

CHAPTER 2014-84

Committee Substitute for Committee Substitute for Senate Bill No. 674

An act relating to background screening; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to share reproductions of driver license images with the Department of Health and the Agency for Health Care Administration for specified purposes; amending s. 408.806, F.S.; revising the requirements for health care licensure; revising a provision requiring an affidavit; amending s. 408.809, F.S.; exempting a person whose fingerprints are already enrolled in a specified Federal Bureau of Investigation program from the requirement that such fingerprints be forwarded to the bureau; requiring certain persons to submit their fingerprints electronically; requiring the Department of Law Enforcement to retain fingerprints when the department begins participation in a certain program; revising requirements for proof of compliance with level 2 screening standards; revising terminology; adding additional disqualifying offenses to background screening requirements; adding an exemption clause from disqualification for new offenses; amending s. 413.208, F.S.; providing applicability for background screening requirements for certain registrants; repealing s. 7 of chapter 2012-73, Laws of Florida, relating to background screening requirements; amending s. 435.04, F.S.; revising information required for vendors submitting employee fingerprints; adding an additional disqualifying offense to background screening requirements; amending s. 435.05, F.S.; revising a provision requiring the annual submission of an affidavit; amending s. 435.07, F.S.; revising criteria for an exemption from disqualification for an employee under certain conditions; amending s. 435.12, F.S.; requiring the fingerprints of an employee required to be screened by a specified agency and included in the clearinghouse also to be retained in the national retained print arrest notification program at a specified time; requiring simultaneous submission of a photographic image and electronic fingerprints to the Care Provider Background Screening Clearinghouse; requiring an employer to follow certain criminal history check procedures and include specified information regarding referral and registration of an employee for electronic fingerprinting with the clearinghouse; providing an effective date.

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

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

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for

identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may shall be made and issued only:

- (a) For departmental administrative purposes;
- (b) For the issuance of duplicate licenses;
- (c) In response to law enforcement agency requests;
- (d) To the Department of Business and Professional Regulation and the Department of Health pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation or the Department of Health;
- (e) To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075;
- (f) To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases;
- (g) To the Department of Children and Families pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415;
- (h) To the Department of Children and Families pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations;
- (i) To the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of authorized agencies verifying photographs in the Care Provider Background Screening Clearinghouse authorized under s. 435.12;
- (j)(i) To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims;
- (k)(j) To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin of any investigations, including autopsies and other laboratory examinations, authorized in s. 406.11; or
- (l)(k) To the following persons for the purpose of identifying a person as part of the official work of a court:

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

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

408.806 License application process.—

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

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

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

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

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

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

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

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

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

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

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

- (a) Licensure applications.
- (b) Required signatures.
- (c) Payment of fees.
- (d) Notarization or attestation of applications.

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

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

408.809 Background screening; prohibited offenses.—

(2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check unless the person's fingerprints are enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h), the person must submit fingerprints electronically file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints shall may be retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h) and enrolled in the national retained print arrest notification program when the Department of Law Enforcement begins participation in the program. The cost of the state and national criminal history records checks required by level 2 screening may be borne by

the licensee or the person fingerprinted. Until a specified agency is fully implemented ~~the person's background screening results are retained in the clearinghouse created under s. 435.12, the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Families ~~Family Services~~, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651, provided that:~~

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

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

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

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

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

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

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

(d) Section 409.9201, relating to Medicaid fraud.

(e) Section 741.28, relating to domestic violence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

435.04 Level 2 screening standards.—

(1)

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

1. Meet the requirements of s. 943.053; and

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

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

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

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

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

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

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

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

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

1.(a) Felonies for which at least 3 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 sanction for the disqualifying felony;

2.(b) Misdemeanors prohibited under any of the statutes cited in this chapter 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 sanction;

3.(e) 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 sanction; or

4.(d) Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 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 sanction for the disqualifying offense.

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

For the purposes of this subsection, the term “felonies” means both felonies prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions.

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

employment pursuant to this chapter without application of the waiting period in ~~subparagraph (1)(a)~~¹ ~~paragraph (1)(a)~~.

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

435.12 Care Provider Background Screening Clearinghouse.—

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

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

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

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

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

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

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

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

(d) An employer must register with and initiate all criminal history checks through the clearinghouse before referring an employee or potential employee for electronic fingerprint submission to the Department of Law

Enforcement. The registration must include the employee's full first name, middle initial, and last name; social security number; date of birth; mailing address; sex; and race. Individuals, persons, applicants, and controlling interests that cannot legally obtain a social security number must provide an individual taxpayer identification number.

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

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.