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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. 402.301, F.S.;  
8     revising provisions relating to the exemption of  
9     certain membership organizations affiliated with  
10    national organizations from certain child care  
11    facility licensing requirements; amending s. 408.806,  
12    F.S.; revising the requirements for health care  
13    licensure; revising a provision requiring an  
14    affidavit; amending s. 408.809, F.S.; exempting a  
15    person whose fingerprints are already enrolled in a  
16    specified Federal Bureau of Investigation program from  
17    the requirement that such fingerprints be forwarded to  
18    the bureau; requiring certain persons to submit their  
19    fingerprints electronically; requiring the Department  
20    of Law Enforcement to retain fingerprints when the  
21    department begins participation in a certain program;  
22    revising requirements for proof of compliance with  
23    level 2 screening standards; revising terminology;  
24    adding additional disqualifying offenses to background  
25    screening requirements; adding an exemption clause  
26    from disqualification for new offenses; amending s.  
27    413.208, F.S.; providing applicability for background  
28    screening requirements for certain registrants;  
29    repealing s. 7 of chapter 2012-73, Laws of Florida,

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30 relating to background screening requirements;  
31 amending s. 435.04, F.S.; revising information  
32 required for vendors submitting employee fingerprints;  
33 adding an additional disqualifying offense to  
34 background screening requirements; amending s. 435.05,  
35 F.S.; revising a provision requiring the annual  
36 submission of an affidavit; amending s. 435.07, F.S.;  
37 revising criteria for an exemption from  
38 disqualification for an employee under certain  
39 conditions; amending s. 435.12, F.S.; requiring the  
40 fingerprints of an employee required to be screened by  
41 a specified agency and included in the clearinghouse  
42 also to be retained in the national retained print  
43 arrest notification program at a specified time;  
44 requiring simultaneous submission of a photographic  
45 image and electronic fingerprints to the Care Provider  
46 Background Screening Clearinghouse; requiring an  
47 employer to follow certain criminal history check  
48 procedures and include specified information regarding  
49 referral and registration of an employee for  
50 electronic fingerprinting with the clearinghouse;  
51 providing an effective date.

52  
53 Be It Enacted by the Legislature of the State of Florida:

54  
55 Section 1. Subsection (4) of section 322.142, Florida  
56 Statutes, is amended to read:

57 322.142 Color photographic or digital imaged licenses.—  
58 (4) The department may maintain a film negative or print

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59 file. The department shall maintain a record of the digital  
60 image and signature of the licensees, together with other data  
61 required by the department for identification and retrieval.  
62 Reproductions from the file or digital record are exempt from  
63 the provisions of s. 119.07(1) and may ~~shall~~ be made and issued  
64 only:

65 (a) For departmental administrative purposes;

66 (b) For the issuance of duplicate licenses;

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

68 (d) To the Department of Business and Professional  
69 Regulation and the Department of Health pursuant to an  
70 interagency agreement for the purpose of accessing digital  
71 images for reproduction of licenses issued by the Department of  
72 Business and Professional Regulation or the Department of  
73 Health;

74 (e) To the Department of State pursuant to an interagency  
75 agreement to facilitate determinations of eligibility of voter  
76 registration applicants and registered voters in accordance with  
77 ss. 98.045 and 98.075;

78 (f) To the Department of Revenue pursuant to an interagency  
79 agreement for use in establishing paternity and establishing,  
80 modifying, or enforcing support obligations in Title IV-D cases;

81 (g) To the Department of Children and Families pursuant to  
82 an interagency agreement to conduct protective investigations  
83 under part III of chapter 39 and chapter 415;

84 (h) To the Department of Children and Families pursuant to  
85 an interagency agreement specifying the number of employees in  
86 each of that department's regions to be granted access to the  
87 records for use as verification of identity to expedite the

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88 determination of eligibility for public assistance and for use  
89 in public assistance fraud investigations;

90 (i) To the Agency for Health Care Administration pursuant  
91 to an interagency agreement for the purpose of authorized  
92 agencies verifying photographs in the Care Provider Background  
93 Screening Clearinghouse authorized under s. 435.12;

94 (j)~~(i)~~ To the Department of Financial Services pursuant to  
95 an interagency agreement to facilitate the location of owners of  
96 unclaimed property, the validation of unclaimed property claims,  
97 and the identification of fraudulent or false claims;

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

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

- 105 1. A justice or judge of this state;
- 106 2. An employee of the state courts system who works in a  
107 position that is designated in writing for access by the Chief  
108 Justice of the Supreme Court or a chief judge of a district or  
109 circuit court, or by his or her designee; or
- 110 3. A government employee who performs functions on behalf  
111 of the state courts system in a position that is designated in  
112 writing for access by the Chief Justice or a chief judge, or by  
113 his or her designee.

114 Section 2. Subsection (6) of section 402.301, Florida  
115 Statutes, is amended to read:

116 402.301 Child care facilities; legislative intent and

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117 declaration of purpose and policy.—It is the legislative intent  
118 to protect the health, safety, and well-being of the children of  
119 the state and to promote their emotional and intellectual  
120 development and care. Toward that end:

121 (6) Notwithstanding any other provision of law, it is  
122 further the intent of the Legislature that membership  
123 organizations affiliated with national organizations which do  
124 not provide child care as defined in s. 402.302, whose primary  
125 purpose is providing activities that contribute to the  
126 development of good character, after school care, and  
127 delinquency prevention programs which are operated 5 days a week  
128 or more, are facility or school based ~~or good sportsmanship or~~  
129 ~~to the education or cultural development of minors in this~~  
130 ~~state, which charge only a nominal annual membership fee, which~~  
131 ~~are not for profit, and which~~ are certified by their national  
132 associations as being in compliance with the association's  
133 minimum standards and procedures shall not be considered child  
134 care facilities, are not subject to the licensing requirements  
135 or the minimum standards for child care facilities, and  
136 ~~therefore,~~ their personnel shall not be required to be screened.

137 Section 3. Subsections (1) and (8) of section 408.806,  
138 Florida Statutes, are amended to read:

139 408.806 License application process.—

140 (1) An application for licensure must be made to the agency  
141 on forms furnished by the agency, submitted under oath or  
142 attestation, and accompanied by the appropriate fee in order to  
143 be accepted and considered timely. The application must contain  
144 information required by authorizing statutes and applicable  
145 rules and must include:

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146 (a) The name, address, and social security number, or  
147 individual taxpayer identification number if a social security  
148 number cannot legally be obtained, of:

149 1. The applicant;

150 2. The administrator or a similarly titled person who is  
151 responsible for the day-to-day operation of the provider;

152 3. The financial officer or similarly titled person who is  
153 responsible for the financial operation of the licensee or  
154 provider; and

155 4. Each controlling interest if the applicant or  
156 controlling interest is an individual.

157 (b) The name, address, and federal employer identification  
158 number or taxpayer identification number of the applicant and  
159 each controlling interest if the applicant or controlling  
160 interest is not an individual.

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

162 (d) The total number of beds or capacity requested, as  
163 applicable.

164 (e) The name of the person or persons under whose  
165 management or supervision the provider will operate and the name  
166 of the administrator, if required.

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

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

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

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

181 (a) Licensure applications.

182 (b) Required signatures.

183 (c) Payment of fees.

184 (d) Notarization or attestation of applications.

185

186 Requirements for electronic submission of any documents required  
187 by this part or authorizing statutes may be established by rule.  
188 As an alternative to sending documents as required by  
189 authorizing statutes, the agency may provide electronic access  
190 to information or documents.

191 Section 4. Subsections (2) and (4) of section 408.809,  
192 Florida Statutes, are amended to read:

193 408.809 Background screening; prohibited offenses.—

194 (2) Every 5 years following his or her licensure,  
195 employment, or entry into a contract in a capacity that under  
196 subsection (1) would require level 2 background screening under  
197 chapter 435, each such person must submit to level 2 background  
198 rescreening as a condition of retaining such license or  
199 continuing in such employment or contractual status. For any  
200 such rescreening, the agency shall request the Department of Law  
201 Enforcement to forward the person's fingerprints to the Federal  
202 Bureau of Investigation for a national criminal history record  
203 check unless the person's fingerprints are enrolled in the

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204 Federal Bureau of Investigation's national retained print arrest  
205 notification program. If the fingerprints of such a person are  
206 not retained by the Department of Law Enforcement under s.  
207 943.05(2)(g) and (h), the person must submit fingerprints  
208 electronically ~~file a complete set of fingerprints with the~~  
209 ~~agency and the agency shall forward the fingerprints to the~~  
210 Department of Law Enforcement for state processing, and the  
211 Department of Law Enforcement shall forward the fingerprints to  
212 the Federal Bureau of Investigation for a national criminal  
213 history record check. The fingerprints shall ~~may~~ be retained by  
214 the Department of Law Enforcement under s. 943.05(2)(g) and (h)  
215 and enrolled in the national retained print arrest notification  
216 program when the Department of Law Enforcement begins  
217 participation in the program. The cost of the state and national  
218 criminal history records checks required by level 2 screening  
219 may be borne by the licensee or the person fingerprinted. Until  
220 a specified agency is fully implemented ~~the person's background~~  
221 ~~screening results are retained~~ in the clearinghouse created  
222 under s. 435.12, the agency may accept as satisfying the  
223 requirements of this section proof of compliance with level 2  
224 screening standards submitted within the previous 5 years to  
225 meet any provider or professional licensure requirements of the  
226 agency, the Department of Health, the Department of Elderly  
227 Affairs, the Agency for Persons with Disabilities, the  
228 Department of Children and Families ~~Family Services~~, or the  
229 Department of Financial Services for an applicant for a  
230 certificate of authority or provisional certificate of authority  
231 to operate a continuing care retirement community under chapter  
232 651, provided that:

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233 (a) The screening standards and disqualifying offenses for  
234 the prior screening are equivalent to those specified in s.  
235 435.04 and this section;

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

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

242 (4) In addition to the offenses listed in s. 435.04, all  
243 persons required to undergo background screening pursuant to  
244 this part or authorizing statutes must not have an arrest  
245 awaiting final disposition for, must not have been found guilty  
246 of, regardless of adjudication, or entered a plea of nolo  
247 contendere or guilty to, and must not have been adjudicated  
248 delinquent and the record not have been sealed or expunged for  
249 any of the following offenses or any similar offense of another  
250 jurisdiction:

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

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

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

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

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

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

258 (g) ~~(f)~~ Section 817.034, relating to fraudulent acts through  
259 mail, wire, radio, electromagnetic, photoelectronic, or  
260 photooptical systems.

261 (h) ~~(g)~~ Section 817.234, relating to false and fraudulent

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262 insurance claims.

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

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

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

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

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

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

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

276 (p)~~(m)~~ Section 831.02, relating to uttering forged  
277 instruments.

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

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

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

284 (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,  
285 delivery, or possession with the intent to sell, manufacture, or  
286 deliver any counterfeit controlled substance, if the offense was  
287 a felony.

288 (u) Section 895.03, relating to racketeering and collection  
289 of unlawful debts.

290 (v) Section 896.101, relating to the Florida Money

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291 Laundering Act.

292

293 If, upon rescreening, a person who is currently employed or  
294 contracted with a licensee as of June 30, 2014, and was screened  
295 and qualified under ss. 435.03 and 435.04, has a disqualifying  
296 offense that was not a disqualifying offense at the time of the  
297 last screening, but is a current disqualifying offense and was  
298 committed before the last screening, he or she may apply for an  
299 exemption from the appropriate licensing agency and, if agreed  
300 to by the employer, may continue to perform his or her duties  
301 until the licensing agency renders a decision on the application  
302 for exemption if the person is eligible to apply for an  
303 exemption and the exemption request is received by the agency no  
304 later than 30 days after receipt of the rescreening results by  
305 the person.

306 Section 5. Subsection (5) is added to section 413.208,  
307 Florida Statutes, to read:

308 413.208 Service providers; quality assurance; fitness for  
309 responsibilities; background screening.—

310 (5) The background screening requirements of this section  
311 apply only to registrations entered into or renewed with the  
312 division after the Care Provider Background Screening  
313 Clearinghouse becomes operational and retains the background  
314 screening results in the clearinghouse under s. 435.12.

315 Section 6. Section 7 of chapter 2012-73, Laws of Florida,  
316 is repealed.

317 Section 7. Paragraph (e) of subsection (1) of section  
318 435.04, Florida Statutes, is amended, present paragraphs (d)  
319 through (yy) of subsection (2) are redesignated as paragraphs

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320 (e) through (zz), respectively, and a new paragraph (d) is added  
321 to that subsection, to read:

322 435.04 Level 2 screening standards.—

323 (1)

324 (e) Vendors who submit fingerprints on behalf of employers  
325 must:

326 1. Meet the requirements of s. 943.053; and

327 2. Have the ability to communicate electronically with the  
328 state agency accepting screening results from the Department of  
329 Law Enforcement and provide the applicant's full first name,  
330 middle initial, and last name; social security number or  
331 individual taxpayer identification number; date of birth;  
332 mailing address; sex; and race ~~a photograph of the applicant~~  
333 ~~taken at the time the fingerprints are submitted.~~

334 (2) The security background investigations under this  
335 section must ensure that no persons subject to the provisions of  
336 this section have been arrested for and are awaiting final  
337 disposition of, have been found guilty of, regardless of  
338 adjudication, or entered a plea of nolo contendere or guilty to,  
339 or have been adjudicated delinquent and the record has not been  
340 sealed or expunged for, any offense prohibited under any of the  
341 following provisions of state law or similar law of another  
342 jurisdiction:

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

345 Section 8. Subsection (3) of section 435.05, Florida  
346 Statutes, is amended to read:

347 435.05 Requirements for covered employees and employers.—

348 Except as otherwise provided by law, the following requirements

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349 apply to covered employees and employers:

350 (3) Each employer licensed or registered with an agency  
351 must conduct level 2 background screening and must submit to the  
352 agency annually or at the time of license renewal, under penalty  
353 of perjury, a signed attestation ~~affidavit~~ attesting to  
354 compliance with the provisions of this chapter.

355 Section 9. Subsections (1) and (2) of section 435.07,  
356 Florida Statutes, are amended to read:

357 435.07 Exemptions from disqualification.—Unless otherwise  
358 provided by law, the provisions of this section apply to  
359 exemptions from disqualification for disqualifying offenses  
360 revealed pursuant to background screenings required under this  
361 chapter, regardless of whether those disqualifying offenses are  
362 listed in this chapter or other laws.

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

366 1. (a) Felonies for which at least 3 years have elapsed  
367 since the applicant for the exemption has completed or been  
368 lawfully released from confinement, supervision, or nonmonetary  
369 condition imposed by the court ~~sanction~~ for the disqualifying  
370 felony;

371 2. (b) Misdemeanors prohibited under any of the statutes  
372 cited in this chapter or under similar statutes of other  
373 jurisdictions for which the applicant for the exemption has  
374 completed or been lawfully released from confinement,  
375 supervision, or nonmonetary condition imposed by the court  
376 ~~sanction~~;

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

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378 are now misdemeanors and for which the applicant for the  
379 exemption has completed or been lawfully released from  
380 confinement, supervision, or nonmonetary condition imposed by  
381 the court ~~sanction~~; or

382 4.-(d) Findings of delinquency. For offenses that would be  
383 felonies if committed by an adult and the record has not been  
384 sealed or expunged, the exemption may not be granted until at  
385 least 3 years have elapsed since the applicant for the exemption  
386 has completed or been lawfully released from confinement,  
387 supervision, or nonmonetary condition imposed by the court  
388 ~~sanction~~ for the disqualifying offense.

389 (b) A person applying for an exemption who was ordered to  
390 pay any amount for any fee, fine, fund, lien, civil judgment,  
391 application, costs of prosecution, trust, or restitution as part  
392 of the judgment and sentence for any disqualifying felony or  
393 misdemeanor must pay the court-ordered amount in full before he  
394 or she is eligible for the exemption.

395  
396 For the purposes of this subsection, the term "felonies" means  
397 both felonies prohibited under any of the statutes cited in this  
398 chapter or under similar statutes of other jurisdictions.

399 (2) Persons employed, or applicants for employment, by  
400 treatment providers who treat adolescents 13 years of age and  
401 older who are disqualified from employment solely because of  
402 crimes under s. 817.563, s. 893.13, or s. 893.147 may be  
403 exempted from disqualification from employment pursuant to this  
404 chapter without application of the waiting period in  
405 subparagraph (1) (a)1 ~~paragraph (1) (a)~~.

406 Section 10. Subsection (2) of section 435.12, Florida

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407 Statutes, is amended to read:

408 435.12 Care Provider Background Screening Clearinghouse.—

409 (2) (a) To ensure that the information in the clearinghouse  
410 is current, the fingerprints of an employee required to be  
411 screened by a specified agency and included in the clearinghouse  
412 must be:

413 1. Retained by the Department of Law Enforcement pursuant  
414 to s. 943.05(2) (g) and (h) and (3), and the Department of Law  
415 Enforcement must report the results of searching those  
416 fingerprints against state incoming arrest fingerprint  
417 submissions to the Agency for Health Care Administration for  
418 inclusion in the clearinghouse.

419 2. Retained by the Federal Bureau of Investigation in the  
420 national retained print arrest notification program as soon as  
421 the Department of Law Enforcement begins participation in such  
422 program. Arrest prints will be searched against retained prints  
423 at the Federal Bureau of Investigation and notification of  
424 arrests will be forwarded to the Florida Department of Law  
425 Enforcement and reported to the Agency for Health Care  
426 Administration for inclusion in the clearinghouse.

427 3.2. Resubmitted for a Federal Bureau of Investigation  
428 national criminal history check every 5 years until such time as  
429 the fingerprints are retained by the Federal Bureau of  
430 Investigation.

431 4.3. Subject to retention on a 5-year renewal basis with  
432 fees collected at the time of initial submission or resubmission  
433 of fingerprints.

434 5. Submitted with a photograph of the person taken at the  
435 time the fingerprints are submitted.

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436 (b) Until such time as the fingerprints are enrolled in the  
437 national retained print arrest notification program ~~retained~~ at  
438 the Federal Bureau of Investigation, an employee with a break in  
439 service of more than 90 days from a position that requires  
440 screening by a specified agency must submit to a national  
441 screening if the person returns to a position that requires  
442 screening by a specified agency.

443 (c) An employer of persons subject to screening by a  
444 specified agency must register with the clearinghouse and  
445 maintain the employment status of all employees within the  
446 clearinghouse. Initial employment status and any changes in  
447 status must be reported within 10 business days.

448 (d) An employer must register with and initiate all  
449 criminal history checks through the clearinghouse before  
450 referring an employee or potential employee for electronic  
451 fingerprint submission to the Department of Law Enforcement. The  
452 registration must include the employee's full first name, middle  
453 initial, and last name; social security number; date of birth;  
454 mailing address; sex; and race. Individuals, persons,  
455 applicants, and controlling interests that cannot legally obtain  
456 a social security number must provide an individual taxpayer  
457 identification number.

458 Section 11. This act shall take effect July 1, 2014.