

By Senator Wise

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1                   A bill to be entitled  
2           An act relating to background screening; amending s.  
3           413.20, F.S.; defining the term "direct service  
4           provider" for purposes of services provided to the  
5           Division of Vocational Rehabilitation of the  
6           Department of Education; amending s. 413.208, F.S.;  
7           requiring direct service providers to participate in  
8           level 2 background screening as a condition for  
9           certification to serve clients of vocational  
10          rehabilitation; specifying which persons are required  
11          to undergo level 2 screening; prohibiting persons for  
12          whom background screening is required from having  
13          contact with any vulnerable person until the screening  
14          process is completed; providing for a temporary  
15          exception; requiring rescreening during a specified  
16          time period; identifying the criminal offenses the  
17          commission of which disqualifies a person from serving  
18          vulnerable persons; requiring that the cost of  
19          criminal history records checks be borne by the direct  
20          service provider or the person seeking certification;  
21          authorizing the division to deny, suspend, reject,  
22          terminate, or revoke the certification or other  
23          agreement of a person who fails to meet the criteria  
24          of the screening; requiring the division to provide  
25          written notification to the person affected if the  
26          division has reasonable cause to believe that grounds  
27          for denial or termination of certification exist;  
28          providing penalties if an employer does not dismiss an  
29          employee who is not compliant with the screening

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30 standards; creating s. 413.2105, F.S.; directing the  
31 division to require all employees and applicants for  
32 employment to undergo personnel screening and security  
33 background investigations using the level 2 standards;  
34 creating s. 1001.12, F.S.; requiring all employees of  
35 the Department of Education, and applicants being  
36 considered for employment at the department, to submit  
37 to level 2 background screening; authorizing a  
38 temporary exemption from disqualification; amending s.  
39 1005.02, F.S.; defining the term "admissions staff"  
40 for purposes of provisions governing nonpublic  
41 postsecondary educational institutions; amending s.  
42 1005.22, F.S.; requiring the Commission for  
43 Independent Education to investigate the criminal  
44 justice information history for certain persons  
45 applying for a license or license renewal; amending s.  
46 1005.31, F.S.; requiring the commission to establish  
47 minimum standards required of admissions staff  
48 employed by institutions under the commission's  
49 jurisdiction; amending s. 1005.38, F.S.; authorizing  
50 the commission to deny or fail to reissue a license if  
51 the person has been a party to a civil action or has  
52 been convicted of, or entered a plea of guilty or nolo  
53 contendere to, certain crimes; creating s. 1012.02,  
54 F.S.; directing the Department of Education to require  
55 level 2 background screening for all personnel of all  
56 contractors required to perform contractual duties at  
57 a facility of the department, local school board  
58 facility, or any other location, if the person will

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59 have access to confidential data or have contact with  
60 vulnerable persons; requiring contractors to meet  
61 specified criteria; requiring that contractors be  
62 rescreened every 5 years; authorizing the department  
63 to deny, suspend, terminate, or revoke the license of  
64 a contractor who fails to satisfy the screening  
65 standards; authorizing the department to grant a  
66 temporary disqualification exemption under limited  
67 circumstances; amending ss. 413.407 and 744.1083,  
68 F.S.; conforming cross-references; providing an  
69 effective date.

70  
71  
72 Be It Enacted by the Legislature of the State of Florida:

73  
74 Section 1. Present subsections (7) through (26) of section  
75 413.20, Florida Statutes, are renumbered as subsections (8)  
76 through (27), respectively, and a new subsection (7) is added to  
77 that section, to read:

78 413.20 Definitions.—As used in this part, the term:

79 (7) "Direct service provider" means an entity and its  
80 associated individuals who, directly or indirectly, provide  
81 employment services, supported employment services, independent  
82 living services, self-employment services, personal assistance  
83 services, vocational evaluation or tutorial services, or  
84 rehabilitation technology services to vulnerable persons, as  
85 defined in s. 435.02.

86 Section 2. Section 413.208, Florida Statutes, is amended to  
87 read:

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88 413.208 Service providers; quality assurance; ~~and~~ fitness  
89 for responsibilities; and background screening.-

90 (1) DIRECT SERVICE PROVIDERS.-The Division of Vocational  
91 Rehabilitation shall certify vendors who are direct service  
92 providers of direct service and ensure that they maintain an  
93 internal system of quality assurance, have proven functional  
94 systems, and are subject to a due-diligence inquiry as to their  
95 fitness to undertake service responsibilities, ~~regardless of~~  
96 ~~whether a contract for services is procured competitively or~~  
97 ~~noncompetitively.~~

98 (2) BACKGROUND SCREENING; PROHIBITED OFFENSES.-

99 (a) As a condition of certification, the division shall  
100 require level 2 background screening of direct service providers  
101 pursuant to s. 435.04.

102 (b) If the direct service provider is a contractor or  
103 operates under an agreement with the division, the division  
104 shall require a level 2 background screening of:

105 1. The administrator or a similarly titled person who is  
106 responsible for the day-to-day operation of the direct service  
107 provider.

108 2. The financial officer or similarly titled individual who  
109 is responsible for the financial operation of the direct service  
110 provider.

111 3. Any person offered employment with a direct service  
112 provider who is expected to, or whose responsibilities may  
113 require him or her to, provide services directly or indirectly  
114 to vulnerable persons, as defined in s. 435.02.

115 4. Directors of direct service providers.

116 (c) A person for whom background screening is required

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117 pursuant to this section may not have contact with any  
118 vulnerable person until the screening process is completed and  
119 he or she demonstrates the absence of any grounds for denial of  
120 qualification or, in the presence of such grounds, an exemption  
121 from disqualification is granted. Upon request, the division may  
122 grant a temporary exception to this requirement upon a showing  
123 of good cause.

124 (d) Employers of direct service providers and direct  
125 service providers are responsible for initiating and completing  
126 the security background investigation as a condition of  
127 certification.

128 (e) Every 5 years following initial screening, each person  
129 must submit to level 2 background rescreening as a condition of  
130 eligibility for recertification. Proof of compliance with level  
131 2 screening standards submitted within the previous 5 years  
132 satisfies the requirements of this section if such proof is  
133 accompanied, under penalty of perjury, by an affidavit of  
134 compliance with the provisions of chapter 435 and this section  
135 using forms acceptable to the division.

136 (f) The background screening conducted under this section  
137 must ensure that, in addition to the disqualifying offenses  
138 listed in s. 435.04, a person subject to this section does not  
139 have an arrest awaiting final disposition, has not been found  
140 guilty of, regardless of adjudication, entered a plea of nolo  
141 contendere or guilty to, or has not been adjudicated delinquent,  
142 and the record has not been sealed or expunged, for any offense  
143 prohibited under any of the following provisions of state law or  
144 similar law of another jurisdiction:

145 1. Section 409.920, relating to Medicaid provider fraud.

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146 2. Section 409.9201, relating to Medicaid fraud.

147 3. Section 741.28, relating to domestic violence.

148 4. Section 817.034, relating to fraudulent acts through  
149 mail, wire, radio, electromagnetic, photoelectronic, or  
150 photooptical systems.

151 5. Section 817.234, relating to false and fraudulent  
152 insurance claims.

153 6. Section 817.505, relating to patient brokering.

154 7. Section 817.568, relating to criminal use of personal  
155 identification information.

156 8. Section 817.60, relating to obtaining a credit card  
157 through fraudulent means.

158 9. Section 817.61, relating to fraudulent use of credit  
159 cards, if the offense was a felony.

160 10. Section 831.01, relating to forgery.

161 11. Section 831.02, relating to uttering forged  
162 instruments.

163 12. Section 831.07, relating to forging bank bills, checks,  
164 drafts, or promissory notes.

165 13. Section 831.09, relating to uttering forged bank bills,  
166 checks, drafts, or promissory notes.

167 14. Section 831.31, relating to the sale, manufacture,  
168 delivery, or possession with the intent to sell, manufacture, or  
169 deliver any counterfeit controlled substance, if the offense was  
170 a felony.

171 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE  
172 CRIMINAL RECORDS CHECKS.—The cost of the state and national  
173 criminal history records checks required by level 2 screening  
174 shall be borne by the direct service provider or the person

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175 seeking certification.

176 (4) TERMINATION; HEARINGS PROVIDED.—

177 (a) The division shall deny, suspend, terminate, or revoke  
 178 a certification, rate agreement, purchase order, referral,  
 179 contract, or other agreement, or pursue other remedies in  
 180 addition to or in lieu of denial, suspension, termination, or  
 181 revocation, for failure to comply with this section.

182 (b) If the division has reasonable cause to believe that  
 183 grounds for denial or termination of certification exist, it  
 184 shall provide written notification to the person affected,  
 185 identifying the specific record that indicates noncompliance  
 186 with the standards in this section.

187 (c) As provided in chapter 435, the division may grant an  
 188 exemption from disqualification from this section only as  
 189 provided in s. 435.07.

190 (d) Refusal on the part of a contractor to dismiss an  
 191 employee who has been found to be in noncompliance with  
 192 standards of this section shall result in revocation of the  
 193 contractor's certification and contract.

194 Section 3. Section 413.2105, Florida Statutes, is created  
 195 to read:

196 413.2105 Employment screening.—The division shall require  
 197 all employees and applicants for employment to undergo personnel  
 198 screening and security background investigations as provided in  
 199 chapter 435, using the level 2 standards for screening set forth  
 200 in that chapter, as a condition of employment and continued  
 201 employment.

202 Section 4. Section 1001.12, Florida Statutes, is created to  
 203 read:

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204 1001.12 Background screening of employees.-

205 (1) The department shall require level 2 background  
206 screening pursuant to s. 435.04 for all of its employees and  
207 applicants being considered for employment. All department  
208 employees and applicants being considered for employment must  
209 meet level 2 screening standards as provided in s. 435.04 before  
210 employment and as a condition of continued employment.

211 (2) As provided in chapter 435, the division may grant an  
212 exemption from disqualification from this section only as  
213 provided in s. 435.07.

214 Section 5. Present subsections (2) through (16) of section  
215 1005.02, Florida Statutes, are renumbered as subsections (3)  
216 through (17), respectively, and a new subsection (2) is added to  
217 that section, to read:

218 1005.02 Definitions.—As used in this chapter, the term:

219 (2) "Admissions staff" means any person, including the  
220 admissions director, who is employed by an independent  
221 postsecondary educational institution, or by an out-of-state  
222 independent postsecondary educational institution under the  
223 jurisdiction of the Commission for Independent Education, and  
224 who provides information or advises prospective students in  
225 order to secure an application or accepts payment of fees from  
226 prospective students for the institution.

227 Section 6. Paragraph (h) of subsection (1) of section  
228 1005.22, Florida Statutes, is amended to read:

229 1005.22 Powers and duties of commission.—

230 (1) The commission shall:

231 (h) Cause to be investigated criminal justice information,  
232 as defined in s. 943.045, for each owner, administrator,



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233 admissions director and staff, and agent employed by an  
234 institution applying for licensure or licensure renewal from the  
235 commission.

236 Section 7. Subsection (16) is added to section 1005.31,  
237 Florida Statutes, to read:

238 1005.31 Licensure of institutions.—

239 (16) The commission shall establish minimum standards for  
240 admissions staff employed by institutions under its  
241 jurisdiction. The commission may adopt rules to ensure that  
242 admissions staff at institutions meet these standards and uphold  
243 the intent of this chapter. A member of an institution's  
244 admissions staff may not solicit prospective students in this  
245 state for enrollment in any independent postsecondary  
246 educational institution or in any out-of-state independent  
247 postsecondary educational institution unless the institution has  
248 received a license as prescribed by the commission.

249 Section 8. Present subsections (3) through (12) of section  
250 1005.38, Florida Statutes, are renumbered as subsections (4)  
251 through (13), respectively, present subsection (4) of that  
252 section is amended, and a new subsection (3) is added to that  
253 section, to read:

254 1005.38 Actions against a licensee and other penalties.—

255 (3) The commission may refuse to grant an institutional  
256 license, renew an existing institutional license, or revoke an  
257 existing institutional license if any applicant, owner,  
258 director, administrator, registered agent, admissions director,  
259 or admissions staff member has been a party to a civil action or  
260 has been convicted of, or entered a plea of guilty or nolo  
261 contendere to, a crime under chapter 817 or fraudulent practices

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262 or fair consumer practices under s. 1005.04.

263 (a) A criminal or civil act committed in another state or  
264 under federal law which, if committed in this state, would  
265 constitute an offense is an offense prohibited under this  
266 subsection.

267 (b) The commission shall review each applicant individually  
268 and may grant or renew a license if good cause is shown.

269 (c) The grounds for refusal or revocation of a license  
270 shall be applied to any disqualifying criminal or civil history  
271 regardless of the date of the commission of the underlying  
272 event. This subsection shall be applied retroactively and  
273 prospectively

274 (5)-(4) The commission may deny an application for any  
275 operating status if the commission determines that the applicant  
276 or its owners, officers, directors, ~~or~~ administrators, or  
277 admissions staff were previously operating an institution in  
278 this state or in another state or jurisdiction in a manner  
279 contrary to the health, education, or welfare of the public. The  
280 commission may consider factors such as the previous denial or  
281 revocation of an institutional license; prior criminal or civil  
282 administrative proceedings regarding the operation and  
283 management of an institution; other types of criminal  
284 proceedings involving fraud, deceit, dishonesty, or moral  
285 turpitude; failure of the institution to be properly closed,  
286 including completing the training or providing for the trainout  
287 of its students; and failure to issue appropriate refunds. The  
288 commission may require an applicant or its owners, officers,  
289 directors, ~~or~~ administrators, or admissions staff to provide the  
290 commission with information under oath regarding the prior

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291 operation of an institution and to provide criminal justice  
292 information, the cost of which must be borne by the applicant in  
293 addition to license fees.

294 Section 9. Section 1012.02, Florida Statutes, is created to  
295 read:

296 1012.02 Background screening of contractors.—

297 (1) The department shall require level 2 background  
298 screening pursuant to s. 435.04 for all personnel of all  
299 contractors required to perform contractual duties at a facility  
300 of the department, local school board facility, or any other  
301 location if the person will have access to confidential data or  
302 may come into contact with vulnerable persons, as defined in s.  
303 435.02.

304 (2) A contractor for whom background screening is required  
305 pursuant to this section may not use any employee to perform any  
306 duties that are covered by subsection (1) until the screening  
307 process is completed and the contractor demonstrates the absence  
308 of any grounds for disqualification or, in the presence of such  
309 grounds, an exemption from disqualification is granted.

310 (3) A contractor for whom background screening is required  
311 pursuant to this section is responsible for initiating and  
312 completing the security background investigation. The costs of  
313 the state and national criminal history records checks required  
314 by level 2 screening shall be borne by the contractor.

315 (4) Every 5 years following initial screening, each  
316 contractor must submit to level 2 background rescreening.

317 (5) The background screening conducted under this section  
318 must ensure that, in addition to the disqualifying offenses  
319 listed in s. 435.04, a person subject to the provisions of this

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320 section does not have an arrest awaiting final disposition, has  
321 not been found guilty of, regardless of adjudication, entered a  
322 plea of nolo contendere or guilty to, or has not been  
323 adjudicated delinquent, and the record has not been sealed or  
324 expunged, for any offense prohibited under any of the following  
325 provisions of state law or similar law of another jurisdiction:

326 (a) Section 409.920, relating to Medicaid provider fraud.

327 (b) Section 409.9201, relating to Medicaid fraud.

328 (c) Section 741.28, relating to domestic violence.

329 (d) Section 817.034, relating to fraudulent acts through  
330 mail, wire, radio, electromagnetic, photoelectronic, or  
331 photooptical systems.

332 (e) Section 817.234, relating to false and fraudulent  
333 insurance claims.

334 (f) Section 817.505, relating to patient brokering.

335 (g) Section 817.568, relating to criminal use of personal  
336 identification information.

337 (h) Section 817.60, relating to obtaining a credit card  
338 through fraudulent means.

339 (i) Section 817.61, relating to fraudulent use of credit  
340 cards, if the offense was a felony.

341 (j) Section 831.01, relating to forgery.

342 (k) Section 831.02, relating to uttering forged  
343 instruments.

344 (l) Section 831.07, relating to forging bank bills, checks,  
345 drafts, or promissory notes.

346 (m) Section 831.09, relating to uttering forged bank bills,  
347 checks, drafts, or promissory notes.

348 (n) Section 831.31, relating to the sale, manufacture,

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349 delivery, or possession with the intent to sell, manufacture, or  
350 deliver any counterfeit controlled substance, if the offense was  
351 a felony.

352 (6) (a) The department shall deny, suspend, terminate, or  
353 revoke a contract, or pursue other remedies in addition to or in  
354 lieu of denial, suspension, termination, or termination, for  
355 failure to comply with this section.

356 (b) If the department has reasonable cause to believe that  
357 grounds for denial, suspension, or termination exist, it shall  
358 provide written notification to the person affected, identifying  
359 the specific record that indicates noncompliance with the  
360 standards in this section.

361 (c) As provided in chapter 435, the department may grant an  
362 exemption from disqualification from this section only as  
363 provided in s. 435.07.

364 (d) Refusal on the part of an employing contractor to  
365 dismiss an employee who has been found to be in noncompliance  
366 with the standards of this section shall result in revocation of  
367 the employer's contract.

368 Section 10. Paragraph (c) of subsection (1) of section  
369 413.407, Florida Statutes, is amended to read:

370 413.407 Assistive Technology Advisory Council.—There is  
371 created the Assistive Technology Advisory Council, responsible  
372 for ensuring consumer involvement in the creation, application,  
373 and distribution of technology-related assistance to and for  
374 persons who have disabilities. The council shall fulfill its  
375 responsibilities through statewide policy development, both  
376 state and federal legislative initiatives, advocacy at both the  
377 state and federal level, planning of statewide resource

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378 allocations, policy-level management, reviews of both consumer  
379 responsiveness and the adequacy of program service delivery, and  
380 by performing the functions listed in this section.

381 (1)

382 (c) A majority of council members shall be persons who have  
383 disabilities as defined in s. 413.20(8) ~~s. 413.20(7)~~ who are  
384 also consumers of assistive technology or family members of such  
385 persons.

386 Section 11. Subsection (10) of section 744.1083, Florida  
387 Statutes, is amended to read:

388 744.1083 Professional guardian registration.—

389 (10) A state college or university or an independent  
390 college or university that is located and chartered in Florida,  
391 that is accredited by the Commission on Colleges of the Southern  
392 Association of Colleges and Schools or the Accrediting Council  
393 for Independent Colleges and Schools, and that confers degrees  
394 as defined in s. 1005.02(8) ~~s. 1005.02(7)~~ may, but is not  
395 required to, register as a professional guardian under this  
396 section. If a state college or university or independent college  
397 or university elects to register as a professional guardian  
398 under this subsection, the requirements of subsections (3) and  
399 (4) do not apply and the registration must include only the  
400 name, address, and employer identification number of the  
401 registrant.

402 Section 12. This act shall take effect July 1, 2011.