

1 A bill to be entitled

2 An act relating to background screening; amending s.  
3 322.142, F.S.; authorizing the Department of Highway  
4 Safety and Motor Vehicles to share reproductions of  
5 driver license images with the Department of Health  
6 and the Agency for Health Care Administration for  
7 specified purposes; amending s. 408.806, F.S.;  
8 revising the requirements for licensure; revising a  
9 provision requiring an affidavit; amending s. 408.809,  
10 F.S.; exempting a person whose fingerprints are  
11 already enrolled in a certain Federal Bureau of  
12 Investigation program from the requirement that such  
13 fingerprints be forwarded to the bureau; requiring  
14 certain persons to submit their fingerprints  
15 electronically; requiring the Department of Law  
16 Enforcement to retain fingerprints when the department  
17 begins participation in a certain program; revising  
18 requirements for proof of compliance with level 2  
19 screening standards; revising terminology; adding  
20 additional disqualifying offenses to background  
21 screening requirements; amending s. 413.208, F.S.;  
22 providing applicability for background screening  
23 requirements for certain registrants; repealing s. 7  
24 of chapter 2012-73, Laws of Florida, relating to  
25 background screening requirements; amending s. 435.04,  
26 F.S.; revising information to be required for vendors

27 submitting employee fingerprints; adding an additional  
28 disqualifying offense to background screening  
29 requirements; amending s. 435.05, F.S.; revising a  
30 provision requiring the annual submission of an  
31 affidavit; amending s. 435.07, F.S.; revising criteria  
32 for an exemption from disqualification for an employee  
33 under certain conditions; amending s. 435.12, F.S.;  
34 requiring the fingerprints of an employee required to  
35 be screened by a specified agency and included in the  
36 clearinghouse also to be retained in the national  
37 retained print arrest notification program at a  
38 specified time; requiring simultaneous submission of a  
39 photographic image and electronic fingerprints to the  
40 Care Provider Background Screening Clearinghouse;  
41 requiring an employer to follow certain criminal  
42 history check procedures and include specified  
43 information regarding referral and registration of an  
44 employee for electronic fingerprinting with the  
45 clearinghouse; providing an effective date.

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. Subsection (4) of section 322.142, Florida  
50 Statutes, is amended to read:

51 322.142 Color photographic or digital imaged licenses.—

52 (4) The department may maintain a film negative or print

53 file. The department shall maintain a record of the digital  
54 image and signature of the licensees, together with other data  
55 required by the department for identification and retrieval.  
56 Reproductions from the file or digital record are exempt from  
57 the provisions of s. 119.07(1) and may ~~shall~~ be made and issued  
58 only:

59 (a) For departmental administrative purposes;

60 (b) For the issuance of duplicate licenses;

61 (c) In response to law enforcement agency requests;

62 (d) To the Department of Business and Professional

63 Regulation and the Department of Health pursuant to an

64 interagency agreement for the purpose of accessing digital

65 images for reproduction of licenses issued by the Department of

66 Business and Professional Regulation or the Department of

67 Health;

68 (e) To the Department of State pursuant to an interagency

69 agreement to facilitate determinations of eligibility of voter

70 registration applicants and registered voters in accordance with

71 ss. 98.045 and 98.075;

72 (f) To the Department of Revenue pursuant to an

73 interagency agreement for use in establishing paternity and

74 establishing, modifying, or enforcing support obligations in

75 Title IV-D cases;

76 (g) To the Department of Children and Families pursuant to

77 an interagency agreement to conduct protective investigations

78 under part III of chapter 39 and chapter 415;

79 (h) To the Department of Children and Families pursuant to  
 80 an interagency agreement specifying the number of employees in  
 81 each of that department's regions to be granted access to the  
 82 records for use as verification of identity to expedite the  
 83 determination of eligibility for public assistance and for use  
 84 in public assistance fraud investigations;

85 (i) To the Agency for Health Care Administration pursuant  
 86 to an interagency agreement for the purpose of authorized  
 87 agencies verifying photographs in the Care Provider Background  
 88 Screening Clearinghouse authorized in s. 435.12;

89 (j)~~(i)~~ To the Department of Financial Services pursuant to  
 90 an interagency agreement to facilitate the location of owners of  
 91 unclaimed property, the validation of unclaimed property claims,  
 92 and the identification of fraudulent or false claims;

93 (k)~~(j)~~ To district medical examiners pursuant to an  
 94 interagency agreement for the purpose of identifying a deceased  
 95 individual, determining cause of death, and notifying next of  
 96 kin of any investigations, including autopsies and other  
 97 laboratory examinations, authorized in s. 406.11; or

98 (l)~~(k)~~ To the following persons for the purpose of  
 99 identifying a person as part of the official work of a court:

- 100 1. A justice or judge of this state;
- 101 2. An employee of the state courts system who works in a
- 102 position that is designated in writing for access by the Chief
- 103 Justice of the Supreme Court or a chief judge of a district or
- 104 circuit court, or by his or her designee; or

105           3. A government employee who performs functions on behalf  
 106 of the state courts system in a position that is designated in  
 107 writing for access by the Chief Justice or a chief judge, or by  
 108 his or her designee.

109           Section 2. Subsections (1) and (8) of section 408.806,  
 110 Florida Statutes, are amended to read:

111           408.806 License application process.—

112           (1) An application for licensure must be made to the  
 113 agency on forms furnished by the agency, submitted under oath or  
 114 attestation, and accompanied by the appropriate fee in order to  
 115 be accepted and considered timely. The application must contain  
 116 information required by authorizing statutes and applicable  
 117 rules and must include:

118           (a) The name, address, and social security number, or  
 119 individual taxpayer identification number if a social security  
 120 number cannot legally be obtained, of:

- 121           1. The applicant;
- 122           2. The administrator or a similarly titled person who is  
 123 responsible for the day-to-day operation of the provider;
- 124           3. The financial officer or similarly titled person who is  
 125 responsible for the financial operation of the licensee or  
 126 provider; and
- 127           4. Each controlling interest if the applicant or  
 128 controlling interest is an individual.

129           (b) The name, address, and federal employer identification  
 130 number or taxpayer identification number of the applicant and

131 each controlling interest if the applicant or controlling  
 132 interest is not an individual.

133 (c) The name by which the provider is to be known.

134 (d) The total number of beds or capacity requested, as  
 135 applicable.

136 (e) The name of the person or persons under whose  
 137 management or supervision the provider will operate and the name  
 138 of the administrator, if required.

139 (f) If the applicant offers continuing care agreements as  
 140 defined in chapter 651, proof shall be furnished that the  
 141 applicant has obtained a certificate of authority as required  
 142 for operation under chapter 651.

143 (g) Other information, including satisfactory inspection  
 144 results, that the agency finds necessary to determine the  
 145 ability of the applicant to carry out its responsibilities under  
 146 this part, authorizing statutes, and applicable rules.

147 (h) An attestation affidavit, under penalty of perjury, as  
 148 required in s. 435.05(3), stating compliance with the provisions  
 149 of this section and chapter 435.

150 (8) The agency may establish procedures for the electronic  
 151 notification and submission of required information, including,  
 152 but not limited to:

153 (a) Licensure applications.

154 (b) Required signatures.

155 (c) Payment of fees.

156 (d) Notarization or attestation of applications.

157  
 158 Requirements for electronic submission of any documents required  
 159 by this part or authorizing statutes may be established by rule.  
 160 As an alternative to sending documents as required by  
 161 authorizing statutes, the agency may provide electronic access  
 162 to information or documents.

163 Section 3. Subsections (2) and (4) of section 408.809,  
 164 Florida Statutes, are amended to read:

165 408.809 Background screening; prohibited offenses.—

166 (2) Every 5 years following his or her licensure,  
 167 employment, or entry into a contract in a capacity that under  
 168 subsection (1) would require level 2 background screening under  
 169 chapter 435, each such person must submit to level 2 background  
 170 rescreening as a condition of retaining such license or  
 171 continuing in such employment or contractual status. For any  
 172 such rescreening, the agency shall request the Department of Law  
 173 Enforcement to forward the person's fingerprints to the Federal  
 174 Bureau of Investigation for a national criminal history record  
 175 check unless the person's fingerprints are enrolled in the  
 176 Federal Bureau of Investigation's national retained print arrest  
 177 notification program. If the fingerprints of such a person are  
 178 not retained by the Department of Law Enforcement under s.  
 179 943.05(2)(g) and (h), the person must submit fingerprints  
 180 electronically ~~file a complete set of fingerprints with the~~  
 181 ~~agency and the agency shall forward the fingerprints to the~~  
 182 Department of Law Enforcement for state processing, and the

183 Department of Law Enforcement shall forward the fingerprints to  
184 the Federal Bureau of Investigation for a national criminal  
185 history record check. The fingerprints shall ~~may~~ be retained by  
186 the Department of Law Enforcement under s. 943.05(2)(g) and (h)  
187 and enrolled in the national retained print arrest notification  
188 program when the Department of Law Enforcement begins  
189 participation in the program. The cost of the state and national  
190 criminal history records checks required by level 2 screening  
191 may be borne by the licensee or the person fingerprinted. Until  
192 a specified agency is fully implemented ~~the person's background~~  
193 ~~screening results are retained~~ in the clearinghouse created  
194 under s. 435.12, the agency may accept as satisfying the  
195 requirements of this section proof of compliance with level 2  
196 screening standards submitted within the previous 5 years to  
197 meet any provider or professional licensure requirements of the  
198 agency, the Department of Health, the Department of Elderly  
199 Affairs, the Agency for Persons with Disabilities, the  
200 Department of Children and Families ~~Family Services~~, or the  
201 Department of Financial Services for an applicant for a  
202 certificate of authority or provisional certificate of authority  
203 to operate a continuing care retirement community under chapter  
204 651, provided that:

205 (a) The screening standards and disqualifying offenses for  
206 the prior screening are equivalent to those specified in s.  
207 435.04 and this section;

208 (b) The person subject to screening has not had a break in  
 209 service from a position that requires level 2 screening for more  
 210 than 90 days; and

211 (c) Such proof is accompanied, under penalty of perjury,  
 212 by an attestation affidavit of compliance with ~~the provisions of~~  
 213 chapter 435 and this section using forms provided by the agency.

214 (4) In addition to the offenses listed in s. 435.04, all  
 215 persons required to undergo background screening pursuant to  
 216 this part or authorizing statutes must not have an arrest  
 217 awaiting final disposition for, must not have been found guilty  
 218 of, regardless of adjudication, or entered a plea of nolo  
 219 contendere or guilty to, and must not have been adjudicated  
 220 delinquent and the record not have been sealed or expunged for  
 221 any of the following offenses or any similar offense of another  
 222 jurisdiction:

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

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

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

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

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

228 (f) Section 777.04, relating to attempts, solicitation,  
 229 and conspiracy to commit an offense listed in this subsection.

230 (g) ~~(f)~~ Section 817.034, relating to fraudulent acts  
 231 through mail, wire, radio, electromagnetic, photoelectronic, or  
 232 photooptical systems.

233        (h)~~(g)~~ Section 817.234, relating to false and fraudulent  
 234 insurance claims.

235        (i) Section 817.481, relating to obtaining goods by using  
 236 a false or expired credit card or other credit device, if the  
 237 offense was a felony.

238        (j) Section 817.50, relating to fraudulently obtaining  
 239 goods or services from a health care provider.

240        (k)~~(h)~~ Section 817.505, relating to patient brokering.

241        (l)~~(i)~~ Section 817.568, relating to criminal use of  
 242 personal identification information.

243        (m)~~(j)~~ Section 817.60, relating to obtaining a credit card  
 244 through fraudulent means.

245        (n)~~(k)~~ Section 817.61, relating to fraudulent use of  
 246 credit cards, if the offense was a felony.

247        (o)~~(l)~~ Section 831.01, relating to forgery.

248        (p)~~(m)~~ Section 831.02, relating to uttering forged  
 249 instruments.

250        (q)~~(n)~~ Section 831.07, relating to forging bank bills,  
 251 checks, drafts, or promissory notes.

252        (r)~~(o)~~ Section 831.09, relating to uttering forged bank  
 253 bills, checks, drafts, or promissory notes.

254        (s)~~(p)~~ Section 831.30, relating to fraud in obtaining  
 255 medicinal drugs.

256        (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,  
 257 delivery, or possession with the intent to sell, manufacture, or

258 deliver any counterfeit controlled substance, if the offense was  
 259 a felony.

260 (u) Section 895.03, relating to racketeering and  
 261 collection of unlawful debts.

262 (v) Section 896.101, relating to the Florida Money  
 263 Laundering Act.

264 Section 4. Subsection (5) is added to section 413.208,  
 265 Florida Statutes, to read:

266 413.208 Service providers; quality assurance; fitness for  
 267 responsibilities; background screening.—

268 (5) The background screening requirements of this section  
 269 apply only to registrations entered into or renewed with the  
 270 division after the Care Provider Background Screening  
 271 Clearinghouse becomes operational and retains the background  
 272 screening results in the clearinghouse under s. 435.12.

273 Section 5. Section 7 of chapter 2012-73, Laws of Florida,  
 274 is repealed.

275 Section 6. Paragraph (e) of subsection (1) of section  
 276 435.04, Florida Statutes, is amended, present paragraphs (d)  
 277 through (yy) of subsection (2) are redesignated as paragraphs  
 278 (e) through (zz), respectively, and a new paragraph (d) is added  
 279 to that subsection, to read:

280 435.04 Level 2 screening standards.—

281 (1)

282 (e) Vendors who submit fingerprints on behalf of employers  
 283 must:

284 1. Meet the requirements of s. 943.053; and  
 285 2. Have the ability to communicate electronically with the  
 286 state agency accepting screening results from the Department of  
 287 Law Enforcement and provide the applicant's full first name,  
 288 middle initial, and last name; social security number or  
 289 individual taxpayer identification number; date of birth;  
 290 mailing address; sex; and race ~~a photograph of the applicant~~  
 291 ~~taken at the time the fingerprints are submitted.~~

292 (2) The security background investigations under this  
 293 section must ensure that no persons subject to the provisions of  
 294 this section have been arrested for and are awaiting final  
 295 disposition of, have been found guilty of, regardless of  
 296 adjudication, or entered a plea of nolo contendere or guilty to,  
 297 or have been adjudicated delinquent and the record has not been  
 298 sealed or expunged for, any offense prohibited under any of the  
 299 following provisions of state law or similar law of another  
 300 jurisdiction:

301 (d) Section 777.04, relating to attempts, solicitation,  
 302 and conspiracy to commit an offense listed in this subsection.

303 Section 7. Subsection (3) of section 435.05, Florida  
 304 Statutes, is amended to read:

305 435.05 Requirements for covered employees and employers.—  
 306 Except as otherwise provided by law, the following requirements  
 307 apply to covered employees and employers:

308 (3) Each employer licensed or registered with an agency  
 309 must conduct level 2 background screening and must submit to the

310 agency annually or at the time of license renewal, under penalty  
311 of perjury, a signed attestation ~~affidavit~~ attesting to  
312 compliance with the provisions of this chapter.

313 Section 8. Subsections (1) and (2) of section 435.07,  
314 Florida Statutes, are amended to read:

315 435.07 Exemptions from disqualification.—Unless otherwise  
316 provided by law, the provisions of this section apply to  
317 exemptions from disqualification for disqualifying offenses  
318 revealed pursuant to background screenings required under this  
319 chapter, regardless of whether those disqualifying offenses are  
320 listed in this chapter or other laws.

321 (1) (a) The head of the appropriate agency may grant to any  
322 employee otherwise disqualified from employment an exemption  
323 from disqualification for:

324 1.(a) Felonies for which at least 3 years have elapsed  
325 since the applicant for the exemption has completed or been  
326 lawfully released from confinement, supervision, or nonmonetary  
327 condition imposed by the court ~~sanction~~ for the disqualifying  
328 felony;

329 2.(b) Misdemeanors prohibited under any of the statutes  
330 cited in this chapter or under similar statutes of other  
331 jurisdictions for which the applicant for the exemption has  
332 completed or been lawfully released from confinement,  
333 supervision, or nonmonetary condition imposed by the court  
334 ~~sanction~~;

335 3.(c) Offenses that were felonies when committed but that

336 are now misdemeanors and for which the applicant for the  
337 exemption has completed or been lawfully released from  
338 confinement, supervision, or nonmonetary condition imposed by  
339 the court sanction; or

340 4.-(d) Findings of delinquency. For offenses that would be  
341 felonies if committed by an adult and the record has not been  
342 sealed or expunged, the exemption may not be granted until at  
343 least 3 years have elapsed since the applicant for the exemption  
344 has completed or been lawfully released from confinement,  
345 supervision, or nonmonetary condition imposed by the court  
346 sanction for the disqualifying offense.

347 (b) A person applying for an exemption who was ordered to  
348 pay any amount for any fee, fine, fund, lien, civil judgment,  
349 application, costs of prosecution, trust, or restitution as part  
350 of the judgment and sentence for any disqualifying felony or  
351 misdemeanor must have paid the court-ordered amount in full  
352 before being eligible for the exemption.

353  
354 For the purposes of this subsection, the term "felonies" means  
355 both felonies prohibited under any of the statutes cited in this  
356 chapter or under similar statutes of other jurisdictions.

357 (2) Persons employed, or applicants for employment, by  
358 treatment providers who treat adolescents 13 years of age and  
359 older who are disqualified from employment solely because of  
360 crimes under s. 817.563, s. 893.13, or s. 893.147 may be  
361 exempted from disqualification from employment pursuant to this

362 chapter without application of the waiting period in  
363 subparagraph (1) (a) ~~paragraph (1) (a)~~.

364 Section 9. Subsection (2) of section 435.12, Florida  
365 Statutes, is amended to read:

366 435.12 Care Provider Background Screening Clearinghouse.—

367 (2) (a) To ensure that the information in the clearinghouse  
368 is current, the fingerprints of an employee required to be  
369 screened by a specified agency and included in the clearinghouse  
370 must be:

371 1. Retained by the Department of Law Enforcement pursuant  
372 to s. 943.05(2) (g) and (h) and (3), and the Department of Law  
373 Enforcement must report the results of searching those  
374 fingerprints against state incoming arrest fingerprint  
375 submissions to the Agency for Health Care Administration for  
376 inclusion in the clearinghouse.

377 2. Retained by the Federal Bureau of Investigation in the  
378 national retained print arrest notification program as soon as  
379 the Department of Law Enforcement begins participation in such  
380 program. Arrest prints shall be searched against retained prints  
381 at the Federal Bureau of Investigation and notification of  
382 arrests shall be forwarded to the Department of Law Enforcement  
383 and reported to the Agency for Health Care Administration for  
384 inclusion in the clearinghouse.

385 3.2. Resubmitted for a Federal Bureau of Investigation  
386 national criminal history check every 5 years until such time as  
387 the fingerprints are retained by the Federal Bureau of

388 Investigation.

389 ~~4.3-~~ Subject to retention on a 5-year renewal basis with  
390 fees collected at the time of initial submission or resubmission  
391 of fingerprints.

392 5. Submitted with a photograph of the person taken at the  
393 time the fingerprints are submitted.

394 (b) Until such time as the fingerprints are enrolled in  
395 the national retained print arrest notification program ~~retained~~  
396 at the Federal Bureau of Investigation, an employee with a break  
397 in service of more than 90 days from a position that requires  
398 screening by a specified agency must submit to a national  
399 screening if the person returns to a position that requires  
400 screening by a specified agency.

401 (c) An employer of persons subject to screening by a  
402 specified agency must register with the clearinghouse and  
403 maintain the employment status of all employees within the  
404 clearinghouse. Initial employment status and any changes in  
405 status must be reported within 10 business days.

406 (d) An employer must register with and initiate all  
407 criminal history checks through the clearinghouse before  
408 referring an employee or potential employee for electronic  
409 fingerprint submission to the Department of Law Enforcement. The  
410 registration must include the employee's full first name, middle  
411 initial, and last name; social security number; date of birth;  
412 mailing address; sex; and race. Individuals, persons,  
413 applicants, and controlling interests that cannot legally obtain

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414 | a social security number must provide an individual taxpayer  
415 | identification number.

416 | Section 10. This act shall take effect July 1, 2014.