

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1856

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Clary

SUBJECT: Protection of Vulnerable Adults

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1856 revises the system for conducting pre-employment background screening of paid caregivers of elderly and disabled persons. It implements a structured previous-employer reference check, continues criminal background checks, and removes the requirement for screening applicants through the central abuse registry and tracking system.

The bill requires health care employers to conduct reference checks on applicants for positions involving direct access to patients or clients. Applicants are required to sign a release authorizing the prospective employer to obtain specific information from certain previous health care employers. The prospective employer is required to obtain such information from two former health care employers which employed the individual within the past three years. Previous employers are required to disclose, subject to administrative fines for failure to comply, any disciplinary action related to the applicant's maltreatment of patients or clients. Applicants who falsify an employment history to hide a history of maltreatment of persons in their care will have their employment immediately terminated and commit a misdemeanor of the second degree.

Disciplinary action taken against a licensed health care professional by the Department of Health (DOH) and its professional boards will be available in the background screening database operated by the Agency for Health Care Administration (AHCA).

The central abuse registry and tracking system is redesignated as the "abuse hotline." The requirements that the Department of Children and Family Services (DCF) classify reports it investigates, notify persons named in investigative reports, and maintain records are removed. The Department's interactions with and responsibility for perpetrators of abuse, neglect, and exploitation are significantly reduced. The terms "elderly person" and "disabled person" are redefined as "vulnerable adult."

The bill amends the following sections of Florida Statutes: 400.6065, 402.48, 415.102, 415.103, 415.1034, 415.1035, 415.1036, 415.104, 415.1045, 415.105, 415.1051, 415.1052, 415.1055, 415.106, 415.107, 415.1102, 415.111, 415.1111, 415.1113, 415.113, 435.03, 435.05, 435.07, 435.08, 435.09, 20.43, 39.202, 110.1127, 112.0455, 119.07, 232.50, 242.335, 320.0848, 381.0059, 381.60225, 383.305, 390.015, 393.067, 393.0674, 394.459, 394.875, 395.0055, 395.0199, 395.3025, 397.461, 400.022, 400.071, 400.215, 400.414, 400.4174, 400.426, 400.428, 400.462, 400.471, 400.495, 400.506, 400.509, 400.512, 400.5572, 400.628, 400.801, 400.805, 400.906, 400.931, 400.95, 400.953, 400.955, 400.962, 400.964, 402.3025, 402.3125, 402.313, 409.175, 409.912, 430.205, 447.208, 447.401, 455.712, 464.018, 468.520, 468.826, 468.828, 483.101, 483.30, 509.032, 744.309, 744.474, 744.7081, 775.21, 916.107, 943.0585, and 985.05.

The bill repeals ss. 415.1065, 415.1075, 415.1085, and 415.109. F.S.

The bill creates ss. 435.401, 435.402, 435.403 and 435.405, F.S., and three undesignated sections of law.

II. Present Situation:

Currently, Florida has more than two and a half million residents age 65 and older, representing about 25 percent of the total state population. This is the highest percentage of elderly in any state. The fastest growing segment of Florida's population is the age 85 and older cohort. With advancing age comes the likelihood of a number of physical and mental infirmities. The need for safe, reliable, trained, competent health care personnel to assist and care for frail elderly and other adults with disabilities is profound and growing.

Employment Screening and Disqualification

The use of criminal history information for conducting background screening of individuals working in sensitive positions or positions of "special trust" began in the late 1970s. The 1974 Legislature created the Department of Criminal Law Enforcement (now FDLE) and included a Division of Criminal Justice Information Systems. Since its creation, the division has conducted hundreds of thousands of screenings, providing a variety of entities with information needed in making personnel and other decisions. Many of these have involved caregivers of elderly and disabled persons.

In 1995 the Legislature created ch. 435, F.S., which sets forth the requirements for screenings according to level 1 and level 2. In creating ch. 435, F.S., the Legislature consolidated screening requirements and disqualifying offenses that were distributed throughout numerous other chapters of statutes. One intent was to provide a more uniform set of standards and procedures related to employment disqualification.

Currently, employers subject to background screening requirements must conduct employee reference checks pursuant to ss. 435.03 and 435.04, F.S. Further, s. 435.10, F.S., requires such employers to share personnel information, if requested, regarding a former employee and provides immunity from liability for the employer sharing such information. Based on reports from industry representatives, few employers are willing to provide such personnel information for fear of being

sued. Generally, employers report only the hiring and termination dates of such former employees. Without protected sharing of disciplinary action by the former employer against persons who mistreat vulnerable adults in their care, such employees are free to continue hurting frail elders and disabled persons in other health care environments

Regulation of Health Care Professionals and Facilities

The state, under its obligation to protect the health, safety and welfare of its residents, licenses some caregivers, such as nurses, doctors, and therapists of various skills. Some caregivers, such as certified nursing assistants (CNAs), are certified by the state as having met a basic level of competency. The regulation of these professionals is the responsibility of the Department of Health (DOH).

Exemptions from employment disqualification because of a criminal offense or because of a “confirmed” report on the abuse registry and classification system can be requested of the Agency for Health Care Administration (AHCA) for employees who are not licensed health care professionals. DOH processes requests for exemptions from employment disqualification for licensed health care professionals.

Currently, AHCA is responsible for regular inspection of health care facilities it licenses. Further, AHCA is responsible for investigating complaints in the facilities it licenses.

The Long-Term Care Ombudsman, the Human Rights Advocacy Committee, and the Medicaid Fraud Control Unit within the Office of the Attorney General are also charged with oversight and investigative responsibilities in the health care entities covered by this bill.

Classification of Perpetrators of Abuse, Neglect or Exploitation

Currently, adult protective services (APS) investigators investigate reports of adult abuse, neglect, or exploitation. The investigators must “classify” the report at the close of the investigation based on their success at identifying the perpetrator. In addition to determining that abuse, neglect, or exploitation has occurred, the protective investigator must attempt to identify the perpetrator and establish a sufficiently compelling case to withstand an appeal from the perpetrator. Persons who are “confirmed” as the perpetrator are listed in the registry. Being named on the registry is a disqualification for work in a long term care facility.

Due Process

Florida, like other states, provides its residents with an avenue to protest or appeal adverse actions imposed by any state entity against them. Chapter 120, F.S., sets forth the rights and procedures for securing those rights. Over the past 11 years since the current screening system has been operating, Division of Administrative Hearings administrative law judges (ALJs) have heard hundreds of appeals of citizens challenging their classification by APS as confirmed perpetrators. Data supplied by the DCF show that during FY 1996/97 and FY 1997/98 there were 231 appeals under the provisions of ch. 120, F.S. Of these, 94 went to a hearing before an ALJ. In 49 of these hearings the recommended order by the ALJ was in favor of the alleged perpetrator, and in 45 the recommended order upheld the department’s classification. A small number of these

have appealed further to the District Court of Appeals. Individuals who have requested an exemption from employment disqualification because of a criminal conviction or confirmed abuse finding and have been denied the exemption by either DOH or AHCA may also request an administrative hearing.

III. Effect of Proposed Changes:

Summary:

- Employment screening of potential paid caregivers against the DCF adult abuse registry and classification system is no longer required. Screening against FDLE and FBI databases for criminal convictions (including criminal convictions for adult abuse) is maintained.
- Caregivers in specified health care organizations will be required to disclose their full employment history, and grant permission for the hiring facility to obtain employment history information from previous health care employers.
- Covered organizations (residential facilities or agencies licensed pursuant to chapter 400, F.S., where health, nutritional, or personal care is provided or arranged for, and entities which hire, contract with or register for referral for such services) must obtain, subject to a financial penalty for repeated failure to do so, an employment history check form called a “service letter.” The service letter must be signed by previous employers which are covered organizations, or if the person has not been employed by covered organizations, by two non-related adults. Penalties are provided for employing and referring individuals without the service letter, failure by a previous employer to complete and return the service letter to the new employer, and providing false or incomplete information. Employers are allowed to conditionally employ or contract with applicants for 30 days pending receipt of the service letter, contingent on their receipt. The covered organization may allow a person to continue working beyond 30 days if it has made a good faith attempt to secure the service letter. Organizations are protected from liability associated with disclosing the required personnel information. Employees who occasionally are in contact with vulnerable adults are excluded.
- The terms “elderly person” and “disabled person” are revised to “vulnerable adult.” Other phrases are updated and made to comport with similar provisions in ch. 825, F.S., related to criminal abuse, neglect and exploitation, and ch. 39, F.S., related to protection of children.
- DCF must enter into cooperative working agreements with the local law enforcement agencies that are responsible for the criminal investigation of shared cases.
- DCF is required to maintain records of referrals to law enforcement, referrals to the state attorney, cases prosecuted and judicial dispositions.
- The requirements associated with the abuse registry, classification of records, and due process procedures are removed. Provisions related to adult protective services teams are streamlined. Certain legislative committee staff are permitted access to investigative records.

Sectional Analysis:

Section 1. Amends s. 400.6065, F.S., to establish background screening requirements for hospice personnel as is required for other programs regulated under ch. 400, F.S.

Section 2. Creates Part XII of ch. 400, F.S., consisting of existing s. 402.48, F.S., as renumbered and amended, for the regulation of Health Care Services Pools.

Section 3. Renumbers s. 402.48, F.S., as s. 400.980, F.S., and amends the section to establish background screening requirements for individuals referred for temporary employment in health care facilities and residential facilities.

Section 4. Transfers by a Type 2 transfer, the regulation of Health Care Services Pools from the Department of Health to the Agency for Health Care Administration.

Section 5. Amends s. 415.102, F.S., to revise the definition of abuse and add definitions for: vulnerable adult, vulnerable adult in need of services, protective investigation, and protective investigator. Removes definitions related to the classification and management of reports, and the definitions for: elderly person, elderly person in need of services, disabled adult and disabled adult in need of services.

Section 6. Amends s. 415.103, F.S., making technical and conforming changes: renames the “central abuse registry and tracking system” as the “central abuse hotline.”

Section 7. Amends s. 415.1034, F.S., to make technical and conforming changes.

Section 8. Amends s. 415.1035, F.S., to require DCF to work cooperatively with AHCA and the Department of Elderly Affairs (DOEA) to ensure that every facility that serves “vulnerable adults” advises residents of their rights to report abuse or other mistreatment. Facilities must establish policies and procedures to facilitate such reporting.

Section 9. Amends s. 415.1036, F.S., to make technical and conforming changes.

Section 10. Amends s. 415.104, F.S., to require that DCF and local law enforcement agencies cooperate to allow a criminal investigation to proceed, without hindrance, concurrently with the department’s protective investigation. Transferred from section 415.045, F.S., to s. 415.104, F.S., are: delineation of the information to be provided to persons involved in a protective investigation; that persons interviewed may be represented by an attorney; and, the requirement that the protective investigator determine if the alleged victim meets the statutory definition of a “vulnerable adult” or “vulnerable adult in need of services” as defined in s. 415.102, F.S. At the close of the investigation, the protective investigator must advise the victim and any caregiver of any recommendations of services to be provided to ameliorate the causes or effects of abuse, neglect, or exploitation.

Section 11. Amends s. 415.1045, F.S., to delete provisions related to the conduct of the protective investigation which are moved to s. 415.104, F.S. Makes conforming changes related to the registry and classification system. Requires that the department enter into working agreements with local law enforcement agencies. The Florida Department of Law Enforcement is

directed to provide electronic access to criminal justice information for purposes of investigations and emergency placement. The department may petition the court to gain access to records relevant to abuse allegations.

Section 12. Amends s. 415.105, F.S., to move requirements related to interference with the provision of protective services from s. 415.1052(2), F.S., to s. 415.105(3), F.S. Makes technical and conforming changes.

Section 13. Amends s. 415.1051, F.S., to transfer provisions related to interference with the provision of protective services when capacity is lacking from s. 415.1052(4), F.S., to s. 415.1051(5), F.S., and make technical and conforming changes.

Section 14. Amends s. 415.1052, F.S., to make technical and conforming changes. Subsection (2) related to access to records is deleted from s. 415.1052 F.S., and transferred to s. 415.105, F.S., and subsection (4) related to interference with the provision of court-ordered protective services is deleted from s. 451.102, F.S., and transferred to s. 415.1052, F.S.

Section 15. Amends s. 415.1055, F.S., to make technical and conforming changes and require that when DCF has reason to believe that a person living in a facility licensed by AHCA has been the victim of abuse, neglect, or exploitation, the department shall send a copy of its report to AHCA. If the investigation determines that a health professional licensed or certified by the Department of Health was involved in the abuse, neglect, or exploitation of a vulnerable adult, a copy of the investigative report will also be sent to the Department of Health. Removes provisions related to notification of alleged victims and perpetrators and to notification by law enforcement to DCF and to the State Attorney.

Section 16. Amends s. 415.106, F.S., to make technical and conforming changes.

Section 17. Amends s. 415.107, F.S., to permit access to abuse reports by legislative staff of committees with jurisdiction over the issues and services related to vulnerable adults, upon request of the committee chair. All confidentiality provisions that apply to DCF continue to apply to the records under this subsection. DOH, and AHCA, and the Department of Business and Professional Regulation may have access to reports when considering disciplinary action against a licensed or certified person pursuant to allegations of abuse, neglect or exploitation. Clarifies that the victim, the victim's caregiver, guardian, or legal counsel and any person who the department determined might be abusing, neglecting, or exploiting the victim may receive a copy of the department's report. Provides that information in the central abuse hotline cannot be used for employment screening.

Section 18. Amends s. 415.1102, F.S., to remove requirements relating to the operation of Adult Protection Teams.

Section 19. Amends s. 415.111, F.S., to make technical and conforming changes.

Section 20. Amends s. 415.1111, F.S., to remove civil penalties. Makes technical and conforming changes.

Section 21. Amends s. 415.1113, F.S., to make technical and conforming changes.

Section 22. Amends s. 415.113, F.S., to modify the inapplicability of the “Adult Protective Services Act” definitions of abuse or neglect to the reliance on treatment by spiritual means or prayer to apply to a “well-recognized” church or religious denomination “or organization.”

Section 23. Creates Part I of ch. 435, F.S., consisting of existing ss. 435.01 through 435.11, F.S.

Section 24. Amends s. 435.03, F.S., to require employees and employers licensed pursuant to ch. 400, F.S., and employees and employers of developmental services institutions, intermediate care facilities for the developmentally disabled, and mental health treatment facilities to meet the requirements of ch. 435, F.S., Part II.

Section 25. Amends s. 435.05, F.S., making technical and conforming changes related to level 1 screening.

Section 26. Amends s. 435.07, F.S., to make technical and conforming changes to Part I of ch. 435, F.S.

Section 27. Amends s. 435.08, F.S., to make technical and conforming changes.

Section 28. Amends s. 435.09, F.S., to make technical and conforming changes are made.

Section 29. Creates Part II of ch. 435, F.S., consisting of newly created ss. 435.401 through 435.405, F.S.

Section 30. Creates s. 435.401, F.S., to provide definitions related to Part II of ch. 435, F.S., related to employment screening practices in specified organizations.

Section 31. Creates s. 435.402, F.S., the “service letter” requirements described in the earlier summary and penalties.

Section 32. Creates s. 435.403, F.S., to require AHCA to monitor organizations covered by Part II of ch. 435, F.S. Provides enforcement and penalty authority. Funds collected through the payment of administrative penalties shall be deposited in the Health Care Trust Fund.

Section 33. Creates s. 435.405, F.S., directing the agency to adopt rules to implement the provisions of the bill relating to service letters.

Section 34. Amends s. 20.43, F.S., to make technical corrections.

Sections 35-100. Make technical and conforming changes and cross reference corrections.

Section 101. Repeals ss. 415.1065, 415.1075, 415.1085, and 415.109, F.S., relating to management of adult abuse records, amendment and expunction of adult abuse reports, consensual photography and medical examination in abuse investigations, and abrogation of

privileged communication in abuse situations, to conform to changes made in sections 10 and 11 of the bill.

Section 102. Appropriates one FTE position and \$60,000 from the Health Care Trust Fund to the Agency for Health Care Administration for regulation of health care services pools.

Section 103. Provides an effective date of September 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, S. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

No measurable impact is projected. Health care employers who currently conduct and respond to reference checks as required by law should incur insignificant cost increases. Further, the \$6.00 per applicant abuse registry screen no longer required should eliminate well over \$1,000,000 in fees currently paid by private industry.

C. Government Sector Impact:

Savings are anticipated from the removal of responsibilities from DCF and other agencies associated with classifying persons identified during protective investigations, from the records management associated with maintaining a registry of perpetrators, and the extensive requirements associated with providing aggrieved parties with access to their rights to appeal the department's classification and addition of their name to the registry and in administrative hearings under the authority of ch. 120, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
