

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: SB 1008

INTRODUCER: Senators Grall and Book

SUBJECT: Background Screening Requirements for Health Care Practitioners

DATE: February 12, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Gerbrandt</u>	<u>McKnight</u>	<u>AHS</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1008 amends s. 456.0135, F.S., to add background screening requirements to numerous health care professions where not currently required.

The bill requires each health care practitioner who was licensed before July 1, 2024, to comply with the background screening requirements in s. 456.0135, F.S., by July 1, 2025. Additionally, the bill amends each affected practitioner practice act to add the licensure requirement to submit to a background screening pursuant to s. 456.0135, F.S., and, for specified practitioners, to require a background screening for licensure by endorsement. The bill also makes technical and conforming changes.

The bill has a significant, negative fiscal impact on state government. *See* Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Background Screening

Florida provides standard procedures for screening a prospective employee¹ where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.² Chapter 435, F.S., establishes procedures for criminal history background screening of prospective employees and outlines the screening requirements. There are two levels of background screening: level 1 and level 2.

¹ Section 435.02(2), F.S., defines “employee” to mean any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers.

² Chapter 435, F.S.

- Level 1 Screening includes, at a minimum, employment history checks, statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE), and a check of the Dru Sjodin National Sex Offender Public Website,³ and may include criminal records checks through local law enforcement agencies. A Level 1 screening may be paid for and conducted through FDLE's website, which provides immediate results.⁴
- Level 2 Screening includes, at a minimum, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁵

Florida law authorizes and outlines specific elements required for Level 1 and Level 2 background screening and establishes requirements for determining whether an individual passes a screening regarding an individual's criminal history. All individuals subject to background screening must be confirmed to have not been arrested for and waiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent, and the record has not been sealed or expunged for, any of 52 offenses prohibited under Florida law, or similar law of another jurisdiction.⁶

Exemptions

Should a person be disqualified from employment due to failing a background screening, he or she may apply to the secretary of the appropriate agency for an exemption. Current law allows the secretary to exempt applicants from disqualification under certain circumstances including:⁷

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the cited statutes or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, this exemption may not be granted until at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense.

Receiving an exemption allows that individual to be employed in a profession or workplace where background screening is statutorily required despite the disqualifying offense in that

³ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. Available at www.nsopw.gov (last visited Jan. 25, 2024).

⁴ Florida Department of Law Enforcement, State of Florida Criminal History Records Check. Available at <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited Jan. 25, 2024).

⁵ Section 435.04, F.S.

⁶ Section 435.04(2), F.S.

⁷ Section 435.07, F.S.

person's past. Certain criminal backgrounds, however, render a person ineligible for an exemption; a person who is considered a sexual predator,⁸ career offender,⁹ or registered sexual offender¹⁰ is not eligible for exemption.¹¹

Care Provider Background Screening Clearinghouse

Florida has established different programs for the facilitation of background screenings. The Care Provider Background Screening Clearinghouse (Clearinghouse) is used by state agencies for statutorily-required screenings, including screenings required as part of the licensure process for specified health care professionals.

In 2012, the Legislature created the Clearinghouse to create a single program of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.¹² Current designated agencies participating in the Clearinghouse include:¹³

- The Agency for Health Care Administration (AHCA);
- The Department of Health (DOH);
- The Department of Children and Families (DCF);
- The Department of Elder Affairs (DOEA);
- The Agency for Persons with Disabilities (APD);
- The Department of Education (DOE);
- Regional workforce boards providing services as defined in s. 445.002(3), F.S.; and
- Local licensing agencies approved pursuant to s. 402.307, F.S., when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

Employers whose employees are screened through an agency participating in the Clearinghouse must maintain the status of individuals being screened and update the Clearinghouse regarding any employment changes within 10 business days of the change.¹⁴

The Clearinghouse allows for constant review of new criminal history information through the federal Rap Back Service¹⁵ which continually matches fingerprints against new arrests or convictions that occur after the individual was originally screened. Once a person's screening

⁸ Section 775.21, F.S.

⁹ Section 775.261, F.S.

¹⁰ Section 943.0435, F.S.

¹¹ Section 435.07(4)(b), F.S.

¹² Chapter 2012-73, L.O.F.

¹³ Section 435.02(5), F.S. Additional entities were added to the list of designated entities beginning in 2023; these entities include district units, special district units, the Florida School for the Deaf and Blind, the Florida Virtual School, virtual instruction programs, charter schools, hope operators, private schools participating in certain scholarship programs, and alternative schools. *See also*, Ch. 2022-154, L.O.F.

¹⁴ Section 435.12(2)(c), F.S.; Beginning January 1, 2024, employers must report changes in an employee's status within five business days for employees screened after January 1, 2024.

¹⁵ The Rap Back Service is managed by the FBI's Criminal Justice Information Services Division. For more information, see the Federal Bureau of Investigation, Privacy Impact Assessment for the Next Generation Identification (NGI) Rap Back Service. Available at <https://www.fbi.gov/file-repository/pia-ngi-rap-back-service.pdf/view> (last visited January 25, 2024).

record is in the Clearinghouse, that person may avoid the need for any future state screens and related fees for screenings, depending on the screening agencies or organizations.¹⁶

Background Screening of Health Care Practitioners

The DOH received 134,362 applications last fiscal year for initial health care practitioner licensing. Of those initial applications, 68 percent of applicants were required under law to submit a Level 2 background screening for state and federal criminal history as part of the application review. These screened professionals use electronic Livescan providers to submit fingerprints at a cost of \$37.50 to the individual, plus the Livescan fees. Screening is processed by the FDLE, sent to the Clearinghouse, and matched to the application within a few days. Last year, 17,532 applicants had screenings that included criminal history and their application review often included the submission of further documentation and an appearance before their professional board to be approved for licensure. Of applicants for initial licensure, 123 were denied licensure, which may have included reasons other than criminal history.¹⁷

The following table is the list of screened and non-screened health care professions.¹⁸

Professions	
Screened	Non-Screened
Athletic Trainers	Acupuncture
Chiropractic Physician	Clinical Laboratory Personnel
Certified Chiropractic Physician's Assistant	Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling
Massage Therapists and Massage Establishment Owner	Dentistry and Dental Laboratory
Orthotists, Prosthetists, Pedorthists, Orthotic Fitters, Orthotic Fitter Assistants, O&P Resident	Dietetics and Nutrition
Osteopathic Physician	Electrolysis and Electrolysis Facility
Osteopathic Resident Physicians/Interns/Fellows	Emergency Medical Technician
Medical Doctor	Genetic Counselor
Physician Assistant	Hearing Aid Specialist
Resident Physicians, Interns, Fellows, and House Physicians	Medical Physicist
Anesthesiologist Assistant	Midwifery
Advanced Practice Registered Nurse	Nursing Home Administrator

¹⁶ Agency for Health Care Administration, *Clearinghouse Renewals*. Available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/Renewals.shtml (last visited January 25, 2024). Fingerprints are retained for five years. Employers have an option to renew screenings at the end of the five year period through a “Clearinghouse Renewal” process which allows employee’s fingerprints to be retained without being re-fingerprinted.

¹⁷ DOH Staff analysis of SB 1008, January 11, 2024. On file with Senate Health Policy Committee staff.

¹⁸ *Id.*

Professions	
Screened	Non-Screened
Certified Nursing Assistant	Occupational Therapy
Compact Upgrade to Multi-State License	Office Surgery Registration
Licensed Practical Nurse	Opticianry and Optical Establishment
Registered Nurse	Optometry
Pharmacy Owner	Pain Management Clinic
Prescription Department Manager	Paramedic
Podiatric Physician	Pharmacist
Certified Podiatric X-Ray Assistant	Physical Therapy
Applicants to the Florida Veterans Application for Licensure Online Response (VALOR) System	Psychology
Exemption applications for disqualifying offenses	Radiological Technician
	Respiratory Care
	School Psychology
	Speech-Language Pathology and Audiology

In addition to individual license requirements and the requirements in ch. 435, F.S. s. 408.809, F.S., establishes background screening requirements for certain employees of facilities licensed by the AHCA pursuant to ch. 408, F.S. Specifically, the statute requires that the following employees pass a Level 2 background screening:

- The licensee, if an individual.
- The administrator or a similarly titled person who is responsible for the day-to-day operation of the facility.
- The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or facility.
- Any person who has a controlling interest.
- Any person, as required by authorizing statutes, seeking employment with a licensee or facility who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or facility whose responsibilities require him or her to provide personal care or personal services directly to clients, or contracting with a licensee or facility to work 20 hours a week or more who will have access to client funds, personal property, or living areas. Evidence of contractor screening may be retained by the contractor’s employer or the licensee.

Additionally, s. 408.809, F.S., provides a second list of disqualifying offenses which is additional to the list in s. 435.04(2), F.S. Overall, this statute adds 19 offenses to the list of disqualifying offenses after accounting for duplicates.

Once licensed, practitioners in screened professions with ongoing screening requirements have their fingerprints retained with FDLE so new charges are found through rerunning the criminal history checks. Licensees are also required to report any criminal charges when they occur. The process of reviewing new criminal charges may disrupt the licensee's ability to practice.¹⁹

A licensee who does not pay to retain their fingerprints receives notification from the DOH when those prints are expiring and that fingerprints must be retained or renewed. The DOH employs strategies to ensure compliance by the licensee, such as reminders, email notifications, and letters. Approximately 62,364 licensees (4.3 percent of all licensees) are required to renew their fingerprints per year. Of those, approximately 28 percent fail to do so; failure to renew fingerprints results in disciplinary cases which may ultimately cause a loss of licensure.²⁰

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 456.0135, F.S., to include non-screened health care practitioners licensed under chs. 462, 463, 465, 466, 467, 468 (part I, part II, part III, part V, part X, or part XIV), 478, 483, 484, 486, 490, and 491, F.S., and to require each health care practitioner to comply with the background screening requirements of s. 456.0135, F.S., by July 1, 2025.

Sections 3-41 amend various practice acts to include background screening as a licensure requirement. Specifically, the bill amends:

- Acupuncture: Licensure Qualifications and Fees in s. 457.105, F.S.
- Optometry: Licensure and Certification by Examination in s. 463.006, F.S.
- Pharmacy:
 - Licensure by Examination in s. 465.007, F.S.
 - Licensure by Endorsement in s. 465.0075, F.S.
 - Registration of Pharmacy Interns in s. 465.013, F.S.
 - Pharmacy Technician in s. 465.014, F.S.
- Dentistry:
 - Dental Hygiene and Dental Laboratories: Examination of Dentists in s. 466.006, F.S.
 - Dental Hygiene and Dental Laboratories: Application for Health Access Dental License in s. 466.0067, F.S.
 - Dental Hygiene and Dental Laboratories: Examination of Dental Hygienists in s. 466.007, F.S.
- Midwifery: Licensed Midwives in s. 467.011, F.S.
- Speech-Language Pathology or Audiology:
 - Licensure in s. 468.1185, F.S.
 - Assistant Certification in s. 468.1215, F.S.
 - Licensure by Examination s. 468.1695, F.S.
- Occupational Therapy:
 - Requirements for Licensure in s. 468.209, F.S.
 - Licensure by Endorsement in s. 468.213, F.S.
- Respiratory Therapy:

¹⁹ Dept. of Health Staff analysis of SB 1008, January 11, 2024 (on file with Senate Health Policy Committee staff).

²⁰ *Id.*

- Licensure Requirements in s. 468.355, F.S.
- Licensure by Endorsement in s. 468.358, F.S.
- Dietitian/Nutritionist:
 - Requirements for Licensure in s. 468.509, F.S.
 - Requirements for Licensure by Endorsement in s. 468.513, F.S.
- Orthotics, Prosthetics, and Pedorthics: License, Registration and Examination in s. 468.803, F.S.
- Electrolysis: Requirements for Licensure in s. 478.45, F.S.
- Clinical Laboratory Personnel: Application for Clinical Laboratory Personnel License in s. 483.815, F.S.
- Medical Physicists in s. 483.901, F.S.
- Genetic Counseling in s. 483.914, F.S.
- Dispensing Optical Devices and Hearing Aids:
 - Licensure of Opticians in s. 484.007, F.S.
 - Licensure by Examination in s. 484.045, F.S.
- Physical Therapy Practice:
 - Physical Therapists in s. 486.031, F.S.
 - Physical Therapist Assistant in s. 486.102, F.S.
- Psychological Services:
 - Licensure by Examination in s. 490.005, F.S.
 - Provisional Licensure in s. 490.0051, F.S.
 - Licensure by Endorsement in s. 490.006, F.S.
- Clinical Counseling and Psychotherapy Services:
 - Intern Registration Requirements in s. 491.0045, F.S.
 - Provisional License Requirements in s. 491.0046, F.S.
 - Licensure by Examination in s. 491.005, F.S.
 - Licensure or Certification by Endorsement in s. 491.006, F.S.
- Physical Therapy Practice:
 - Powers and Duties of the Board of Physical Therapy Practice in s. 486.025, F.S.
 - Physical Therapist; Issuance of Temporary Permit in s. 486.0715, F.S.
 - Physical Therapist Assistant; Issuance of Temporary Permit in s. 486.1065, F.S.
- Clinical Counseling and Psychotherapy Services: Definitions in s. 491.003, F.S.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has an indeterminate negative fiscal impact on health care practitioners who are required to submit to a background screening pursuant to the bill's provisions. The cost per practitioner will likely be the cost for the background screening, \$37.50 plus any the Livescan provider's fee, and \$24 every five years for fingerprint retention in the Clearinghouse.²¹

Additionally, the Department of Health (DOH) reports that 28 percent of applicants who are required to renew their fingerprints fail to do so and this can lead to licensure actions including fines and eventual revocation or non-renewal of a license. These licensure actions may have a negative fiscal impact on such practitioners.²²

C. Government Sector Impact:

The bill may have a positive fiscal impact on the Florida Department of Law Enforcement's (FDLE) Operating Trust Fund. According to the FDLE, the total revenue for the state portion of a state and national criminal history check with five years of fingerprint retention within the Clearinghouse is \$48 per person.²³

According to the DOH the bill will have a significant negative fiscal impact on the department, and will require \$2.7 million recurring and \$1.57 million nonrecurring, and 21 full-time equivalent positions. The provisions of the bill will likely increase the number of reviews, cases, investigations, disciplinary actions, and prosecution management that cannot be absorbed within existing resources. The department will

²¹ Dept. of Health Staff analysis of SB 1008, January 11, 2024 (on file with Senate Health Policy Committee staff).

²² *Id.*

²³ Florida Dept. of Law Enforcement staff analysis of SB 1008, Dec. 22, 2023, revised Jan. 19, 2024, (on file with Senate Health Policy Committee staff).

experience an increase in workload associated with updating and maintaining technology system requirements. The breakdown of costs is as follows:

- Salaries and Benefits: \$2,392,571 recurring;
- Expense: \$257,375 recurring and \$193,111 nonrecurring;
- OPS: \$332,808;
- Human Resources: \$8,346 recurring;
- Contracted Services: \$250,290 nonrecurring;
- Non-operating Transfer to AHCA: \$50,000 recurring and \$800,000 nonrecurring.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Department of Law Enforcement's (FDLE) staff analysis indicates that the additional practitioners who are required to get fingerprinted within one year of the bill's passage may cause unexpected termination of processes within the Biometric Identification System (BIS) and FALCON (the application that manages retained applicant fingerprints). At a minimum, the increase could cause significant detrimental system issues which would negatively impact the processing of criminal booking responses and all other applicant (non-criminal) background checks.²⁵ The FDLE recommends staggering the time frames by which each profession must be screened or extending the timeframe by which all professions must be screened.²⁶

The bill amends s. 457.105, F.S., pertaining to acupuncture for applicants and licensees to submit to background screening; however, ch. 457, F.S., was not included in the amended language for s. 456.0135(1), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.0135, 457.105, 463.006, 465.007, 465.0075, 465.013, 465.014, 466.006, 466.0067, 466.007, 467.011, 468.1185, 468.1215, 468.1695, 468.209, 468.213, 468.355, 468.358, 468.509, 468.513, 468.803, 478.45, 483.815, 483.901, 483.914, 484.007, 484.045, 486.031, 486.102, 490.005, 490.0051, 490.006, 491.0045, 491.0046, 491.005, 491.006, 486.025, 486.0715, 486.1065, and 491.003.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

²⁴ Dept. of Health Staff analysis of SB 1008, January 11, 2024, (on file with Senate Health Policy Committee staff).

²⁵ FDLE staff analysis of SB 1008, Dec. 22, 2023, revised Jan. 19, 2024, on file with Senate Health Policy Committee staff.

²⁶ *Id.*

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
