

Committee Substitute for Senate Bill No. 988

An act relating to high-risk offenders; amending s. 322.141, F.S.; requiring distinctive markings for driver's licenses and identification cards issued to persons who are designated as sexual predators or subject to registration as sexual offenders; requiring sexual predators and sexual offenders to obtain an updated or a renewed driver's license or identification card; amending s. 322.212, F.S.; prohibiting the alteration of sexual predator or sexual offender markings on driver's licenses or identification cards, for which there are criminal penalties; amending s. 775.21, F.S.; requiring sexual predators to obtain a distinctive driver's license or identification card; amending s. 943.0435, F.S.; requiring sexual offenders to obtain a distinctive driver's license or identification card; amending s. 944.607, F.S.; requiring specified offenders who are under the supervision of the Department of Corrections but are not incarcerated to obtain a distinctive driver's license or identification card; amending s. 1012.465, F.S.; revising background screening requirements for certain noninstructional school district employees and contractors; creating s. 1012.467, F.S.; adding noninstructional contractors to those who must meet the screening requirements; defining the terms "noninstructional contractor," "convicted," and "school grounds"; providing for the submission of fingerprints; requiring school districts to screen results of criminal records checks; requiring the cost of background screening requirements to be borne by certain parties; providing a cap on fees that may be charged; authorizing the retention of fingerprints; providing a list of violations that such persons must not have committed if they are to satisfy the screening requirements; providing penalties; providing grounds for contesting denial of access to school grounds; providing reporting requirements; providing that the failure to meet requirements is a felony of the third degree; allowing certain educational entities to share information derived from checks of criminal history records; authorizing the Department of Law Enforcement to adopt rules; providing immunity from civil or criminal liability; creating s. 1012.468, F.S.; specifying exemptions for contractors; providing criteria and conditions; providing that exempted contractors are subject to a search of certain databases that list sexual predators and sexual offenders; providing consequences of a failure to meet the screening requirements; prohibiting school districts from conducting additional criminal history checks; specifying that the act does not create a private cause of action or a new duty of care or basis of liability; creating s. 1012.321, F.S.; creating an exception for certain instructional personnel; providing criteria; providing effective dates.

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

Section 1. Effective August 1, 2007, section 322.141, Florida Statutes, is amended to read:

322.141 Color or markings of certain licenses or identification cards.—

(1) All licenses originally issued or reissued by the department to persons under the age of 21 years for the operation of motor vehicles shall have markings or color which shall be obviously separate and distinct from all other licenses issued by the department for the operation of motor vehicles.

(2)(a) All licenses for the operation of motor vehicles originally issued or reissued by the department to persons who have insulin-dependent diabetes may, at the request of the applicant, have distinctive markings separate and distinct from all other licenses issued by the department.

(b) At the time of application for original license or reissue, the department shall require such proof as it deems appropriate that a person has insulin-dependent diabetes.

(3) All licenses for the operation of motor vehicles or identification cards originally issued or reissued by the department to persons who are designated as sexual predators under s. 775.21 or subject to registration as sexual offenders under s. 943.0435 or s. 944.607 shall have on the front of the license or identification card the following:

(a) For a person designated as a sexual predator under s. 775.21, the marking “775.21, F.S.”

(b) For a person subject to registration as a sexual offender under s. 943.0435 or s. 944.607, the marking “943.0435, F.S.”

(4) Unless previously secured or updated, each sexual offender and sexual predator shall report to the department during the month of his or her reregistration as required under s. 775.21(8), s. 943.0435(14), or s. 944.607(13) in order to obtain an updated or renewed driver’s license or identification card as required by subsection (3).

Section 2. Effective February 1, 2008, paragraph (c) is added to subsection (5) of section 322.212, Florida Statutes, to read:

322.212 Unauthorized possession of, and other unlawful acts in relation to, driver’s license or identification card.—

(5)

(c) It is unlawful for any person designated as a sexual predator or sexual offender to have in his or her possession a driver’s license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141 are not displayed or have been altered.

Section 3. Paragraph (f) of subsection (6) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

(6) REGISTRATION.—

(f) Within 48 hours after the registration required under paragraph (a) or paragraph (e), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent or temporary residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued to the sexual predator must be in compliance with s. 322.141(3).

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

The sheriff shall promptly provide to the department the information received from the sexual predator.

Section 4. Subsection (3) of section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver's license office of the Department of Highway Safety and Motor Vehicles, unless a driver's license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver's license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual offender reported as required in subsection (2). The sexual offender shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued must be in compliance with s. 322.141(3).

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.

Section 5. Subsection (9) of section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver's license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver's license or identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 6. Subsection (1) of section 1012.465, Florida Statutes, is amended to read:

1012.465 Background screening requirements for certain noninstructional school district employees and contractors.—

(1) Except as provided in s. 1012.467 or s. 1012.468, noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in s. 1012.32. Contractual personnel shall include any vendor, individual, or entity under contract with a school or the school board.

Section 7. Section 1012.467, Florida Statutes, is created to read:

1012.467 Noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.—

(1) As used in this section, the term:

(a) “Noninstructional contractor” means any vendor, individual, or entity under contract with a school or with the school board who receives remuneration for services performed for the school district or a school, but who is not otherwise considered an employee of the school district. The term also includes any employee of a contractor who performs services for the school district or school under the contract and any subcontractor and its employees.

(b) “Convicted” has the same meaning as in s. 943.0435.

(c) “School grounds” means the buildings and grounds of any public pre-kindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, or any combination of grades pre-kindergarten through grade 12, together with the school district land on which the buildings are located. The term does not include:

1. Any other facility or location where school classes or activities may be located or take place;

2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, or any combination of grades prekindergarten through grade 12, or contiguous school district land, during any time period in which students are not permitted access; or

3. Any building described in this paragraph during any period in which it is used solely as a career or technical center under part IV of chapter 1004 for postsecondary or adult education.

(2)(a) A fingerprint-based criminal history check shall be performed on each noninstructional contractor who is permitted access to school grounds when students are present, whose performance of the contract with the school or school board is not anticipated to result in direct contact with students, and for whom any unanticipated contact would be infrequent and incidental. Criminal history checks shall be performed at least once every 5 years. For the initial criminal history check, each noninstructional contractor who is subject to the criminal history check shall file with the Department of Law Enforcement a complete set of fingerprints taken by an authorized law enforcement agency or an employee of a school district, a public school, or a private company who is trained to take fingerprints. The fingerprints shall be electronically submitted for state processing to the Department of Law Enforcement, which shall in turn submit the fingerprints to the Federal Bureau of Investigation for national processing. The results of each criminal history check shall be reported to the school district in which the individual is seeking access and entered into the shared system described in subsection (7). The school district shall screen the results using the disqualifying offenses in paragraph (g). The cost of the criminal history check may be borne by the district school board, the school, or the contractor. A fee that is charged by a district school board for such checks may not exceed 30 percent of the total amount charged by the Department of Law Enforcement and the Federal Bureau of Investigation.

(b) As authorized by law, the Department of Law Enforcement shall retain the fingerprints submitted by the school districts pursuant to this subsection to the Department of Law Enforcement for a criminal history background screening in a manner provided by rule and enter the fingerprints in the statewide automated fingerprint identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system under s. 943.051.

(c) As authorized by law, the Department of Law Enforcement shall search all arrest fingerprint cards received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (b).

(d) School districts may participate in the search process described in this subsection by paying an annual fee to the Department of Law Enforcement.

(e) A fingerprint retained pursuant to this subsection shall be purged from the automated fingerprint identification system 5 years following the date the fingerprint was initially submitted. The Department of Law Enforcement shall set the amount of the annual fee to be imposed upon each participating agency for performing these searches and establishing the procedures for retaining fingerprints and disseminating search results. The fee may be borne as provided by law. Fees may be waived or reduced by the executive director of the Department of Law Enforcement for good cause shown.

(f) A noninstructional contractor who is subject to a criminal history check under this section shall inform a school district that he or she has completed a criminal history check in another school district within the last 5 years. The school district shall verify the results of the contractor's criminal history check using the shared system described in subsection (7). The school district may not charge the contractor a fee for verifying the results of his or her criminal history check.

(g) A noninstructional contractor for whom a criminal history check is required under this section may not have been convicted of any of the following offenses designated in the Florida Statutes, any similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former provision of the Florida Statutes to one of the following offenses:

1. Any offense listed in s. 943.0435(1)(a)1., relating to the registration of an individual as a sexual offender.

2. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct.

3. Section 394.4593, relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct.

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.
6. Section 787.01, relating to kidnapping.
7. Any offense under chapter 800, relating to lewdness and indecent exposure.
8. Section 826.04, relating to incest.
9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(3) If it is found that a noninstructional contractor has been convicted of any of the offenses listed in paragraph (2)(g), the individual shall be immediately suspended from having access to school grounds and shall remain suspended unless and until the conviction is set aside in any postconviction proceeding.

(4) A noninstructional contractor who has been convicted of any of the offenses listed in paragraph (2)(g) may not be permitted on school grounds when students are present unless the contractor has received a full pardon or has had his or her civil rights restored. A noninstructional contractor who is present on school grounds in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If a school district has reasonable cause to believe that grounds exist for the denial of a contractor's access to school grounds when students are present, it shall notify the contractor in writing, stating the specific record that indicates noncompliance with the standards set forth in this section. It is the responsibility of the affected contractor to contest his or her denial. The only basis for contesting the denial is proof of mistaken identity or that an offense from another jurisdiction is not disqualifying under paragraph (2)(g).

(6) Each contractor who is subject to the requirements of this section shall agree to inform his or her employer or the party to whom he or she is under contract and the school district within 48 hours if he or she is arrested for any of the disqualifying offenses in paragraph (2)(g). A contractor who willfully fails to comply with this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. If the employer of a contractor or the party to whom the contractor is under contract knows the contractor has been arrested for any of the disqualifying offenses in paragraph (2)(g) and authorizes the contractor to be present on school grounds when students are present, such employer or such party commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(7)(a) The Department of Law Enforcement shall implement a system that allows for the results of a criminal history check provided to a school district to be shared with other school districts through a secure Internet website or other secure electronic means. The Department of Law Enforcement may adopt rules under ss. 120.536(1) and 120.54 to implement this paragraph.

(b) An employee of a school district, a charter school, a lab school, a charter lab school, or the Florida School for the Deaf and the Blind who requests or shares criminal history information under this section is immune from civil or criminal liability for any good-faith conduct that occurs during the performance of and within the scope of responsibilities related to the record check.

Section 8. Section 1012.468, Florida Statutes, is created to read:

1012.468 Exceptions to certain fingerprinting and criminal history checks.—

(1) As used in this section, the term “noninstructional contractor” means any vendor, individual, or entity under contract with a school or with the school board who receives remuneration for services performed for the school district or a school, but who is not otherwise considered an employee of the school district. The term also includes any employee of a contractor who performs services for the school district or school under the contract and any subcontractor and its employees.

(2) A district school board shall exempt from the screening requirements set forth in ss. 1012.465 and 1012.467 the following noninstructional contractors:

(a)1. Noninstructional contractors who are under the direct supervision of a school district employee or contractor who has had a criminal history check and meets the screening requirements under s. 1012.32, s. 1012.465, s. 1012.467, or s. 1012.56. For purposes of this paragraph, the term “direct supervision” means that a school district employee or contractor is physically present with a noninstructional contractor when the contractor has access to a student and the access remains in the school district employee’s or the contractor’s line of sight.

2. If a noninstructional contractor who is exempt under this subsection is no longer under direct supervision as specified in subparagraph 1., the contractor may not be permitted on school grounds when students are present until the contractor meets the screening requirements in s. 1012.465 or s. 1012.467.

(b) Noninstructional contractors who are required by law to undergo a level 2 background screening pursuant to s. 435.04 for licensure, certification, employment, or other purposes and who submit evidence of meeting the following criteria:

1. The contractor meets the screening standards in s. 435.04;
2. The contractor’s license or certificate is active and in good standing, if the contractor is a licensee or certificateholder; and
3. The contractor completed the criminal history check within 5 years prior to seeking access to school grounds when students are present.

(c) A law enforcement officer, as defined in s. 943.10, who is assigned or dispatched to school grounds by his or her employer.

(d) An employee or medical director of an ambulance provider, licensed pursuant to chapter 401, who is providing services within the scope of part III of chapter 401 on behalf of such ambulance provider.

(e) Noninstructional contractors who remain at a site where students are not permitted if the site is separated from the remainder of the school grounds by a single chain-link fence of 6 feet in height.

(f) A noninstructional contractor who provides pick-up or delivery services and those services involve brief visits on school grounds when students are present.

(3)(a) A noninstructional contractor who is exempt under this section from the screening requirements set forth in s. 1012.465 or s. 1012.467 is subject to a search of his or her name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under s. 943.043 and the national sex offender public registry maintained by the United States Department of Justice. The school district shall conduct the search required under this subsection without charge or fee to the contractor.

(b) A noninstructional contractor who is identified as a sexual predator or sexual offender in the registry search required in paragraph (a) may not be permitted on school grounds when students are present. Upon determining that a noninstructional contractor may not be permitted on school grounds pursuant to this subsection, the school district shall notify the vendor, individual, or entity under contract within 3 business days.

(4) A school district may not subject a contractor who meets the requirements in subsection (2) to an additional criminal history check. Upon submission of evidence and verification by the school district, the school district must accept the results of the criminal history check for the contractor.

(5) This section and ss. 1012.465 and 1012.467 do not create or imply any private cause of action for a violation of these sections and do not create any new duty of care or basis of liability.

Section 9. Section 1012.321, Florida Statutes, is created to read:

1012.321 Exceptions for certain instructional personnel from background screening requirements.—Instructional personnel who are required to undergo level 2 background screening under s. 393.0655 or s. 402.305 and who meet the level 2 screening standards in s. 435.04 are not required to be rescreened in order to satisfy the screening requirements in s. 1012.32 if the instructional personnel:

(1) Have completed the criminal history check within 5 years prior to having direct contact with students;

(2) Are rescreened every 5 years and meet the level 2 screening standards; and

(3) Have their fingerprints retained by the Department of Law Enforcement.

Section 10. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2007.

Approved by the Governor June 20, 2007.

Filed in Office Secretary of State June 20, 2007.