider under~~  
 1899 ~~contract with the department, in delinquency facilities,~~  
 1900 ~~services, or programs, the department shall require:~~

- 1901 1. A level 2 employment screening pursuant to chapter 435
- 1902 prior to employment. The security background investigations
- 1903 conducted under this section must ensure that, in addition to
- 1904 the disqualifying offenses listed in s. 435.04, no persons

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1905 subject to the background screening provisions of this section  
 1906 have been found guilty of, regardless of adjudication, or  
 1907 entered a plea of nolo contendere or guilty to, any offense  
 1908 prohibited under any of the following provisions of the Florida  
 1909 Statutes or under any similar statute of another jurisdiction:

1910 a. Section 784.07, relating to assault or battery of law  
 1911 enforcement officers, firefighters, emergency medical care  
 1912 providers, public transit employees or agents, or other  
 1913 specified officers.

1914 b. Section 817.568, relating to criminal use of personal  
 1915 identification information.

1916 2. A federal criminal records check by the Federal Bureau  
 1917 of Investigation every 5 years following the date of the  
 1918 person's employment.

1919 (b) Except for law enforcement, correctional, and  
 1920 correctional probation officers, to whom s. 943.13(5) applies,  
 1921 the department shall electronically submit to the Department of  
 1922 Law Enforcement:

1923 1. Fingerprint information obtained during the employment  
 1924 screening required by subparagraph (a)1.

1925 2. ~~Beginning on December 15, 2005,~~ Fingerprint information  
 1926 for all persons employed by the department, or by a provider  
 1927 under contract with the department, in delinquency facilities,  
 1928 services, or programs if such fingerprint information has not  
 1929 previously been electronically submitted to the Department of  
 1930 Law Enforcement under this paragraph.

1931 (c) All fingerprint information electronically submitted  
 1932 to the Department of Law Enforcement under paragraph (b) shall

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1933 | be retained by the Department of Law Enforcement and entered  
 1934 | into the statewide automated fingerprint identification system  
 1935 | authorized by s. 943.05(2)(b). Thereafter, such fingerprint  
 1936 | information shall be available for all purposes and uses  
 1937 | authorized for arrest fingerprint information entered into the  
 1938 | statewide automated fingerprint identification system pursuant  
 1939 | to s. 943.051 until the fingerprint information is removed  
 1940 | pursuant to paragraph (e). The Department of Law Enforcement  
 1941 | shall search all arrest fingerprint information received  
 1942 | pursuant to s. 943.051 against the fingerprint information  
 1943 | entered into the statewide automated fingerprint system pursuant  
 1944 | to this subsection. Any arrest records identified as a result of  
 1945 | the search shall be reported to the department in the manner and  
 1946 | timeframe established by the Department of Law Enforcement by  
 1947 | rule.

1948 |         (d) The department shall pay an annual fee to the  
 1949 | Department of Law Enforcement for its costs resulting from the  
 1950 | fingerprint information retention services required by this  
 1951 | subsection. The amount of the annual fee and procedures for the  
 1952 | submission and retention of fingerprint information and for the  
 1953 | dissemination of search results shall be established by the  
 1954 | Department of Law Enforcement by a rule that is applicable to  
 1955 | the department individually pursuant to this subsection or that  
 1956 | is applicable to the department and other employing agencies  
 1957 | pursuant to rulemaking authority otherwise provided by law. The  
 1958 | appropriate agency is responsible for collecting and paying any  
 1959 | fee related to fingerprints retained on its behalf to the  
 1960 | Florida Department of Law Enforcement for costs resulting from



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1961 the fingerprint information retention services. The amount of  
 1962 the annual fee and procedures for the submission and retention  
 1963 of fingerprint information and for the dissemination of search  
 1964 results shall be established by rule of the Florida Department  
 1965 of Law Enforcement.

1966 (e) The department shall notify the Department of Law  
 1967 Enforcement when a person whose fingerprint information is  
 1968 retained by the Department of Law Enforcement under this  
 1969 subsection is no longer employed by the department, or by a  
 1970 provider under contract with the department, in a delinquency  
 1971 facility, service, or program. This notice shall be provided by  
 1972 the department to the Department of Law Enforcement no later  
 1973 than 6 months after the date of the change in the person's  
 1974 employment status. Fingerprint information for persons  
 1975 identified by the department in the notice shall be removed from  
 1976 the statewide automated fingerprint system.

1977 (6) The department may grant exemptions from  
 1978 disqualification from working with children as provided in s.  
 1979 435.07.

1980 (7) The department may, pursuant to ch. 120, adopt rules  
 1981 that describe the procedure and requirements necessary to  
 1982 implement the employment screening and fingerprint retention  
 1983 services for all employees of the department and all personnel  
 1984 of contract providers for any program for children, including  
 1985 all owners, operators, employees, and volunteers including the  
 1986 collection of associated fees.

1987 Section 40. The changes made by this act are intended to  
 1988 be prospective in nature. It is not intended that persons be

BILL

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|      |   |
|------|---|
| 1989 | <u>rescreened who are employed or licensed on the effective date of</u> |
| 1990 | <u>this act until such time they are otherwise required to be</u>       |
| 1991 | <u>rescreened pursuant to law, at which time they would must meet</u>   |
| 1992 | <u>the requirements for screening as set forth in this act.</u>         |
| 1993 | Section 41. This act shall take effect July 1, 2010.                    |