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# **Policy Council**

**TUESDAY, MARCH 9, 2010  
2:00 – 4:30 P.M.  
MORRIS HALL**

**MEETING PACKET**

**Larry Cretul  
Speaker**

**Rep. Marcelo Llorente  
Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

### Policy Council

**Start Date and Time:** Tuesday, March 09, 2010 02:00 pm

**End Date and Time:** Tuesday, March 09, 2010 04:30 pm

**Location:** Morris Hall (17 HOB)

**Duration:** 2.50 hrs

#### Consideration of the following bill(s):

HB 707 International Banking Corporations by Grady

HB 1065 Biodiesel Fuel by Precourt

HB 7069 Background Screening by Criminal & Civil Justice Policy Council, Snyder, Porth

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be Monday, March 8, 2010, at 6:00 PM.

By request of the Chair, all council members are asked to have amendments to bills on the agenda submitted to staff by 6:00 P.M., Monday, March 8, 2010.

**NOTICE FINALIZED on 03/05/2010 15:29 by Glatfelter.Sukie**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS


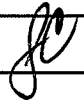
**BILL #:** HB 707

International Banking Corporations

**SPONSOR(S):** Grady

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1264

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 0 N	Barnum	Cooper
2)	Policy Council		Liepshutz 	Cicccone 
3)	General Government Policy Council			
4)				
5)				

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) has authority to regulate entities conducting banking or trust business in Florida. An international banking corporation or other foreign institution that engages in banking activities, must be licensed by the OFR before transacting business in Florida. Although an international banking corporation may operate through a variety of business models, each of which must be separately licensed, a particular business model not addressed in Florida Statutes, and thus not subject to OFR regulation, is an "international trust company representative office."

To date, only one international trust company representative office has operated in Florida. Stanford Trust Company Limited's representative office is no longer in operation due to federal charges brought against Robert Allen Stanford for operating an \$8 billion Ponzi scheme.

HB 707 defines an international trust company representative office and provides for its regulation by the OFR. An international trust company representative office will be subject to:

- Licensing and examination.
- Audit and record keeping requirements.
- Injunctions and subpoenas.
- Administrative action and fines.
- Voluntary and involuntary dissolution.

The bill stipulates that international trust company representative offices will not be authorized to accept deposits or make loans. Activities will be limited to those which are ancillary to the trust business and of a nonfiduciary nature such as marketing, soliciting business, answering questions, or providing account information.

The bill provides for a \$5,000 filing fee and \$2,000 annual assessment for an international trust company representative office, which is consistent with the existing requirement for an international representative office or international administrative office.

The bill expands the requirements to conduct financial institution business by an international banking corporation. It provides statutory authority for the OFR to regulate and take action against an international banking corporation based on the activities of its affiliates or subsidiaries.

The bill provides for the first increase in over 18 years to the minimum capital account requirement for international financial entities.

The bill does not appear to have a state or local government fiscal impact.

The bill provides for an effective date of July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/4/2010

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

Chapters 655 through 667, Florida Statutes comprise the financial institution codes.<sup>1</sup> These provide general regulatory powers to be exercised by the Financial Services Commission<sup>2</sup> and the Office of Financial Regulation (OFR). The OFR is responsible for administering Florida's financial institution codes. The specific chapters are:

- Chapter 655, relating to financial institutions generally
- Chapter 657, relating to credit unions
- Chapter 658, relating to banks and trust companies
- Chapter 660, relating to trust business
- Chapter 663, relating to international banking corporations
- Chapter 665, relating to associations
- Chapter 667, relating to savings banks

While OFR has authority to regulate entities conducting banking or trust business in Florida, there are certain exceptions. These include:

- Banks chartered and regulated by other states.
- National banks, which are regulated by the Office of the Comptroller of the Currency.
- Federal thrifts, which are regulated by the Office of Thrift Supervision.
- Federal credit unions, which are regulated by the National Credit Union Administration.
- Institutions chartered and regulated by foreign countries, unless those institutions seek to "engage in the business of banking" or "engage in trust business" in Florida.

An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities, must be licensed by OFR<sup>3</sup> to transact business in Florida. An international banking corporation may operate through a variety of business models, all of which must be separately licensed.<sup>4</sup> These authorized business models, include international bank

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<sup>1</sup> s. 655.005(1)(j), F.S.

<sup>2</sup> The Financial Services Commission is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

<sup>3</sup> ss. 663.04 and 663.05, F.S.

<sup>4</sup> s. 663.06(1), F.S.

agencies<sup>5</sup>, international representative offices<sup>6</sup>, international administrative offices<sup>7</sup>, and international branches<sup>8</sup>.

A business model which is not included within the definition of "financial institution", "state financial institution", or "international banking corporation" is an "international trust company representative office". An international trust company representative office conducts marketing, advertising, and customer relations activities on behalf of the international trust company, but does not render investment advice or act as a trustee. Florida's financial institution codes are silent regarding regulation of these entities. Therefore, unlike other international banking businesses operating in Florida, these offices are not subject to regulation by the OFR.

To date, only one international trust company representative office has operated in Florida. In 1998, Stanford Trust Company Limited (Stanford Trust), an international trust company domiciled in Antigua, contacted the Florida Department of Banking and Finance<sup>9</sup>, about establishing an international trust company representative office. A Memorandum of Agreement<sup>10</sup> was entered into with Stanford Trust which specified terms for operation of the trust company representative office. The agreement specified permissible and prohibited business activities which were equivalent to those permitted for trust company representative offices of out-of-state domestic trust companies. Therefore, it was not considered to be engaging in banking or trust business in Florida subject to state regulation.

The Stanford Trust representative office is no longer in operation due to civil and criminal charges that have been brought against Robert Allen Stanford by federal authorities. In 2009, Mr. Stanford was charged by the U.S. Securities and Exchange Commission with operating an \$8 billion Ponzi scheme involving certificates of deposit issued by Stanford International Bank, LTD, located in Antigua.<sup>11</sup> Mr. Stanford was subsequently arrested by federal authorities and remains in jail. OFR has an ongoing investigation into the operations of Stanford Trust's representative office in South Florida.

#### **Current Situation:**

The Office of Financial Regulations (OFR) licenses international banking corporation entities, including international bank agencies, international representative offices, international administrative offices, and international branches transacting business in Florida. Among other things, the license application must include:

- The name of the international banking corporation.
- The name of the person in charge of the business and affairs of the office.
- The total amount of the capital accounts of the international banking corporation.
- A complete and detailed statement of its financial condition as of a date within 180 days prior to the date of such application.
- A listing of any occasion within the preceding 10-year period in which either the international banking corporation or any of its directors, executive officers, or principal shareholders has been convicted of, or pled guilty or nolo contendere to, any offense with respect to which the penalties include the possibility of imprisonment for 1 year or more, or to any offense involving money laundering or otherwise related to the operation of a financial institution.
- An authenticated copy of its articles of incorporation and a copy of its bylaws, or an equivalent.
- A certificate issued by the banking or supervisory authority of the country in which the international banking corporation is chartered stating that the international banking corporation is duly organized

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<sup>5</sup> s. 663.061, F.S.

<sup>6</sup> s. 663.062, F.S.

<sup>7</sup> s. 663.063, F.S.

<sup>8</sup> s. 663.064, F.S.

<sup>9</sup> The predecessor to the Office of Financial Regulation.

<sup>10</sup> Memorandum of Agreement executed December 14, 1998 on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>11</sup> Securities and Exchange Commission Press Release 2009-26 on file with the Insurance, Business and Financial Affairs Policy Committee.

and licensed and lawfully existing in good standing and listing any instance in which the international banking corporation has been convicted of, or pled guilty or nolo contendere to, a violation of any currency transaction reporting or money laundering law which may exist in that country.

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. They may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper. For licensure, the normal minimum capital account requirement is \$25 million; however, under certain circumstances<sup>12</sup>, a \$10 million minimum could apply. As of January 1, 2010, there were 19 international bank agencies and 6 international branches licensed.<sup>13</sup>

International representative offices and international administrative offices are permitted more limited activities. An international representative office may solicit business, provide information to customers concerning their accounts, answer questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts. An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments. For licensure, the normal minimum capital account requirement is \$10 million for an international representative office and \$25 million for an international administrative office. As of January 1, 2010, there were 10 international representative offices and 4 international administrative offices licensed.<sup>14</sup>

The Office of Financial Regulation (OFR) is authorized revoke a license if a home country has dissolved, terminated, or cancelled the international banking corporations' authority to operate in the home jurisdiction. The financial institution codes are silent regarding OFR's authority to revoke inactive licenses.

OFR may take possession of the business and property in this state of any international banking corporation that:

- Has violated any law.
- Has neglected or refused to comply with an order issued by the OFR.
- Is insolvent or imminently insolvent.
- Is transacting business in an unsound, unsafe, or unauthorized manner such that the corporation is threatened with imminent insolvency.
- Is in liquidation at its domicile or elsewhere.

The financial institution codes are silent regarding OFR's authority to regulate or take action against an international banking corporation based on the activities of its affiliates<sup>15</sup> or subsidiaries<sup>16</sup>.

#### **Effect of Bill:**

HB 707 adds the term "international trust company representative office" to the definition of "financial institution" and "state financial institution." This will result in an international trust company representative office being subject to Office of Financial Regulation (OFR) subpoena powers, regular examinations, and the general enforcement powers of the OFR contained in ch. 655, F.S.

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<sup>12</sup> s. 663.055(2)(c), F.S. The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition.

<sup>13</sup> Office of Financial Regulation Bill Analysis dated January 22, 2010 on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>14</sup> Id.

<sup>15</sup> s. 655.005(1)(a), F.S. "Affiliate" means any financial institution holding company pursuant to federal law or any subsidiary or service corporation of such a holding company.

<sup>16</sup> s. 655.005(1)(q), F.S. "Subsidiary" means any organization permitted by the office which is controlled by a financial institution.

The bill amends the definition of an "international banking corporation" to include "a foreign trust company, or any similar business entity, including a foreign bank with fiduciary powers, that conducts trust business as defined in the financial institutions codes."<sup>17</sup>

In addition, the bill amends the definition of "international representative office" to include the affiliates and subsidiaries of an international banking corporation. Currently, only offices of the international banking corporation fall within the purview of the definition. The bill expands the definition to include offices of the affiliates or subsidiaries of the international banking corporation.

The bill defines an international trust company representative office,<sup>18,19</sup> and provides for its regulation. An international banking corporation desiring to establish international trust company representative office in this state will be required to:

- Hold an unrestricted license to conduct trust business in the foreign country under the laws of which it is organized and chartered.
- Be authorized by the foreign country's trust business regulatory authority to establish the proposed international trust company representative office.
- Be adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered.
- Meet all requirements under Florida's financial institutions codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers, including being subject to:
  - Licensing, examination and regulation by the OFR.
  - Administrative action and fines.
  - Anti-money laundering provisions.
  - Outside audit requirements.
  - Record keeping requirements.
  - Injunctions and subpoenas.
  - Voluntary and involuntary dissolution.
- Meet a minimum capital account requirement of \$20 million.

The bill stipulates that international trust company representative offices will not be authorized to accept deposits or make loans. Representatives and employees at such offices will be prohibited from acting as a fiduciary, which includes, but is not limited to, accepting a fiduciary appointment, executing fiduciary documents that create a fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts. Activities will be limited to engaging in non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers;
- Answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers.

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<sup>17</sup> s. 658.12(20), F.S. "Trust business" means the business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company, and also when conducted by any other business organization as its sole or principal business.

<sup>18</sup> "An office of an international banking corporation or trust company organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in non-fiduciary activities described in s. 663.0625, or any affiliate, subsidiary, or other person who engages in such activities, on behalf of such international banking corporation or trust company, from an office located in this state."

<sup>19</sup> The definition is consistent with 12 CFR s. 9.2(k), which defines a "trust representative office" as it relates to a national bank, in part, as follows: "Trust representative office" means an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, **but does not engage in any of the activities specified in § 9.7(d)**. Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer. . . . (emphasis supplied). The activities which are specified in § 9.7(d) and which are prohibited include: accepting a fiduciary appointment, executing documents that create the fiduciary relationship, and making discretionary decisions regarding the investment or distribution of fiduciary assets.



- Such other activities as may be approved by the OFR or rules of the Financial Services Commission.

The bill provides that the filing fee to establish an international trust company representative office is \$5,000 followed by an annual assessment is \$2,000.

The bill increases the minimum capital account requirements for international bank agencies, international branches, and international administrative offices from \$25 million to \$40 million. Under certain circumstances,<sup>20</sup> a \$20 million minimum could apply. The minimum capital account requirement for an international representative office is increased from \$10 million to \$20 million.

The bill expands the requirements for carrying on financial institution business to include capital account minimums, and requires that the organization is not:

- Insolvent or imminently insolvent.
- In bankruptcy, conservatorship, liquidation, or similar status.
- Is not operating under the direct control of the government, regulatory, or supervisory authority of the jurisdiction of its incorporation.
- Has not been in such status or control at anytime within the 7 years preceding the date of application of the license.

Furthermore, it requires disclosure of any felony arrest or charge involving any director, executive officer, or principal shareholder,<sup>21</sup> and disclosure of any financial offense involving facilitating or furthering terrorism or fraud.

The bill provides statutory authority for the OFR to regulate and take action against an international banking corporation based on the activities of its affiliates or subsidiaries. The bill provides that the OFR may take possession of the business and property in this state of any international banking corporation or licensed office upon a finding that the corporation is dissolved or otherwise terminated in the jurisdiction of its incorporation, is in bankruptcy or similar status under the laws of any country, or is operating through government intervention or any other extraordinary actions. It requires the OFR to revoke a license if it determines that a licensed office has been substantially inactive for six months or greater.

The bill removes the requirement that an authenticated copy of the articles of incorporation and the bylaws of an international banking corporation be submitted to the OFR. The remaining provisions of current law<sup>22</sup> are sufficient to determine whether the applicant is duly organized, licensed and in good standing.

The bill authorizes the OFR, by order, to allow an international banking corporation to make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under federal law. The bill retains current law authority for the Financial Services Commission to take this same action by rule.<sup>23</sup>

## B. SECTION DIRECTORY:

Section 1. Amends s. 655.005, F.S., by revising and expanding definitions.

Section 2. Amends s. 663.01, F.S., by revising and expanding definitions.

Section 3. Amends s. 663.02, F.S., by expanding and clarifying the applicability of state banking laws.

<sup>20</sup> s. 663.055(2)(c), F.S. The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition.

<sup>21</sup> This language is consistent with FDIC Form 3064-0006, *Interagency Biographical and Financial Report*, which is incorporated by reference in 69U-100.03852 and 69U-105.202, *Florida Administrative Code*, as Form OFR-U-10.

<sup>22</sup> An applicant must submit a certificate issued by the banking or supervisory authority of the country in which the applicant is chartered stating that the applicant is duly organized, licensed, and in good standing.

<sup>23</sup> s. 663.061(3), F.S.

- Section 4. Amends s. 663.04, F.S., by expanding the requirements for carrying on financial institution business.
- Section 5. Amends s. 663.05, F.S., by revising and expanding licensure requirements.
- Section 6. Amends s. 663.055, F.S., by increasing capital accounts requirements.
- Section 7. Amends s. 663.06, F.S., by revising and clarifying permissible activities.
- Section 8. Amends s. 663.061, F.S., by revising permissible activities.
- Section 9. Amends s. 663.062, F.S., by revising permissible activities.
- Section 10. Creates s. 663.0625, F.S., providing for international trust company representative offices, permissible activities, and requirements.
- Section 11. Amends s. 663.064, F.S., by revising requirements and permissible activities.
- Section 12. Amends s. 663.065, F.S., by correcting a cross-reference.
- Section 13. Amends s. 663.11, F.S., by revising requirements for continuing to conduct business.
- Section 14. Amends s. 663.12, F.S., by providing international trust company representative office licensing and fee requirements.
- Section 15. Amends s. 663.16, F.S., by conforming language.
- Section 16. Amends s. 663.17, F.S., by clarifying application and conforming language.
- Section 17. Amends s. 663.171, F.S., by conforming language.
- Section 18. Amends s. 663.172, F.S., by conforming language.
- Section 19. Provides for a July 1, 2010 effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None or negligible.<sup>24</sup>

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

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<sup>24</sup> With a \$5,000 initial application fee and a \$2,000 annual assessment, and with only one entity to date ever having expressed an interest in this business model, it is doubtful there will be any revenue.

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

**D. FISCAL COMMENTS:**

HB 707 creates a new license type. The filing fee for establishing an "international trust company representative office" will be \$5,000 and the annual assessment will be \$2,000. The same fee structure currently applies to an international representative office or international administrative office.

The bill increases capital account requirements for licensure of international banking corporations. The requirements have not been raised in the past 18 years. In 2001 the Legislature raised capital requirements for new banks,<sup>25</sup> and raised those requirements again in 2008.<sup>26</sup> Currently, all Florida-licensed international banking corporations, with one exception, meet the new capital requirements.<sup>27</sup>

To date, only one international trust company representative office<sup>28</sup> has expressed any interest in conducting business in Florida. At this time, no additional staffing has been requested by OFR to administer the new license type.<sup>29</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill expands existing rule-making authority to include international trust company representative offices.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>25</sup> Chapter 2001-243, Laws of Florida

<sup>26</sup> Chapter 2008-75, Laws of Florida

<sup>27</sup> Banco Industrial de Venezuela (BIV) is not in compliance with the current statutory requirement. The OFR served BIV with an Administrative Complaint on October 26, 2009, seeking to revoke BIV's license to operate its Miami Agency. BIV petitioned for a DOAH hearing. The hearing is currently scheduled for March 22-26, 2010, in Miami. DOAH Docket # 09-006714.

<sup>28</sup> Stanford Trust

<sup>29</sup> Office of Financial Regulation Bill Analysis dated January 22, 2010 on file with the Insurance, Business and Financial Affairs Policy Committee.

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1                                   A bill to be entitled  
2       An act relating to international banking corporations;  
3       amending ss. 655.005 and 663.01, F.S.; revising certain  
4       definitions; amending s. 663.02, F.S.; expanding  
5       application of state banking laws to include certain  
6       international banking corporations; expanding legislative  
7       intent; prohibiting construction to authorize  
8       international banking corporation or trust companies to  
9       conduct trust business under certain circumstances;  
10      amending s. 663.04, F.S.; revising requirements for  
11      carrying on banking business to apply to certain  
12      additional financial institutions; imposing additional  
13      requirements; amending s. 663.05, F.S.; revising  
14      requirements for licensing international banking  
15      corporations; including requirements applicable to certain  
16      trust representative offices; deleting certain  
17      nonapplication provisions; amending s. 663.055, F.S.;  
18      increasing certain net capital account requirements;  
19      amending s. 663.06, F.S.; revising permissible activities  
20      requirements for licensed international banking  
21      corporations; amending s. 663.061, F.S.; revising a  
22      permissible activity requirement for international bank  
23      agencies; amending s. 663.062, F.S.; revising a  
24      permissible activity requirement for licensed  
25      international representative offices to apply to trust  
26      companies; creating s. 663.0625, F.S.; specifying  
27      permissible activities for international trust company  
28      representative offices; specifying requirements; amending

29 s. 663.064, F.S.; revising application of provisions of  
 30 law to establishing branches of international banking  
 31 corporations; amending s. 663.065, F.S.; revising  
 32 application of provisions of law to organize a state-  
 33 chartered investment company; amending s. 663.11, F.S.;  
 34 providing for termination of an international banking  
 35 corporation's charter or authority; prohibiting  
 36 international banking corporations from continuing to  
 37 conduct licensed business in this state under certain  
 38 circumstances; amending s. 663.12, F.S.; increasing a  
 39 license application filing fee; imposing an annual  
 40 assessment upon certain entities; amending s. 663.16,  
 41 F.S.; revising definitions to conform to changes made by  
 42 the act; amending s. 663.17, F.S.; expanding criteria  
 43 under which the Office of Financial Regulation may take  
 44 possession of certain business and property of certain  
 45 international banking corporations; revising provisions to  
 46 conform to changes made by the act; amending ss. 663.171  
 47 and 663.172, F.S.; revising provisions to conform to  
 48 changes made by the act; providing an effective date.

49

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

51

52 Section 1. Paragraphs (h) and (p) of subsection (1) of  
 53 section 655.005, Florida Statutes, are amended to read:

54 655.005 Definitions.—

55 (1) As used in the financial institutions codes, unless  
 56 the context otherwise requires, the term:

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57 (h) "Financial institution" means a state or federal  
 58 savings or thrift association, bank, savings bank, trust  
 59 company, international bank agency, international banking  
 60 corporation ~~organization~~, international branch, international  
 61 representative office, international administrative office,  
 62 international trust company representative office, or credit  
 63 union, or an agreement corporation operating pursuant to s. 25  
 64 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge  
 65 Act corporation organized pursuant to s. 25(a) of the Federal  
 66 Reserve Act, 12 U.S.C. ss. 611 et seq.

67 (p) "State financial institution" means a state-chartered  
 68 or state-organized association, bank, investment company, trust  
 69 company, international bank agency, international branch,  
 70 international representative office, international  
 71 administrative office, international trust company  
 72 representative office, or credit union.

73 Section 2. Subsections (3), (6), and (8) of section  
 74 663.01, Florida Statutes, are amended, subsections (9) and (10)  
 75 of that section are renumbered as subsections (10) and (11),  
 76 respectively, and a new subsection (9) is added to that section,  
 77 to read:

78 663.01 Definitions.—As used in this part, the term:

79 (3) "Foreign country" means a country other than the  
 80 United States and includes any colony, dependency, or possession  
 81 of such country notwithstanding any definitions in chapter 658,  
 82 and any territory of the United States, including Guam, American  
 83 Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

84 (6) "International banking corporation" means a banking

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85 corporation organized and licensed under the laws of a foreign  
 86 country, ~~or, if organized and licensed under the laws of the~~  
 87 ~~United States or any of the states of the United States of~~  
 88 ~~America, a banking corporation:~~

89 ~~(a) Which is not a bank or bank holding company as defined~~  
 90 ~~in the federal Bank Holding Company Act, as amended, 12 U.S.C.~~  
 91 ~~ss. 1841-1850; and~~

92 ~~(b) Which maintained, on July 1, 1981, as its only United~~  
 93 ~~States banking office, one state agency licensed by a state~~  
 94 ~~other than this state.~~

95  
 96 The term "international banking corporation" includes, without  
 97 limitation, a foreign commercial bank, foreign merchant bank, or  
 98 other foreign institution that engages in banking activities  
 99 usual in connection with the business of banking in the country  
 100 where such foreign institution is organized or operating,  
 101 including a corporation: the sole shareholders of which are one  
 102 or more international banking corporations or holding companies  
 103 which own or control one or more international banking  
 104 corporations which are authorized to carry on a banking  
 105 business, or a central bank or government agency of a foreign  
 106 country and any affiliate or division thereof; which has the  
 107 power to receive deposits from the general public in the country  
 108 where it is chartered and organized; and which is under the  
 109 supervision of the central bank or other bank regulatory  
 110 authority of such country. The term also includes foreign trust  
 111 companies, or any similar business entities, including, but not  
 112 limited to, foreign banks with fiduciary powers, that conduct

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113 trust business as defined in the financial institutions codes.

114 (8) "International representative office" means an office  
 115 of an international banking corporation organized and licensed  
 116 under the laws of a foreign country that is established or  
 117 maintained in this state for the purpose of engaging in the  
 118 activities described in s. 663.062, or any affiliate,  
 119 subsidiary, or other person that engages ~~whose primary business~~  
 120 ~~is to engage~~ in such activities, on behalf of such international  
 121 banking corporation, from an office located in this state.

122 (9) "International trust company representative office"  
 123 means an office of an international banking corporation or trust  
 124 company organized and licensed under the laws of a foreign  
 125 country which office is established or maintained in this state  
 126 for the purpose of engaging in nonfiduciary activities described  
 127 in s. 663.0625, or any affiliate, subsidiary, or other person  
 128 that engages in such activities on behalf of such international  
 129 banking corporation or trust company from an office located in  
 130 this state.

131 Section 3. Section 663.02, Florida Statutes, is amended to  
 132 read:

133 663.02 Applicability of state banking laws.—

134 (1) International banking corporations having offices in  
 135 this state shall be subject to all the provisions of the  
 136 financial institutions codes and chapter 655 as though such  
 137 international banking corporations were state banks or trust  
 138 companies, except where it may appear, from the context or  
 139 otherwise, that such provisions are clearly applicable only to  
 140 banks or trust companies organized under the laws of this state



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141 or the United States. Without limiting the foregoing general  
 142 provisions, it is the intent of the Legislature that the  
 143 following provisions shall be applicable to such banks or  
 144 corporations: s. 655.031, relating to administrative enforcement  
 145 guidelines; s. 655.032, relating to investigations, subpoenas,  
 146 hearings, and witnesses; s. 655.0321, relating to hearings,  
 147 proceedings, and related documents and restricted access  
 148 thereto; s. 655.033, relating to cease and desist orders; s.  
 149 655.037, relating to removal by the office of an officer,  
 150 director, committee member, employee, or other person; s.  
 151 655.041, relating to administrative fines and enforcement; s.  
 152 655.50, relating to control of money laundering ; and s. 658.49,  
 153 relating to loans by banks not exceeding \$50,000; and any  
 154 provision of law for which the penalty is increased under s.  
 155 775.31 for facilitating or furthering terrorism. International  
 156 banking corporations shall not have the powers conferred on  
 157 domestic banks by the provisions of s. 658.60, relating to  
 158 deposits of public funds. The provisions of chapter 687,  
 159 relating to interest and usury, shall apply to all loans not  
 160 subject to s. 658.49.

161 (2) Neither an international bank agency nor an  
 162 international branch shall have any greater right under, or by  
 163 virtue of, this section than is granted to banks organized under  
 164 the laws of this state. Legal and financial terms used herein  
 165 shall be deemed to refer to equivalent terms used by the country  
 166 in which the international banking corporation is organized.  
 167 This chapter and the financial institutions codes may not be  
 168 construed to authorize any international banking corporation or

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169 trust company to conduct trust business, as defined in s.  
 170 658.12, from an office in this state except for those activities  
 171 specifically authorized by ss. 663.061(5) and 663.0625.

172 Section 4. Section 663.04, Florida Statutes, is amended to  
 173 read:

174 663.04 Requirements for carrying on financial institution  
 175 ~~banking~~ business.—An ~~No~~ international banking corporation or  
 176 trust company, or any affiliate, subsidiary, or other person or  
 177 business entity acting as an agent for, on behalf of, or for the  
 178 benefit of such international banking corporation or trust  
 179 company who engages in such activities from an office located in  
 180 this state, may not shall transact a banking or trust business,  
 181 or maintain in this state any office for carrying on such  
 182 business, or any part thereof, unless such corporation, trust  
 183 company, affiliate, subsidiary, person, or business entity has:

184 (1) Has been authorized by its charter to carry on a  
 185 banking or trust business and has complied with the laws of the  
 186 jurisdiction in which it is chartered.

187 (2) Has furnished to the office such proof as to the  
 188 nature and character of its business and as to its financial  
 189 condition as the commission or office requires.

190 (3) Has filed with the office a certified copy of that  
 191 information required to be supplied to the Department of State  
 192 by those provisions of chapter 607 which are applicable to  
 193 foreign corporations.

194 (4) Has received a license duly issued to it by the  
 195 office.

196 (5) Has capital accounts no less than the minimums

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197 required per s. 663.055 and is not imminently insolvent or  
 198 insolvent per s. 655.005(1).

199 (6) (a) Is not in bankruptcy, conservatorship,  
 200 receivership, liquidation, or similar status under the laws of  
 201 any country.

202 (b) Is not operating under the direct control of the  
 203 government, regulatory, or supervisory authority of the  
 204 jurisdiction of its incorporation through government  
 205 intervention or any other extraordinary actions.

206 (c) Has not been in such status or control at any time  
 207 within the 7 years preceding the date of application for a  
 208 license.

209 Section 5. Section 663.05, Florida Statutes, is amended to  
 210 read:

211 663.05 Application for license; approval or disapproval.—

212 (1) Every international banking corporation, before being  
 213 licensed by the office to maintain any office in this state,  
 214 shall subscribe and acknowledge, and submit to the office, an  
 215 application which shall contain:

216 (a) The name of the international banking corporation.

217 (b) The proposed location by street and post office  
 218 address and county where its business is to be transacted in  
 219 this state and the name of the person who shall be in charge of  
 220 the business and affairs of the office.

221 (c) The location where its initial registered office will  
 222 be located in this state.

223 (d) The total amount of the capital accounts of the  
 224 international banking corporation.

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225 (e) A complete and detailed statement of its financial  
 226 condition as of a date within 180 days prior to the date of such  
 227 application, except that the office in its discretion may, when  
 228 necessary or expedient, accept such statement of financial  
 229 condition as of a date within 240 days prior to the date of such  
 230 application. The office in its discretion may, when necessary or  
 231 expedient, require an independent opinion audit or the  
 232 equivalent satisfactory to the office.

233 (f) A listing of any occasion within the preceding 10-year  
 234 period in which either the international banking corporation or  
 235 any of its directors, executive officers, or principal  
 236 shareholders has been arrested for, charged with, convicted of,  
 237 or pled guilty or nolo contendere to, regardless of  
 238 adjudication, any offense with respect to which the penalties  
 239 include the possibility of imprisonment for 1 year or more, or  
 240 to any offense involving money laundering, currency transaction  
 241 reporting, facilitating or furthering terrorism, fraud, or  
 242 otherwise related to the operation of a financial institution.

243 (2) The office shall disallow any illegally obtained  
 244 currency, monetary instruments, funds, or other financial  
 245 resources from the capitalization requirements of this section,  
 246 and the existence of such illegally obtained resources shall be  
 247 grounds for denial of the application for license.

248 (3) At the time an application is submitted to the office,  
 249 the international banking corporation shall also submit a ~~duly~~  
 250 ~~authenticated copy of its articles of incorporation and a copy~~  
 251 ~~of its bylaws, or an equivalent thereof satisfactory to the~~  
 252 ~~office. Such corporation shall also submit a certificate issued~~

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253 by the banking or supervisory authority of the country in which  
254 the international banking corporation is chartered stating that  
255 the international banking corporation is duly organized and  
256 licensed and lawfully existing in good standing ~~and listing any~~  
257 ~~instance in which the international banking corporation has been~~  
258 ~~convicted of, or pled guilty or nolo contendere to, a violation~~  
259 ~~of any currency transaction reporting or money laundering law~~  
260 ~~which may exist in that country.~~

261 (4) Application shall be made on a form prescribed by the  
262 office ~~commission~~ and shall contain such information as the  
263 commission or office requires.

264 (5) The office may, in its discretion, approve or  
265 disapprove the application, but it shall not approve the  
266 application unless, in its opinion, the applicant meets each and  
267 every requirement of this part and any other applicable  
268 provision of the financial institutions codes. The office shall  
269 approve the application only if it has determined that the  
270 directors, executive officers, and principal shareholders of the  
271 international banking corporation are qualified by reason of  
272 their financial ability, reputation, and integrity and have  
273 sufficient banking and other business experience to indicate  
274 that they will manage and direct the affairs of the  
275 international banking corporation in a safe, sound, and lawful  
276 manner. In the processing of applications, the time limitations  
277 under the Administrative Procedure Act shall not apply as to  
278 approval or disapproval of the application.

279 (6) The office may ~~shall~~ not issue a license to an  
280 international banking corporation unless:

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281 (a) It is chartered in a jurisdiction in which any bank or  
 282 trust company having its principal place of business in this  
 283 state may establish similar facilities or exercise similar  
 284 powers; or

285 (b) Federal law permits the appropriate federal regulatory  
 286 authority to issue a comparable license to the international  
 287 banking corporation.

288 (7) The office may not issue a license ~~shall not be issued~~  
 289 to an international banking corporation for the purpose of  
 290 operating:

291 (a) An international bank agency or an international  
 292 branch in this state unless the ~~international banking~~  
 293 corporation:

294 1.~~(a)~~ Holds an unrestricted license to receive deposits  
 295 from the general public, as authorized for that international  
 296 banking corporation, in the foreign country under the laws of  
 297 which it is organized and chartered.

298 2.~~(b)~~ Has been authorized by the foreign country's bank  
 299 regulatory authority to establish the proposed international  
 300 bank office.

301 3.~~(c)~~ Is adequately supervised by the central bank or bank  
 302 regulatory agency in the foreign country in which it is  
 303 organized and chartered.

304 ~~(8) A license shall not be issued to an international~~  
 305 ~~banking corporation for the purpose of operating~~

306 (b) An international representative office or an  
 307 international administrative office in this state unless the  
 308 ~~international banking~~ corporation:

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309 | 1.(a) Has been authorized by the foreign country's bank  
310 | regulatory authority to establish the proposed international  
311 | bank office. ~~and~~

312 | 2.(b) Is adequately supervised by the central bank or bank  
313 | regulatory agency in the foreign country in which it is  
314 | organized and chartered.

315 | (c) A trust representative office in this state unless the  
316 | corporation:

317 | 1. Holds an unrestricted license to conduct trust business  
318 | in the foreign country under the laws of which it is organized  
319 | and chartered.

320 | 2. Has been authorized by the foreign country's trust  
321 | business regulatory authority to establish the proposed  
322 | international trust representative office.

323 | 3. Is adequately supervised by the central bank or trust  
324 | regulatory agency in the foreign country in which it is  
325 | organized and chartered.

326 | 4. Meets all requirements under the financial institutions  
327 | codes for the operation of a trust company or trust department  
328 | as if it was a state chartered trust company or bank authorized  
329 | to exercise fiduciary powers.

330 | (8)(9) The commission shall establish, by rule, the  
331 | general principles which shall determine the adequacy of  
332 | supervision of an international banking corporation's foreign  
333 | establishments. These principles shall be based upon the need  
334 | for cooperative supervisory efforts and consistent regulatory  
335 | guidelines and shall address, at a minimum, the capital  
336 | adequacy, asset quality, management, earnings, liquidity,

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337 internal controls, audits, and foreign exchange operations and  
338 positions of the international banking corporation. This  
339 subsection shall not require examination by the home-country  
340 regulatory authorities of any office of an international banking  
341 corporation in this state. The commission may also establish, by  
342 rule, other standards for approval of an application for a  
343 license as considered necessary to ensure the safe and sound  
344 operations of the international bank or trust representative  
345 office in this state.

346 ~~(10) The requirements of subsection (7) shall not apply to~~  
347 ~~any international banking corporation that held a license to~~  
348 ~~operate an international bank agency in this state before July~~  
349 ~~1, 1992.~~

350 ~~(11) The requirements of subsection (8) shall not apply to~~  
351 ~~any international banking corporation that held a license to~~  
352 ~~operate an international representative office or international~~  
353 ~~administrative office in this state before July 1, 1992.~~

354 Section 6. Section 663.055, Florida Statutes, is amended  
355 to read:

356 663.055 Capital requirements.—

357 (1) To qualify for a license under the provisions of this  
358 part, an international banking corporation must have net total  
359 capital accounts, calculated according to United States  
360 generally accepted accounting principles and practices, of at  
361 least:

362 (a) Forty ~~Twenty-five~~ million dollars for the  
363 establishment of an international bank agency, an international  
364 branch, or an international administrative office; or



365 (b) Twenty ~~Ten~~ million dollars for the establishment of an  
 366 international representative office or international trust  
 367 representative office.

368 (2) Notwithstanding the provisions of paragraph (1)(a),  
 369 the office may approve an application for a license to establish  
 370 an international bank agency, an international branch, or an  
 371 international administrative office if:

372 (a) The international banking corporation is licensed to  
 373 receive deposits from the general public in the country where it  
 374 is organized and licensed and to engage in such other activities  
 375 as are usual in connection with the business of banking in such  
 376 country;

377 (b) The office receives a certificate that is issued by  
 378 the banking or supervisory authority of the country in which the  
 379 international banking corporation is organized and licensed and  
 380 states that the international banking corporation is duly  
 381 organized and licensed and lawfully existing in good standing,  
 382 and is empowered to conduct a banking business; and

383 (c) The international banking corporation has been in the  
 384 business of banking for at least 10 years and is ranked by the  
 385 banking or supervisory authority of the country in which it is  
 386 organized and licensed as one of the five largest banks in that  
 387 country in terms of domestic deposits, as of the date of its  
 388 most recent statement of financial condition. However, in no  
 389 event shall the office approve an application under this  
 390 subsection for any international banking corporation with  
 391 capital accounts of less than \$20 ~~\$10~~ million.

392 (3) The office may specify such other conditions as it

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393 determines appropriate, considering the public interest, the  
394 need to maintain a safe, sound, and competitive banking system,  
395 and the preservation of an environment conducive to the conduct  
396 of an international banking business in this state. In  
397 translating the capital accounts of an international banking  
398 corporation, the office may consider monetary corrections  
399 accounts that reflect results consistent with the requirements  
400 of generally accepted accounting principles in the United  
401 States.

402 (4) For the purpose of this part, the capital accounts of  
403 an international banking corporation shall be determined in  
404 accordance with rules adopted by the commission. In adopting  
405 such rules, the commission shall consider similar rules adopted  
406 by bank regulatory agencies in the United States and the need to  
407 provide reasonably consistent regulatory requirements for  
408 international banking corporations which will maintain the safe  
409 and sound condition of international banking corporations doing  
410 business in this state.

411 Section 7. Subsections (1), (2), and (3) of section  
412 663.06, Florida Statutes, are amended to read:

413 663.06 Licenses; permissible activities.-

414 (1) An international banking corporation licensed to  
415 operate an office in this state may engage in the business  
416 authorized by this part at the office specified in such license  
417 for an indefinite period. An international banking corporation  
418 may operate more than one licensed office ~~international bank~~  
419 ~~agency, international branch, or international representative~~  
420 ~~office~~, each at a different place of business, provided that

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421 | each office shall be separately licensed. No license ~~to operate~~  
 422 | ~~an international bank office~~ is transferable or assignable.  
 423 | However, the location of a licensed ~~an international bank~~ office  
 424 | may be changed after notification of the office. Every such  
 425 | license shall be, at all times, conspicuously displayed in the  
 426 | place of business specified therein.

427 | (2) An international banking corporation which proposes to  
 428 | terminate the operations of a licensed office in this state ~~its~~  
 429 | ~~international bank agency, international branch, international~~  
 430 | ~~representative office, or international administrative office~~  
 431 | shall surrender the ~~its~~ license to the office and comply with  
 432 | such procedures as the commission may prescribe by rule.

433 | (3) ~~The An international bank agency, international~~  
 434 | ~~branch, international representative office, or international~~  
 435 | ~~administrative office~~ license for any international banking  
 436 | corporation office in this state may be suspended or revoked by  
 437 | the office, with or without examination, upon its determination  
 438 | that the international banking corporation or the licensed  
 439 | office does not meet all requirements for original licensing.  
 440 | Additionally, the office shall revoke the license of any  
 441 | licensed office that the office determines has been inactive for  
 442 | 6 months or longer. The commission may by rule prescribe  
 443 | additional conditions or standards under which the license of an  
 444 | international bank agency, international branch, international  
 445 | representative office, international trust company  
 446 | representative office, or international administrative office  
 447 | may be suspended or revoked.

448 | Section 8. Subsection (3) of section 663.061, Florida

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449 Statutes, is amended to read:

450 663.061 International bank agencies; permissible  
451 activities.—

452 (3) Notwithstanding any provision of this chapter or  
453 chapter 658 to the contrary, an international banking  
454 corporation licensed under this part to operate an international  
455 bank agency may, if authorized by rule of the commission or  
456 office order, make any loan or investment or exercise any power  
457 which it could make or exercise if it were operating in this  
458 state as a federal agency under federal law. The commission and  
459 office shall, when adopting such rules or issuing such orders,  
460 consider the public interest and convenience and the need to  
461 maintain a safe, sound, and competitive state banking system.  
462 Unless otherwise provided by statute, an international bank  
463 agency may not exercise any powers that a federal agency is not  
464 authorized to exercise.

465 Section 9. Section 663.062, Florida Statutes, is amended  
466 to read:

467 663.062 International representative offices; permissible  
468 activities.—An international representative office may promote  
469 or assist the deposit-taking, lending, or other financial or  
470 banking activities of an international banking corporation. An  
471 international representative office may serve as a liaison in  
472 Florida between an international banking corporation and its  
473 existing and potential customers. Representatives and employees  
474 based at such office may solicit business for the international  
475 banking corporation and its subsidiaries and affiliates, provide  
476 information to customers concerning their accounts, answer

477 | questions, receive applications for extensions of credit and  
 478 | other banking services, transmit documents on behalf of  
 479 | customers, and make arrangements for customers to transact  
 480 | business on their accounts, but a representative office may not  
 481 | conduct any banking or trust business in this state.

482 |       Section 10. Section 663.0625, Florida Statutes, is created  
 483 | to read:

484 |       663.0625 International trust company representative  
 485 | offices; permissible activities; requirements.—An international  
 486 | trust company representative office may conduct any nonfiduciary  
 487 | activities that are ancillary to the fiduciary business of its  
 488 | international banking corporation or trust company, but may not  
 489 | act as a fiduciary. Permissible activities include advertising,  
 490 | marketing, and soliciting for fiduciary business on behalf of an  
 491 | international banking corporation or trust company; contacting  
 492 | existing or potential customers, answering questions, and  
 493 | providing information about matters related to their accounts;  
 494 | serving as a liaison in this state between the international  
 495 | banking corporation or trust company and its existing or  
 496 | potential customers; and engaging in any other activities  
 497 | approved by the office or under rules of the commission.  
 498 | Representatives and employees at such office may not act as a  
 499 | fiduciary, including, but not limited to, accepting the  
 500 | fiduciary appointment, executing the fiduciary documents that  
 501 | create the fiduciary relationship, or making discretionary  
 502 | decisions regarding the investment or distribution of fiduciary  
 503 | accounts.

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504 Section 11. Section 663.064, Florida Statutes, is amended  
 505 to read:

506 663.064 International branches; permissible activities;  
 507 requirements.—An international banking corporation that meets  
 508 the requirements of ss. 658.26, 663.04, and 663.05 may, with the  
 509 approval of the office, establish one or more branches in this  
 510 state ~~to the extent permitted to banks from other states~~. An  
 511 international branch shall have the same rights and privileges  
 512 as a federally licensed international branch. The operations of  
 513 an international branch shall be conducted pursuant to  
 514 requirements determined by the office as necessary to ensure  
 515 compliance with the provisions of the financial institutions  
 516 codes, including requirements for the maintenance of accounts  
 517 and records separate from those of the international banking  
 518 corporation of which it is a branch. ~~An application to establish~~  
 519 ~~an international branch shall be made pursuant to s. 658.26.~~

520 Section 12. Subsection (3) of section 663.065, Florida  
 521 Statutes, is amended to read:

522 663.065 State-chartered investment companies; formation;  
 523 permissible activities; restrictions.—

524 (3) An application for approval to organize a state-  
 525 chartered investment company shall be subject to the provisions  
 526 of chapter 658 ~~655~~ relating to the organization of de novo  
 527 financial institutions and to rules adopted by the commission as  
 528 necessary to ensure that the proposed state-chartered investment  
 529 company will be operated in a safe and lawful manner, except  
 530 that the applicant is not required to become a member of the  
 531 Federal Reserve System or the Federal Deposit Insurance

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532 Corporation. State-chartered investment companies shall be  
 533 subject to the examination and supervision of the office and are  
 534 subject to the financial institutions codes to the same extent  
 535 as international banking corporations pursuant to s. 663.02.

536 Section 13. Section 663.11, Florida Statutes, is amended  
 537 to read:

538 663.11 Termination of charter or authority ~~Dissolution.~~ ~~In~~  
 539 ~~the event~~ An international banking corporation that ~~which~~ is  
 540 licensed to maintain an office in this state may not continue to  
 541 conduct its licensed business in this state if the international  
 542 banking corporation is dissolved, or its authority or existence  
 543 is otherwise terminated or canceled in the jurisdiction of its  
 544 incorporation, is in bankruptcy, conservatorship, receivership,  
 545 liquidation, or similar status under the laws of any country, or  
 546 is operating under the direct control of the government or the  
 547 regulatory or supervisory authority of the jurisdiction of its  
 548 incorporation through government intervention or any other  
 549 extraordinary actions. A certificate of the official who is  
 550 responsible for records of banking corporations of the  
 551 jurisdiction of incorporation of such international banking  
 552 corporation, attesting to the occurrence of any such event, or a  
 553 certified copy of an order or decree of a court of such  
 554 jurisdiction, directing the dissolution of such international  
 555 banking corporation, the termination of its existence, or the  
 556 cancellation of its authority, or declaring its status in  
 557 bankruptcy, conservatorship, receivership, liquidation, or  
 558 similar proceedings, or other reliable documentation that the  
 559 international banking corporation is operating under the direct

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560 control of its government or a regulatory or supervisory  
 561 authority, shall be delivered by the international banking  
 562 corporation or its surviving officers and directors to the  
 563 office. The filing of the certificate, order, documentation, or  
 564 decree shall have the same effect as the revocation of the  
 565 license of such international banking corporation as provided in  
 566 s. 663.06.

567 Section 14. Paragraph (e) of subsection (1) and subsection  
 568 (2) of section 663.12, Florida Statutes, are amended to read:

569 663.12 Fees; assessments; fines.—

570 (1) Each application for a license under the provisions of  
 571 this part shall be accompanied by a nonrefundable filing fee  
 572 payable to the office in the following amount:

573 (e) Five ~~Two~~ thousand dollars ~~annually~~ for establishing  
 574 ~~operating~~ an international trust company representative office  
 575 ~~or international administrative office.~~

576 (2) Each international bank agency, international branch,  
 577 and state-chartered investment company shall pay to the office a  
 578 semiannual assessment, payable on or before January 31 and July  
 579 31 of each year, in an amount determined by rule by the  
 580 commission and calculated in a manner so as to recover the costs  
 581 of the office incurred in connection with the supervision of  
 582 international banking activities licensed under this part. These  
 583 rules shall provide for uniform rates of assessment for all  
 584 licenses of the same type, shall provide for declining rates of  
 585 assessment in relation to the total assets of the licensee held  
 586 in the state, but shall not, in any event, provide for rates of  
 587 assessment which exceed the rate applicable to state banks



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588 pursuant to s. 658.73, unless the rate of assessment would  
 589 result in a semiannual assessment of less than \$1,000. For the  
 590 purposes of this subsection, the total assets of an  
 591 international bank agency, international branch, or state-  
 592 chartered investment company shall include amounts due the  
 593 agency or branch or state investment company from other offices,  
 594 branches, or subsidiaries of the international banking  
 595 corporations or other corporations of which the agency, branch,  
 596 or state-chartered investment company is a part or from entities  
 597 related to that international banking corporation. Each  
 598 international representative office, international  
 599 administrative office, or international trust company  
 600 representative office shall pay to the office an annual  
 601 assessment in the amount of \$2,000, payable on or before January  
 602 31 of each year.

603 Section 15. Subsections (1), (4), (5), (11), and (12) of  
 604 section 663.16, Florida Statutes, are amended to read:

605 663.16 Definitions; ss. 663.17-663.181.—As used in ss.  
 606 663.17-663.181, the term:

607 (1) "Business and property in this state" includes, but is  
 608 not limited to, all property of the international banking  
 609 corporation, real, personal, or mixed, whether tangible or  
 610 intangible:

611 (a) Wherever situated, constituting a part of the business  
 612 of the Florida licensed office ~~agency~~ and appearing on its books  
 613 as such.

614 (b) Situated within this state whether or not constituting  
 615 part of the business of the Florida licensed office ~~agency~~ or so

616 appearing on its books.

617 (4) Except where the context otherwise requires,  
 618 "international banking corporation" or "corporation" has the  
 619 same meaning as that provided in s. 663.01 and includes ~~means~~  
 620 any licensed office of an international banking corporation ~~bank~~  
 621 ~~agency or branch~~ operating in this state.

622 (5) "Officer" means the agent or other person in charge of  
 623 an international banking corporation licensed office.

624 (11) "Licensed office ~~Branch or agency~~ net obligations"  
 625 means, with respect to a qualified financial contract, the  
 626 amount, if any, that would have been owed by the international  
 627 banking corporation to a party after netting only those  
 628 transactions entered into by the licensed office ~~branch or~~  
 629 ~~agency~~ and such party under such qualified financial contract.

630 (12) "Licensed office ~~Branch or agency~~ net payments  
 631 entitlement" means, with respect to a qualified financial  
 632 contract, the amount, if any, that would have been owed by a  
 633 party to the international banking corporation after netting  
 634 only those transactions entered into by the licensed office  
 635 ~~branch or agency~~ and such party under such qualified financial  
 636 contract.

637 Section 16. Section 663.17, Florida Statutes, is amended  
 638 to read:

639 663.17 Liquidation; possession of business and property;  
 640 inventory of assets; wages; depositing collected assets;  
 641 appointing agents; appointment of judges.—

642 (1) The office may, at its discretion, take possession of  
 643 the business and property in this state of any international

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644 banking corporation that has been licensed to operate in this  
 645 state upon finding that the corporation, or any of the  
 646 corporation's licensed offices ~~international bank agency~~  
 647 operating in this state has violated any law, has neglected or  
 648 refused to comply with the terms of a duly issued order of the  
 649 office, is insolvent or imminently insolvent, or is transacting  
 650 business in an unsound, unsafe, or unauthorized manner such that  
 651 the corporation is threatened with imminent insolvency, or that  
 652 the corporation is dissolved, its authority or existence is  
 653 otherwise terminated or canceled in the jurisdiction of its  
 654 incorporation, it is in bankruptcy, conservatorship,  
 655 receivership, liquidation, or similar status under the laws of  
 656 any country, or it is operating under the direct control of the  
 657 government or the regulatory or supervisory authority of the  
 658 jurisdiction of its incorporation through government  
 659 intervention or any other extraordinary actions ~~in liquidation~~  
 660 at its domicile or elsewhere. Title to such business and  
 661 property shall vest by operation of law in the office upon  
 662 taking possession. Thereafter, the office shall liquidate or  
 663 otherwise deal with such business and property in accordance  
 664 with the provisions of this part, chapter 658, and any other  
 665 provision relating to the liquidation of banking corporations.  
 666 The office may deal with such business and property and  
 667 prosecute and defend any and all actions relating to the  
 668 liquidation. Only the claims of creditors of the international  
 669 banking corporation arising out of transactions those creditors  
 670 had with the international banking corporation, or any of the  
 671 corporation's licensed offices ~~international bank agency or~~

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672 | ~~agencies~~ located in this state, shall be accepted by the office  
 673 | for payment out of the business and property which it has taken  
 674 | possession of in this state. Acceptance or rejection of such  
 675 | claims by the office shall not prejudice any creditor's rights  
 676 | to otherwise share in other assets of the international banking  
 677 | corporation. The following claims shall not be accepted by the  
 678 | office for payment out of the business and property in the  
 679 | office's possession in this state:

680 |       (a) Claims which would not represent an enforceable legal  
 681 | obligation against an international banking corporation, or any  
 682 | of the corporation's licensed offices located in this state, if  
 683 | such office was ~~bank agency if such agency were~~ a separate and  
 684 | independent legal entity.

685 |       (b) Amounts due and other liabilities to other offices,  
 686 | agencies, and branches of and affiliates of such international  
 687 | banking corporation.

688 |       (2) Whenever all accepted claims, together with interest  
 689 | on such claims, and the expenses of the liquidation have been  
 690 | paid in full or properly provided for, the office, upon the  
 691 | order of a court of competent jurisdiction, shall transfer the  
 692 | remaining assets to the principal office of such international  
 693 | banking corporation, or to the duly appointed domiciliary  
 694 | liquidator or receiver of such corporation. Dividends and other  
 695 | amounts that remain unclaimed or unpaid and are in the  
 696 | possession of the office for 6 months after such transfer shall  
 697 | be deposited by the office as provided by law.

698 |       (3) When the office takes possession of the property and  
 699 | business of any international banking corporation, including any

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700 of the corporation's licensed offices located in this state, the  
 701 office shall:

702 (a) Give notice of such fact to all corporations,  
 703 unincorporated associations, partnerships, governmental  
 704 entities, and other entities and individuals known by the office  
 705 to hold any assets of such corporation. No corporation,  
 706 unincorporated association, partnership, governmental entity, or  
 707 other entity or individual having notice or knowledge that the  
 708 office has taken possession of such property and business of a  
 709 international banking corporation shall have a lien or charge  
 710 for any payment, advance, or clearance thereafter made against  
 711 any of the assets of such corporation for liability thereafter  
 712 incurred.

713 (b) Upon written demand of the office, any corporation,  
 714 unincorporated association, partnership, governmental entity, or  
 715 other entity or individual holding assets of such corporation  
 716 shall deliver such assets to the office and shall be discharged  
 717 from liability with respect to any claim upon such assets;  
 718 provided, such demand shall not affect the right of a secured  
 719 creditor with a perfected security interest, or other valid lien  
 720 or security interest enforceable against third parties, to  
 721 retain collateral, including any right of such secured creditor  
 722 under any security agreement related to a qualified financial  
 723 contract to retain collateral and apply such collateral in  
 724 accordance with the provisions of the financial institutions  
 725 codes.

726 (c) Nothing in paragraphs (a) and (b) shall affect any  
 727 right of setoff permitted under applicable law; provided, in

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728 connection with the liquidation of a licensed office ~~an~~  
 729 ~~international bank agency~~ of any other international banking  
 730 corporation pursuant to this part, no entity or individual may  
 731 set off the business and property in this state of an  
 732 international banking corporation being liquidated under this  
 733 subsection, against the liabilities of such corporation other  
 734 than those that arise out of transactions engaged in by such  
 735 entity or individual with such licensed office ~~international~~  
 736 ~~bank agency~~. For purposes of this paragraph, liabilities shall  
 737 be deemed to include, in the case of qualified financial  
 738 contracts, the lesser of the two amounts calculated with respect  
 739 to any such qualified financial contract pursuant to s.  
 740 663.172(3), and this paragraph shall not be deemed to authorize  
 741 setoff except as otherwise permissible under applicable law.

742 (4) Any licensed office of an international banking  
 743 corporation of which the office has taken possession or which is  
 744 operating under restrictions imposed by duly constituted  
 745 authority may be permitted to resume business subject to the  
 746 office's discretion and any conditions that the office may  
 747 impose.

748 (5) After the office takes possession of and determines to  
 749 liquidate the property and business of any licensed office of an  
 750 international banking corporation, the office shall make an  
 751 inventory, in duplicate, of the assets of such licensed office  
 752 ~~corporation~~. One copy of such inventory shall be filed with the  
 753 office and one copy shall be filed with a court of competent  
 754 jurisdiction in the county in which the licensed office  
 755 ~~principal office of such corporation~~ is located.

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756 (6) Notwithstanding s. 658.84, all wages actually owing to  
 757 the employees of an international banking corporation for  
 758 services rendered within 3 months prior to the date possession  
 759 was taken by the office, and not exceeding \$10,000 ~~\$2,000~~ to  
 760 each employee, shall be paid prior to the payment of any other  
 761 debt or claim, and, in the discretion of the office, may be paid  
 762 as soon as practicable after taking possession, except that at  
 763 all times the office shall reserve such funds as will, in the  
 764 office's opinion, be sufficient for the expenses of  
 765 administration.

766 (7) The office is authorized, upon taking possession of  
 767 any licensed office of an international banking corporation, to  
 768 liquidate the affairs of such licensed office ~~corporation~~ and to  
 769 do all acts and to make such expenditures as in the office's  
 770 judgment are necessary to conserve the assets and business of  
 771 the corporation. The office shall proceed to collect the debts  
 772 due to the corporation. The office may, upon an order of a court  
 773 of competent jurisdiction, sell, assign, compromise, or  
 774 otherwise dispose of all bad or doubtful debts held by, and  
 775 compromise claims against, such corporation, other than deposit  
 776 claims, provided, whenever the principal amount of any such debt  
 777 or claim owed by or owing to such corporation does not exceed  
 778 \$50,000, the office may sell, assign, compromise, or otherwise  
 779 dispose of such debt or claim upon such terms as the office may  
 780 deem to be in the best interests of such corporation wherever  
 781 situated. When the real property of an international banking  
 782 corporation, to be disposed of pursuant to this subsection, is  
 783 located in a county in this state other than a county in which

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784 an application to the court for leave to dispose is made, the  
 785 office shall file a certified copy of the order of such court  
 786 authorizing such disposal in the office of the clerk of the  
 787 county in which such real property is located.

788 (8) Moneys collected by the office in liquidating a  
 789 licensed office of an international banking corporation shall  
 790 be:

791 (a) Deposited on demand, time or otherwise, in one or more  
 792 banks, associations, or trust companies organized under the laws  
 793 of this state and, in the case of insolvency or voluntary or  
 794 involuntary liquidation of the depositary, such deposits shall  
 795 be entitled to priority of payment equally with any other  
 796 priority given under the financial institutions codes;

797 (b) Deposited on demand, time or otherwise, in one or more  
 798 national banks with a principal office located in this state and  
 799 with total assets exceeding \$1 billion; or

800 (c) Invested in obligations of the United States, or  
 801 obligation for which the full faith and credit of the United  
 802 States is pledged to provide for the payment of interest and  
 803 principal.

804 (9) The office may appoint one or more persons as agent or  
 805 agents to assist in the liquidation of the business and affairs  
 806 of any international banking corporation, or any of the  
 807 corporation's licensed offices located in this state, in the  
 808 office's possession. The office shall serve a copy of the ~~file a~~  
 809 certificate of such appointment to the international banking  
 810 corporation in the headquarters of the office and shall file a  
 811 certified copy of such certificate with a court of competent



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812 jurisdiction in the county in which the licensed ~~principal~~  
 813 office of such corporation is located in this state. The office  
 814 may employ such counsel and expert assistants under such titles  
 815 that the office shall assign to them, and may retain such  
 816 officers or employees of such corporation as the office deems  
 817 necessary in the liquidation and distribution of the  
 818 corporation's assets. The office may require such security as it  
 819 may deem proper from the agents and assistants appointed  
 820 pursuant to the provisions of this subsection.

821 (10) When the office has taken possession of and is  
 822 liquidating the business and property in this state of any  
 823 international banking corporation under the provisions of this  
 824 part, the office shall be entitled to the appointment of a  
 825 single judge to supervise the liquidation in the judicial  
 826 circuit in which the licensed ~~principal~~ office of such  
 827 corporation is located. Such judge shall have the power to order  
 828 expedited or simplified procedures or order a reference whenever  
 829 necessary to resolve a matter in such liquidation.

830 (11) The compensation of agents and any other employees  
 831 appointed by the office to assist in the liquidation of an  
 832 international banking corporation, or any of the corporation's  
 833 licensed offices located in this state ~~bank agency~~, the  
 834 distribution of its assets, or the expenses of supervision,  
 835 shall be paid out of the assets of the corporation ~~agency~~ in the  
 836 hands of the office. Expenses of liquidation and approved claims  
 837 for fees and assessments due the office shall be given first  
 838 priority among unsecured creditors.

839 Section 17. Section 663.171, Florida Statutes, is amended

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840 to read:

841 663.171 Liquidation; repudiation of contracts.—

842 (1) Except as otherwise provided in this section, when the  
 843 office has taken possession of the business and property in this  
 844 state of an international banking corporation, or any of the  
 845 corporation's licensed offices located in this state, the office  
 846 may assume or repudiate any contract, including an unexpired  
 847 lease, of the corporation:

848 (a) To which such corporation is a party.

849 (b) The performance of which the office, in its  
 850 discretion, determines to be burdensome.

851 (c) The repudiation of which the office, in its  
 852 discretion, determines will promote the orderly administration  
 853 of the corporation's affairs.

854 (2) After the expiration of 90 days after the date the  
 855 office takes possession of the business and property of an  
 856 international banking corporation, or any of the corporation's  
 857 licensed offices located in this state, any party to a contract  
 858 with such corporation may demand in writing that the office  
 859 assume or repudiate such contract. If the office has not assumed  
 860 or repudiated the contract within 15 calendar days after the  
 861 date of receipt of such demand, the affected party may bring an  
 862 action in a court of competent jurisdiction in the county in  
 863 which the licensed ~~principal~~ office of the corporation is  
 864 located to obtain an order requiring the office to assume or  
 865 repudiate the contract. If the office has not assumed or  
 866 repudiated the contract by at least 1 month before the last date  
 867 for filing claims against the corporation, such contract shall

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868 | be deemed repudiated.

869 |       (3) Notwithstanding subsection (2), with respect to an  
 870 | unexpired lease of the corporation for rental of real property  
 871 | under which the corporation was a lessee, if the office remains  
 872 | in possession of the leasehold, the office shall not be required  
 873 | to assume or repudiate such lease and may continue in possession  
 874 | of such leasehold for the remainder of the term of the lease in  
 875 | accordance with the terms of the lease; provided, if the office  
 876 | later repudiates the lease before the end of the lease term, any  
 877 | amounts that may be due the lessor with respect to such lease  
 878 | shall be calculated as provided by law.

879 |       (4) Notwithstanding any other provision of this section  
 880 | relating to liquidating an international banking corporation, or  
 881 | any of the corporation's licensed offices located in this state,  
 882 | the office shall not assume or repudiate any qualified financial  
 883 | contract that the international banking corporation ~~bank agency~~  
 884 | entered into which is subject to a multibranch or multiagency  
 885 | netting agreement or arrangement that provides for netting  
 886 | present or future payment obligations or payment entitlements,  
 887 | including termination or closeout values relating to the  
 888 | obligations or entitlements, among the parties to the contract  
 889 | and agreement or arrangement and the office may, but shall not  
 890 | be required to, assume or repudiate any other qualified  
 891 | financial contract an international banking corporation ~~bank~~  
 892 | ~~agency~~ entered into; provided, upon the repudiation of any  
 893 | qualified financial contract or the termination or liquidation  
 894 | of any qualified financial contract in accordance with its  
 895 | terms, the liability of the office under such qualified

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896 financial contract shall be determined in accordance with s.  
897 663.172.

898 Section 18. Section 663.172, Florida Statutes, is amended  
899 to read:

900 663.172 Liability on repudiation or termination of  
901 contracts.—

902 (1) Except as otherwise provided in this section, upon the  
903 repudiation or termination of any contract pursuant to s.  
904 663.171, the liability of the office shall be limited to the  
905 actual direct compensatory damages of the parties to the  
906 contract, determined as of the date the office took possession  
907 of the business and property of the international banking  
908 corporation or the corporation's licensed offices located in  
909 this state. The office shall not be liable for any future wages  
910 other than severance payments, to the extent such payments are  
911 reasonable standards, or for payments for future service, costs  
912 of cover, or any consequential, punitive, or exemplary damages,  
913 damages for lost profits or lost opportunity, or damages for  
914 pain and suffering.

915 (2) Except as otherwise provided in this section, the  
916 liability of the office, upon the repudiation of any qualified  
917 financial contract or in connection with the termination or  
918 liquidation of any qualified financial contract in accordance  
919 with the terms of such contract, shall be limited as provided in  
920 subsection (1), except compensatory damages shall be deemed to  
921 include normal and reasonable costs of cover or other reasonable  
922 measures of damages used among participants in the market for  
923 qualified financial contract claims, calculated as of the date

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924 | of repudiation or the date of the termination of such qualified  
 925 | financial contract in accordance with the terms of the contract.  
 926 | Upon the repudiation of any qualified financial contract or in  
 927 | connection with the termination or liquidation of any qualified  
 928 | financial contract in accordance with the terms of such  
 929 | contract, the office shall be entitled to damages and such  
 930 | damages shall be paid to the office upon written demand from the  
 931 | office to the other party or parties to the contract.

932 |         (3) In the case of the liquidation of the business and  
 933 | property of an international banking corporation, or any of the  
 934 | corporation's licensed offices located in this state, bank  
 935 | ~~agency of an international banking corporation~~ by the office,  
 936 | with respect to qualified financial contracts subject to netting  
 937 | agreements or arrangements that provide for netting present or  
 938 | future payment obligations or payment entitlements, including  
 939 | termination or closeout values relating to the obligations or  
 940 | entitlements, among the parties to the contracts and agreements  
 941 | or arrangements, the liability of the office to any party to any  
 942 | such qualified financial contract upon the repudiation or in any  
 943 | connection with the termination or liquidation of such qualified  
 944 | financial contract in accordance with the terms of such contract  
 945 | shall be limited to the lesser of:

- 946 |             (a) The global net payment obligation; or
- 947 |             (b) The licensed office ~~branch-to-agency or agency-to-~~  
 948 | ~~agency~~ net payment obligation.

949 |         (4) The liability of the office to a party under this  
 950 | section shall be reduced by any amount otherwise paid or  
 951 | received by the party with respect to the global net payment

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952 obligation pursuant to such qualified financial contract which,  
 953 if added to the liability of the office under subsection (1),  
 954 would exceed the global net payment obligation. The liability of  
 955 the office under this section to a party to a qualified  
 956 financial contract also shall be reduced by the fair market  
 957 value or the amount of any proceeds of collateral that secures  
 958 and has been applied to satisfy the obligations of the  
 959 international banking corporation to the party pursuant to such  
 960 qualified financial contract. If netting under the applicable  
 961 netting agreement or arrangement results in a licensed office  
 962 ~~branch-to-agency~~ net payment entitlement, notwithstanding any  
 963 provision in any such contract that purports to effect a  
 964 forfeiture of such entitlement, the office may make written  
 965 demand for and shall be entitled to receive from the party to  
 966 such contract an amount not to exceed the lesser of the global  
 967 net payment entitlement or the licensed office ~~branch-to-agency~~  
 968 net payment entitlement.

969 (5) The liability of a party under this section shall be  
 970 reduced by any amount otherwise paid to or received by the  
 971 office or any other liquidator or receiver of the international  
 972 banking corporation or licensed office with respect to the  
 973 global net payment entitlement pursuant to such qualified  
 974 financial contract which, if added to the liability of the party  
 975 under this section, would exceed the global net payments  
 976 entitlement. The liability of a party under this section to the  
 977 office pursuant to such qualified financial contract also shall  
 978 be reduced by the fair market value of the amount of any  
 979 proceeds of the collateral that secures and has been applied to

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980 | satisfy the obligations of the party to the international  
981 | banking corporation pursuant to such qualified financial  
982 | contract.

983 |       Section 19. This act shall take effect July 1, 2010.

**HB 1065**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

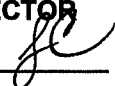
BILL #: HB 1065

Biodiesel Fuel

SPONSOR(S): Precourt

TIED BILLS:

IDEN./SIM. BILLS: SB 1730

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Policy Council		Liepshutz	Ciccone 
2)	Finance & Tax Council			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Biodiesel fuel is a renewable energy source that can be used to operate motor vehicles and other machinery that is designed to operate with petroleum based diesel fuel. It is produced from feedstock, most notably vegetable oils and animal based fats. This bill provides two exemptions to a public or private secondary school that manufactures less than 1000 gallons of biodiesel fuel for its sole use or the sole use of its employees or students.

The first exemption accords tax-free status to a limited production of biodiesel by the school and, thus, relieves the school from payment of monthly motor fuel taxes on its production of biodiesel and from the recordkeeping and filing of forms necessarily required for the payment of taxes or the claiming of tax refunds or credits.

The second exemption relieves the secondary school from having to:

- Register with the Florida Department of Revenue;
- Pay the fees for the initial application and annual renewals; or
- Secure a bond and file it with the department.

HB 1065 bill does not appear to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Biodiesel fuel is a renewable energy source that can be used to operate motor vehicles and other machinery that is designed to operate with petroleum based diesel fuel. It is produced or manufactured from feedstock, most notably vegetable oils and animal-based fats. However, it is most often manufactured from soybeans or recycled restaurant grease through a process called transesterification, which uses an alcohol reactant such as methanol to separate the fatty acid alkyl esters (the biodiesel) from glycerin. Biodiesel is both biodegradable and cleaner burning than petroleum diesel fuel and is usually blended with petroleum diesel in different concentrations, most commonly in a mixture of 20% biodiesel and 80% petroleum diesel (B20).<sup>1</sup>

This bill provides two exemptions to a public or private secondary school that manufactures less than 1000 gallons of biodiesel fuel for its sole use or the sole use of its employees or students. The first exemption accords tax-free status to a limited production of biodiesel by the school and, thus, relieves the school from payment of monthly taxes on its production and from the recordkeeping and filing of forms necessarily required for the payment of taxes or the claiming of tax refunds or credits<sup>2</sup>. Biodiesel falls within Florida's statutory definition of diesel fuel<sup>3</sup> and is subject to the same array of fuel taxes as petroleum based diesel. The total amount of fuel tax on a gallon of biodiesel is currently 29.6 cents and breaksdown as follows:

• Excise Tax	4 cents (constitutional 2 cents, county 1 cent, municipality 1 cent)
• Sales Tax	12 cents
• Ninth-cent	1 cent
• Local Option	6 cents
• SCETS Tax	<u>6.6 cents</u>
Total	29.6 cents <sup>4</sup>

<sup>1</sup> Information about biodiesel, including its production, is accessible on the website of the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy at: [http://www1.eere.energy.gov/biomass/abcs\\_biofuels.html#biodprod](http://www1.eere.energy.gov/biomass/abcs_biofuels.html#biodprod)

<sup>2</sup> ss. 206.874, F.S. and 206.8745, F.S. describe the conditions a taxpayer must meet for tax refund or credit eligibility.

<sup>3</sup> s. 206.86(1), F.S.

<sup>4</sup> These taxes are levied on diesel fuel pursuant to s. 206.87(1)(a)-(d) and are allocated primarily, but not exclusively, for state and local transportation purposes. Both the sales tax and SCETS tax (State Comprehensive Enhanced Transportation System Tax) are adjusted annually by the percentage change in the Consumer Price Index; consequently, the current rate per gallon for each tax is greater than the base amount of 6.9 cents specified in s. 206.87(1)(e)1., F.S. for the sales tax and the 6.0 cents specified in ss. 206.87(1)(d) and 206.41(1)(f), F.S. for the SCETS tax.

The second exemption relieves the school from having to register as a wholesaler<sup>5</sup> with the Florida's Department of Revenue (DOR), the \$30 fees for initial registration and annual renewal, and the need to file with DOR a bond<sup>6</sup> executed by a licensed surety company. Although the bill does not specifically define the term "secondary school" or refer to Florida's Education Code for a definition of the term, secondary schools are commonly understood to serve students in grades 6 through 12.<sup>7</sup> Also, while the term "private school" is not defined in the bill, Florida's Education Code provides a definition that includes nonpublic secondary schools that meet the intent of the state's regular school attendance requirements.<sup>8</sup>

The bill does not appear to exempt a school whose production exceeds more than 1000 gallons from having to pay taxes, maintain the appropriate records, or file for credits or refunds on the first 1000 gallons of biodiesel produced. Also, the bill, by implication, would appear to require a secondary school to become properly registered with the DOR whenever its biodiesel production exceeds 1000 gallons in any particular year.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 206.874, F.S., creating a new subsection (7) that grants exemptions from taxation and registration requirements related to the manufacture of limited amount of biodiesel fuel by a public or private secondary school.

**Section 2:** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference has not yet reviewed this bill, but it is anticipated that there will be no impact, or a negligible impact, on the state's fuel tax revenues since the exemption from taxation applies to a relatively small production of biodiesel (1000 gallons) and any taxes that are currently being paid by a secondary school producing biodiesel may already be refundable under existing law. Additionally, any loss of revenue that results from the registration fee exemption in the bill should be minimal, because the \$ 30 fee for the initial application and the annual renewal of the registration is a relatively small amount.

#### 2. Expenditures:

None. In the DOR's analysis of the identical Senate companion, SB 1730 by Senator Oelrich, the department did not anticipate an operational impact from the exemptions provided by the bill.

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<sup>5</sup> DOR does not have a registration category specifically designated as "manufacturer" or "producer." Instead, s. 206.02(5), F.S. requires a biodiesel manufacturer to meet the reporting, bonding, and licensing requirements prescribed for wholesalers. The requirements for registration as a wholesaler, including the fees for the initial application and renewal, are specified in s. 206.02(4).

<sup>6</sup> s. 206.05(1), F.S. specifies the amount and nature of the bond required of a wholesaler. The subsection also authorizes DOR to accept an assigned time deposit or irrevocable letter of credit in lieu of a surety bond.

<sup>7</sup> See, *The Florida Secondary School Redesign Act*, s. 1003.413(1), F.S., stating that secondary schools primarily serve students in grades 6 through 12.

<sup>8</sup> s. 1002.01(2), F.S. provides, in pertinent part, that a "private school," is a nonpublic school defined as an individual, association, co partnership, or corporation, . . . that designates itself as an educational center that includes . . . secondary [schools]. . . . A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs. . . .

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

No impact or a negligible impact (see, II. A. 1. of this analysis for reasons)

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

An indeterminate amount of savings may accrue to any privately operated secondary school that is already producing biodiesel or any privately operated secondary school that is incentivized to produce biodiesel because of the exemptions this bill provides. The savings will result from the schools not having to pay registration fees, annual renewal fees, or monthly taxes. Schools may also realize savings from not having to maintain records needed for the payment of taxes or the filing for refunds.

**D. FISCAL COMMENTS:**

An indeterminate amount of savings may accrue to any public secondary school that is already producing biodiesel or any public secondary school that is incentivized to produce biodiesel because of the exemptions this bill provides. The savings will result from the schools not having to pay registration fees, annual renewal fees, or monthly taxes. Schools may also realize savings from not having to maintain records needed for the payment of taxes or the filing for refunds.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill may reduce the authority that counties or municipalities have to raise revenues in the aggregate. The bill exempts a secondary school that manufactures less than 1000 gallons of biodiesel from having to pay motor fuel taxes. By providing this exemption, the bill affects both the Local Option Fuel Tax base (6 cents per gallon of biodiesel) and the Ninth-cent fuel tax base (1 cent per gallon of biodiesel). However, the bill would appear to be exempt from application of the mandates provision since it would have an insignificant fiscal impact in the aggregate. The impact would be insignificant, because only secondary schools that produce a very limited amount of biodiesel will qualify for the exemption.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

This bill was filed at the behest of four Oak Hall<sup>9</sup> high school students who, as part of a science project at the Gainesville school, processed used vegetable oil into biodiesel. As reported by the Newspaper in Education (NIE) of the Gainesville Sun, the students encountered a problem they believe the Legislature needs to address:

As the students forged ahead with the development of their program, they encountered what they feel is a somewhat burdensome requirement of state law, which they believe could dissuade other students from pursuing similar biodiesel production products, even as the state looks for alternative energy initiatives to ween (sic) itself off fossil fuels. . . .

The students' issue is with Florida Statute 206, which deals with biodiesel production and taxes on the fuel paid to the state Department of Revenue. . . .

. . . [U]nder the law, schools such as Oak Hall must fill out and submit to the state monthly production reports and pay taxes to the state, but then receive back a tax rebate. Students feel that is a cumbersome, bureaucratic process that could be an obstacle in expanding biodiesel production to other schools.<sup>10</sup>

The Alachua County Commission has expressed support for this legislation:

By providing an exemption from these requirements for educational institutions pursuing a science curriculum, the Legislature could help to foster alternative energy development and practice applications for science curricula across the state of Florida.<sup>11</sup>

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>9</sup> Oak Hall is a private school duly registered and listed as a non-profit corporation on the Department of State's website as Oak Hall Private School Inc. :

[http://www.sunbiz.org/scripts/cordet.exe?action=DEFIL&inq\\_doc\\_number=N96000000468&inq\\_came\\_from=NAMFWD&cor\\_web\\_names\\_seq\\_number=0000&names\\_name\\_ind=N&names\\_cor\\_number=&names\\_name\\_seq=&names\\_name\\_ind=&names\\_comp\\_name=OAKHALL&names\\_filing\\_type=](http://www.sunbiz.org/scripts/cordet.exe?action=DEFIL&inq_doc_number=N96000000468&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=OAKHALL&names_filing_type=) The school is also listed on the DOR website as a registered blender:  
[http://dor.myflorida.com/dor/taxes/fuel/fuel\\_2.html](http://dor.myflorida.com/dor/taxes/fuel/fuel_2.html)

<sup>10</sup> *Students look to cut red tape on Project*, September 16, 2009; available on-line: <http://www.gainesville-nie.com/?p=399>

<sup>11</sup> *Alachua County, Florida FY 2010 Draft State Legislative Program, Board of County Commissioners*; available on-line: <http://www.alachuacounty.us/documents/bocc/agendas/2009-10-27/afe79c40-ad0f-4c92-936a-cf975f174bac.pdf>  
<http://www.alachuacounty.us/documents/bocc/agendas/2009-10-27/afe79c40-ad0f-4c92-936a-cf975f174bac.pdf>

1                                   A bill to be entitled  
 2           An act relating to biodiesel fuel; amending s. 206.874,  
 3           F.S.; exempting biodiesel fuel manufactured by a public or  
 4           private secondary school from taxation under certain  
 5           circumstances; specifying the circumstances under which a  
 6           public or private secondary school that manufactures  
 7           biodiesel fuel is exempt from certain registration  
 8           requirements; providing an effective date.

9  
 10   Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1.   Section 206.874, Florida Statutes, is amended  
 13   to read:

14           206.874   Exemptions.—

15           (1)   The provisions of this part requiring the payment of  
 16   taxes do not apply to any of the following:

17           (a)   The removal from a terminal or refinery of, or the  
 18   entry or sale of, any diesel fuel if all of the following apply:

19           1.   The person otherwise liable for tax is a diesel fuel  
 20   registrant;

21           2.   In the case of a removal from a terminal, the terminal  
 22   is an approved terminal; and

23           3.   The diesel fuel satisfies the dyeing and marking  
 24   requirements of s. 206.8741.

25           (b)   Any entry by a licensed importer into this state of  
 26   diesel fuel on which taxes have been imposed by this chapter on  
 27   a diesel fuel registrant pursuant to an agreement entered into  
 28   with the department as provided by s. 206.872.

29 (c) The removal of diesel fuel if all of the following  
 30 apply:

31 1. The diesel fuel is removed by rail car from an approved  
 32 refinery or terminal and is received at an approved refinery or  
 33 terminal; and

34 2. The refinery and the terminal are operated by the same  
 35 diesel fuel registrant.

36 (d) Diesel fuel which, pursuant to the contract of sale,  
 37 is required to be shipped and is shipped to a point outside of  
 38 this state by a supplier by means of any of the following:

39 1. Facilities operated by the supplier.

40 2. Delivery by the supplier to a carrier, customs broker,  
 41 or forwarding agent, whether hired by the purchaser or not, for  
 42 shipment to such out-of-state point.

43 3. Delivery by the supplier to any vessel clearing from a  
 44 port of this state for a port outside of this state and actually  
 45 exported from this state in the vessel.

46 (e) Diesel fuel which is destined for delivery to a  
 47 location outside of this state on which the diesel fuel  
 48 registrant is required to collect the taxes of the destination  
 49 state pursuant to an agreement with the state of destination.

50 (2) Backup tax does not apply to delivery in this state of  
 51 diesel fuel into the fuel tank of a diesel-powered motor vehicle  
 52 as provided in s. 206.873 for use on a farm for farming  
 53 purposes.

54 (3) Dyed diesel fuel may be purchased and used only for  
 55 the following purposes:

56 (a) Use on a farm for farming purposes.

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- 57 (b) Exclusive use of a local government.
- 58 (c) Use in a vehicle owned by an aircraft museum.
- 59 (d) Exclusive use of the American Red Cross.
- 60 (e) Use in a vessel employed in the business of commercial
- 61 transportation of persons or property or in commercial fishing.
- 62 (f) Use in a bus engaged in the transportation of students
- 63 and employees of schools.
- 64 (g) Use in a local bus service that is open to the public
- 65 and travels regular routes.
- 66 (h) Exclusive use of a nonprofit educational facility.
- 67 (i) Use in a motor vehicle owned by the United States
- 68 Government which ~~that~~ is not used on a highway.
- 69 (j) Use in a vessel of war.
- 70 (k) Use of diesel fuel for home heating.
- 71 (l) Use in self-propelled off-road equipment or stationary
- 72 equipment subject to tax under s. 212.0501.
- 73 (m) Use by a noncommercial vessel.
- 74 (4)(a) Notwithstanding the provisions of this section
- 75 allowing local governments and school districts to use dyed or
- 76 otherwise untaxed diesel fuel in motor vehicles, each county,
- 77 municipality, and school district, to qualify for such use, must
- 78 first register with the department as a local government user of
- 79 diesel fuel.
- 80 (b) Local government users of diesel fuel shall be
- 81 required to file a return accounting for diesel fuel
- 82 acquisitions, inventory, and use, and remit a tax equal to 3
- 83 cents of the 4-cent tax required under s. 206.87(1)(a), plus the
- 84 taxes required under s. 206.87(1)(b), (c), and (d) each month to



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85 the department.

86 (c) Any county, municipality, or school district not  
87 licensed as a local government user of diesel fuel shall be  
88 liable for the taxes imposed by s. 206.87(1) directly to the  
89 department for any highway use of untaxed diesel fuels.

90 (d) Each county, municipality, or school district may  
91 receive a credit for additional taxes paid under s. 206.87 for  
92 the highway use of diesel fuel, provided the purchases of diesel  
93 fuel meet the requirements relating to refunds for motor fuel  
94 purchases under s. 206.41.

95 (5) (a) Notwithstanding the provisions of this section  
96 allowing local bus transit systems to use dyed or otherwise  
97 untaxed diesel fuel in qualifying motor vehicles providing local  
98 public transportation over regular routes, each qualifying mass  
99 transit provider, to qualify for such use, must first register  
100 with the department as a mass transit system.

101 (b) Mass transit system providers shall be required to  
102 file a return accounting for diesel fuel acquisitions,  
103 inventory, and use, and remit a tax equal to the taxes required  
104 under s. 206.87(1) (a) and (b) each month to the department.

105 (c) Any local provider not licensed as a mass transit  
106 system shall be liable directly to the department for any  
107 highway use of untaxed diesel fuels.

108 (d) Each licensed mass transit system may receive a credit  
109 for additional taxes paid under s. 206.87 for the highway use of  
110 diesel fuel, provided the purchases of diesel fuel meet the  
111 requirements relating to refunds for motor fuel purchases under  
112 s. 206.41.

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113 (6) Diesel fuel contained in the fuel tanks of any motor  
114 vehicle entering this state and used to propel such motor  
115 vehicle into Florida from another state shall be exempt from the  
116 taxes imposed by this part but may be taxed under the provisions  
117 of chapter 207. Diesel fuel supplied by a vehicle manufacturer  
118 and contained in the fuel tanks of a new and untitled motor  
119 vehicle shall be exempt from the taxes imposed by this part.  
120 "Fuel tanks" means the reservoir or receptacle attached to the  
121 motor vehicle by the manufacturer as the container for fuel used  
122 to propel the vehicle.

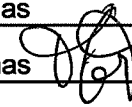
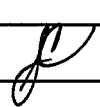
123 (7) Biodiesel fuel manufactured by a public or private  
124 secondary school that produces less than 1,000 gallons annually  
125 for the sole use of the school, its employees, or its students  
126 is exempt from the tax imposed by this part. A public or private  
127 secondary school that produces less than 1,000 gallons a year of  
128 biodiesel is exempt from the registration requirements of this  
129 chapter.

130 Section 2. This act shall take effect July 1, 2010.

**HB 7069**

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7069    PCB CCJP 10-04    Background Screening  
**SPONSOR(S):** Criminal & Civil Justice Policy Council; Snyder and Porth  
**TIED BILLS:** IDEN./SIM. BILLS: SB 2416; SB 1520

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council	14 Y, 0 N	Thomas	Havlicak
1)	Policy Council		Thomas 	Ciccone 
2)	Full Appropriations Council on Education & Economic Development			
3)				
4)				
5)				

**SUMMARY ANALYSIS**

Florida law mandates criminal background screening of certain individuals applying to operate or to be employed in a business that deals primarily with vulnerable persons. Each provider, employee, or contractor required to submit to a criminal background screening may be subject to one of two types of screening requirements. A Level 1 screening simply requires a name check against state records, while a Level 2 screening requires a fingerprint search against state and national records. If a person's screening results determine he or she is not qualified to work in a position of trust due to their criminal history, he or she may apply for an exemption from disqualification.

HB 7069 substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. Key changes made by the bill:

- Require that no person required to be screened may begin work until the screening has been completed.
- Increase all Level 1 screening to Level 2 screening.
- Require all fingerprints to be submitted electronically by July 1, 2012.
- Require certain personnel that are not presently being screened to begin Level 2 screening.
- Add additional serious crimes to the list of disqualifying offenses.
- Authorize agencies to request the retention of fingerprints by the Florida Department of Law Enforcement.
- Provide that an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- Require that all exemptions from disqualification be granted only by the agency head.

The new screening requirements will be prospective. Existing persons working with vulnerable populations are not required to be rescreened until such time they are otherwise required to be rescreened by existing law.

The bill does not appear to have a significant fiscal impact on state or local governments. The Florida Department of Law Enforcement will expend additional resources in performing the higher number of Level 2 background screens, but will receive additional fees for such services.

The bill takes effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Currently, Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Florida Legislature created standard procedures for the screening of prospective employees where the Legislature had determined it necessary to conduct criminal history background checks to protect vulnerable persons. Chapter 435, F.S., outlines the screening standards for Level 1 employment screening and Level 2 employment screening. The Florida Department of Law Enforcement (FDLE) provides criminal history checks to the employer.

In September, 2009, the Fort Lauderdale Sun Sentinel ran a series of articles following an investigation of background screening of persons working with vulnerable populations in Florida.<sup>1</sup> The Sun Sentinel spent six months investigating Florida's background screening system for caregivers of children, the elderly and disabled. The newspaper obtained screening databases from the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), and Broward County. Among the findings are the following:

- Since 1985, DCF has granted exemptions to more than 6,500 people with criminal records to work in child care, substance abuse and mental health counseling, and with the disabled.
- Lack of proof that a nationwide criminal check on employees had been conducted is the most frequent violation found by state inspectors in day care centers. Screening problems are among the four most common violations in assisted living facilities, adult day cares and nursing agencies. Home health agencies and nursing homes are also cited, but less frequently.
- Florida seniors and disabled adults have been beaten, neglected and robbed by caregivers with criminal records.

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<sup>1</sup> Sun Sentinel. Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes. The entire series of articles may be found at <http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html,0,3829069.htmlstory> (accessed February 15, 2010).

- More than 3,500 people with criminal records - including rape, robbery and murder - have been allowed to work with the elderly, disabled and infirm through exemptions granted by the state over the past two decades.
- Hundreds of employees are working with vulnerable persons because employers failed to check their backgrounds or kept them on the job despite their criminal pasts.
- Facility owners and administrators require a nationwide FBI check, but not employees caring for patients. With some exceptions, they are checked only for crimes in Florida.
- For most businesses, employees can begin work before screening results come back.
- At nursing homes, some employees had worked as long as seven years without any check.

The newspaper performed analyses to determine how many exemptions have been granted, who obtained them and for what crimes. FDLE crosschecked the newspaper's list of 8,750 people granted exemptions against its criminal database and found:

- 1,818 people were re-arrested, 1,067 of them on felony charges.
- The crimes included 3,123 felonies and 3,321 misdemeanors.
- The majority of the felonies were drug- and theft-related but also included child molestation, sex offenses, murder, arson, extortion, kidnapping, and cruelty toward a child.<sup>2</sup>

### **Level 1 and Level 2 Background Screenings**

The provisions of ch. 435, F.S., apply whenever a Level 1 or Level 2 screening for employment is required by law. Screenings can be done following Level 1 or Level 2 standards, depending on what direction is provided in a specific statute.<sup>3</sup>

Level 1 screenings<sup>4</sup> are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. Anyone undergoing a Level 1 screening must not have been found guilty of any of the offenses listed below:

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, relating to abuse, neglect, or exploitation of a vulnerable adult.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, relating to vehicular homicide.
- Section 782.09, relating to killing of an unborn quick child by injury to the mother.
- Section 784.011, relating to assault, if the victim of the offense was a minor.
- Section 784.021, relating to aggravated assault.

<sup>2</sup> A full report of the FDLE results can be found at <http://www.sun-sentinel.com/media/acrobat/2009-09/49418865.pdf>.

<sup>3</sup> A Level 1 screening is referred to as a "background screening" in s. 435.03, F.S., while a Level 2 screening is referred to as a "security background investigation" in s. 435.04, F.S.

<sup>4</sup> Level 1 screenings are outlined in s. 435.03, F.S.

- Section 784.03, relating to battery, if the victim of the offense was a minor.
- Section 784.045, relating to aggravated battery.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Chapter 796, relating to prostitution.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.
- Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Chapter 847, relating to obscene literature.
- Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Has not committed an act that constitutes domestic violence as defined in s. 741.28.

A Level 2 screening<sup>5</sup> consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the offenses for Level 1 or the offenses listed below:

- Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a dependency hearing.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 843.01, relating to resisting arrest with violence.
- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, relating to aiding in an escape.

<sup>5</sup> Level 2 screenings are outlined in s. 435.04, F.S.

- Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, relating to introduction of contraband into a correctional facility.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to contraband introduced into detention facilities.

Additionally, the security background investigations conducted for employees and contractors of the Department of Juvenile Justice (DJJ) must ensure that no persons have been found guilty of any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- Section 784.07, relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.
- Section 810.02, relating to burglary, if the offense is a felony.
- Section 944.40, relating to escape.

The Department of Juvenile Justice may not remove a disqualification from employment to any person who is disqualified for any offense disposed of during the most recent 7-year period.

There are two additional requirements that are unique to the Level 2 screening process. Employees undergoing a Level 2 screening are required to inform an employer immediately if they are convicted of any of the disqualifying offenses listed in the statute during the time they are employed. In addition, each employer that is licensed by a state agency must attest upon each renewal that it is in compliance with the screening provisions.<sup>6</sup>

In addition to Level 1 and Level 2 disqualification offenses<sup>7</sup>, additional disqualification offenses were added to s. 408.809(5), F.S., (for screening done under the purview of AHCA) during the 2009 Legislative Session. These offenses apply to both the Level 1 and Level 2 screening. These additional offenses are:

- Any specific authorizing statutes, if the offense was a felony.
- Chapter 408, if the offense was a felony.
- Section 409.920, relating to Medicaid provider fraud, if the offense was a felony.
- Section 409.9201, relating to Medicaid fraud, if the offense was a felony.
- Section 741.28, relating to domestic violence.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 810.02, relating to burglary.
- Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, relating to false and fraudulent insurance claims.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to criminal use of personal identification information.
- Section 817.60, relating to obtaining a credit card through fraudulent means.
- Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, relating to forgery.
- Section 831.02, relating to uttering forged instruments.
- Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.

<sup>6</sup> *Id.* at s. 435.04(5), F.S.

<sup>7</sup> Section 435.03, and s. 435.04, F.S., respectively.



- Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.
- Section 831.30, relating to fraud in obtaining medicinal drugs.
- 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.

## **Level 2 Fingerprint Submission**

Criminal histories for Level 2 background screenings are obtained through the submission of the applicant's fingerprints to FDLE. Currently, there are two ways to submit the applicant's fingerprints: hardcopy submission or electronic submission. Each type of fingerprint submission has a different process and varies in the time it takes to have results returned.

The hard copy fingerprint submission is as follows:

- (1) An applicant submits a completed hard copy fingerprint card to a regulatory agency;
- (2) The agency must forward the card to FDLE within 5 days;
- (3) FDLE sends the original card to the FBI for a national criminal records check, and enters prints into their system to run a state criminal history check. FDLE reports back to the regulatory agency regarding the *state* criminal history check.
- (4) The FBI's response to the agency is mailed to the employer separately from FDLE's response and at a later date. Results from the FBI can take from 4 to 6 weeks.

The electronic fingerprint submission is as follows:

- (1) An applicant has fingerprints taken through the use of a "livescan" device<sup>8</sup> that digitally takes their fingerprints. The prints are then securely emailed to FDLE;
- (2) FDLE processes the prints for a state check and e-mails the electronic submission to the FBI for a national check;
- (3) A bundle of both the FDLE and the FBI results are then sent to the agency within 2 to 3 days.<sup>9</sup>

Currently, due to the length of time required to respond to hard copy fingerprint submissions, a person may begin to work while awaiting the results of a Level 2 background screening.

The fee for a Level 1 screening request is \$24.00. The fee for a Level 2 screening request is \$43.25<sup>10</sup> if submitted electronically, while a hard copy submission costs \$54.25. Currently, over 75% of fingerprints are submitted electronically.<sup>11</sup>

Electronic submissions have many benefits including reduced processing time, improved quality of prints for searching, reduction in potential missed identifications, national and state results bundled together and retention of finger prints for future records. Electronic submissions that are retained by FDLE allow for easy notification to employers if the applicant is arrested. In addition, fingerprint submissions for a Level 2 screening have been found to be more accurate than a Level 1 screening (which is name-based check only). Level 1 screenings conducted in Florida were found to have an error rate of 11.7%.<sup>12</sup> A name-based check does not identify any convictions outside of Florida and may contain false positives and false negatives when trying to correctly identify the applicant.

<sup>8</sup> Livescan devices may be owned by agencies or may be owned by third party vendors. Livescan is a computer device that captures electronic finger prints more accurately than hard copy, and allows for faster submission and retention of the prints. Many state agencies already have livescans in place, and FDLE has established a process to set up any new device.

<sup>9</sup> Results regarding criminal histories for both hard copy and electronic fingerprint submissions are always sent to the agency and never directly to the applicant.

<sup>10</sup> The Agency for Health Care Administration: Background Screening. Available at: [http://www.fdhc.state.fl.us/mchq/long\\_term\\_care/Background\\_Screening/index.shtml](http://www.fdhc.state.fl.us/mchq/long_term_care/Background_Screening/index.shtml).

<sup>11</sup> Criminal History Record Check Process. Florida Department of Law Enforcement. Jan. 12, 2010.

<sup>12</sup> Interstate Identification Index Name Check Efficacy. Report of the National Task Force to the U.S. Attorney General. July 1999. NCJ-179385. Pg 7.

## **Exemptions from Disqualification**

If a person is disqualified from applying for employment in a facility through a Level 1 or Level 2 background screening, ch. 435, F.S., provides a mechanism for those individuals to pursue an exemption from disqualification. An agency may grant an exemption from disqualification to any applicant or employee otherwise disqualified for:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Commissions of acts of domestic violence as defined in s. 741.30.<sup>13</sup>

Once an application for exemption is received, the agency determines if a hearing is warranted. A notice is sent to the applicant to request a personal interview. The informal interview is typically conducted by telephone. The review officer poses questions regarding the applicant's criminal/abuse history, work history, and their motivations for seeking employment in a position of trust. A review committee will make a decision to grant or deny the application based on this interview and the applicant is notified by mail in 14 days.<sup>14</sup>

Pursuant to s. 435.07, F.S., an applicant seeking an exemption must demonstrate by clear and convincing evidence that they should not have been disqualified. The applicant must give sufficient evidence of rehabilitation, which could include:

- An explanation of the circumstances surrounding the criminal incident for which an exemption is sought,
- The time period that has elapsed since the incident,
- The nature of the harm caused to the victim,
- The history of the employee since the incident, or
- Any other evidence indicating that the employee will not present a danger in continued employment.<sup>15</sup>

If one agency grants an exemption, it is not binding on other agencies.<sup>16</sup>

Since 2006, nearly 44% of the total applications for exemption processed by AHCA have been granted. The Fort Lauderdale Sun Sentinel reported on the high recidivism rate among people granted exemptions. The Sun Sentinel reported that one in five people granted exemptions were re-arrested after having been granted the exemption.<sup>17</sup>

## **Screening Statistics for Certain Agencies**

The following chart outlines current screening statistics that are performed by agencies affected by this bill. These totals are for the most recent one-year period available.

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<sup>13</sup> Section 435.07(1), F.S.

<sup>14</sup> A decision is contestable under the traditional administrative appeal process found in chapter 120, F.S.

<sup>15</sup> Section 435.07(3), F.S.

<sup>16</sup> Section 435.07(5), F.S.

<sup>17</sup> Sun Sentinel. Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes. <http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html,0,3829069.html> (accessed February 10, 2010).

	FDLE <sup>18</sup>	AHCA	DCF	DOEA	G.A.L. <sup>19</sup>	DJJ	APD <sup>20</sup>
<b>Level 1 Screens<sup>21</sup></b>	914,863	35,438	0	0	2,400	0	0
<b>Level 2 Screens</b>	1,236,191	28,323	109,945	628	0	12,199	21,159
<b>Disqualified Level 1</b>	N/A	2,368	N/A	N/A	Unknown	0	0
<b>Disqualified level 2</b>		1,028	1,032	37	0	361	Unknown
<b>Exemptions Requested<sup>22</sup></b>	N/A	605	539	36	Unknown	61	136
<b>Exemptions Granted</b>	N/A	182	398	22	Unknown	49	104
<b>Exemptions Denied</b>	N/A	53	130	13	Unknown	Unknown	33
<b>Retains Fingerprints</b>	N/A <sup>23</sup>	No	No	No	No	Yes	No
<b>Rescreening</b>	N/A	Adminis- trators	Yes, Level 1 only	No	No	Yes	Yes

### **Effect of Proposed Changes**

The bill substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. The bill provides that “vulnerable persons” includes minors and adults whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging. Key changes made by the bill:

- Require that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified.
- Increase all Level 1 screening to Level 2 screening. This will not require existing employees to be rescreened until they otherwise come up for rescreening pursuant to existing law.

<sup>18</sup> FDLE processes all Level 1 and Level 2 screens, but does not make determinations for disqualifications or exemptions. The totals in this chart reflect all screens handled by FDLE, and are not limited to just those screens affected by the agencies listed.

<sup>19</sup> Guardian ad Litem.

<sup>20</sup> Totals for APD in this chart are for the annual average over the past five years.

<sup>21</sup> Most Level 1 screens go directly to FDLE and do not show up on this chart as handled under the agency, and are therefore under-reported. The number handled directly at FDLE for each agency is unknown.

<sup>22</sup> Not all exemption requests are acted upon. Many are not processed because the applicant does not respond to requests for information, the agency does not have jurisdiction, or the applicant withdraws the request.

<sup>23</sup> FDLE is the agency where fingerprints are retained for those agencies that retain fingerprints.

- Require all fingerprint submissions to be submitted electronically by July 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints will be required as of July 1, 2010.
- Require certain personnel that deal substantially with vulnerable persons that are not presently being screened to begin Level 2 screening. This includes homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under the Department of Elder Affairs.
- Add additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening.
- Authorize agencies to request the retention of fingerprints by FDLE. The bill also provides for rulemaking and related implementation provisions for retention of fingerprints.
- Provide that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony.
- Require that all exemptions from disqualification be granted only by the agency head.
- Rewrite present screening provisions for clarity and consistency.

**Section 1** (guardian ad litem), **sections 6 and 7** (home health agency personnel; nurse registry personnel; and companions and homemakers), **section 8** (hospices), **sections 12, 13, and 14** (home medical equipment providers), **section 16** (health care services pools), **section 21** (employees and volunteers in summer day camps and summer 24-hour camps), **section 22** (consumer directed care personnel), **sections 24 and 25** (assisted living facilities), **sections 26 and 27** (adult family-care homes), and **sections 28 and 29** (adult day care centers), increase from Level 1 screening to Level 2 screening for relevant personnel. These provisions are also being revised for clarity and consistency and to conform to the screening provisions being placed in s. 408.809, F.S. By placing the procedures for screening in a single statute, s. 408.809, F.S., AHCA can achieve efficiencies and consistency in the application of screening requirements. Many of the existing provisions being deleted are duplicative of provisions in ch. 435, F.S., and are unnecessary or may conflict with changes made by this bill.

**Section 2** removes a reference to ch. 435, F.S., for background screening of hurricane mitigation inspectors participating in the My Safe Florida Home Program established within the Department of Financial Services. These persons will still undergo fingerprinting and criminal background screening at the state and national level, but not pursuant to ch. 435, F.S., since they do not deal primarily with vulnerable children or adults.

**Section 3** adds additional disqualifying offenses for the screening of direct service providers for persons with developmental disabilities. The additional offenses are:

- Any specific authorizing statutes, if the offense was a felony.
- Chapter 393, if the offense was a felony.
- Section 409.920, relating to Medicaid provider fraud, if the offense was a felony.
- Section 409.9201, relating to Medicaid fraud, if the offense was a felony.
- Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, relating to false and fraudulent insurance claims.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to criminal use of personal identification information.
- Section 817.60, relating to obtaining a credit card through fraudulent means.

- Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, relating to forgery.
- Section 831.02, relating to uttering forged instruments.
- Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

**Section 4** (mental health personnel), **section 5** (nursing homes), **section 15** (intermediate care facilities for developmentally disabled persons), **section 17** (health care clinics), and **section 23** (Medicaid providers), revise provisions related to the screening of personnel. These screening provisions already require Level 2 screening, but are being revised for clarity and consistency. They are also being revised to conform to the screening provisions being placed in s. 408.809, F.S. By placing the procedures for screening in a single statute, s. 408.809, F.S., AHCA can achieve efficiencies and consistency in the application of screening requirements. Many of the existing provisions being deleted are duplicative of provisions in ch. 435, F.S., and are unnecessary or may conflict with changes made by this bill.

**Section 9** (homes for special services), **section 10** (transitional living facilities), **section 11** (prescribed pediatric extended care centers), and **section 30** (certain direct service providers under the Department of Elder Affairs), provide Level 2 background screening for personnel in these facilities. Presently, these groups do not have such screening requirements.

**Sections 18, 19, and 20** bills revise AHCA's general provisions relating to screening. These changes are intended to provide for consistency and clarity. The change to s. 408.806, F.S., provides for the submission of an affidavit by licensure applicants, subject to the penalty of perjury, stating that all persons subject to background screening have been screened and are qualified. The change to s. 408.808, F.S., deletes a cross-reference to language being struck by the bill regarding a provisional status for persons pending screening results. Changes to s. 408.809, F.S., provide that:

- Any person whose responsibilities may require them to provide personal care or services directly to clients, including contractors, must be screened. However, this change does not require a person who is employed or contracts with a licensee on or before June 30, 2010, to submit to any additional rescreening if that licensee has written evidence that the person has already been screened and qualified according to Level 1 or Level 2 standards.
- Proof of compliance with Level 2 screening standards submitted within the previous 5 years to meet requirements of AHCA, the Department of Health, the Agency for Persons with Disabilities, or the Department of Children and Family Services satisfies screening requirements if the person has not been unemployed for more than 90 days. After 5 years, the person must be rescreened.
- Fingerprints must be provided in electronic format.
- Screening results will be reviewed by the agency and maintained in a database. The qualifying or disqualifying status of the person named in the request will be posted on a secure website accessible to all licensees [this is current law for nursing homes and is being moved from s. 400.215(1)(b), F.S.].
- An employer is not liable for unemployment compensation or other monetary reimbursement, upon notice of a disqualifying offense listed, for terminating the person against whom the report was issued, whether or not the person has filed for an exemption.

**Section 31** provides that ch. 435, F.S., only applies to background screenings that are required by law to be conducted under the chapter. This section also provides that, in accordance with the doctrine of incorporation by reference, that a reference in the Florida Statutes to any provision in ch. 435, F.S.,

includes all subsequent amendments to ch. 435, F.S. This section also grants rulemaking authority to the agencies in order to implement the background screening provisions.

**Section 32** provides:

- A definition of “employment” to clarify that its use in the chapter is limited to those activities that require the employee to be subject to screening.
- A definition of “vulnerable person” to include all minors and those adults whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.
- A revision to the definition of “licensing agency” – to “agency” – to clarify that its use includes all agencies that facilitate background screening, not just those agencies that issue licenses.

**Section 33** revises the provisions related to Level 1 screening to delete the current list of disqualifying offenses and instead, incorporate the expanded list of disqualifying offenses provided by the bill for Level 2 screening in s. 435.04, F.S.

**Section 34** revises the provisions related to Level 2 screening as follows:

- Require all fingerprint submissions to be submitted electronically by July 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints will be required July 1, 2010.
- Authorize an agency to contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section.
- Delete specific provisions for nursing homes, assisted living facilities, and the Department of Juvenile Justice (these are being transferred to the specific statutes on these topics).
- Deletes requirements for attestation and affidavits by employees and employers (these are being moved to s. 435.05, F.S.).

Section 34 also provides the following additional disqualifying offenses to Level 2 screening (which means they will also apply to Level 1 screening):

- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony (therefore, the bill strikes existing specific references to crimes in this chapter).
- Section 787.025, relating to luring or enticing a child.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Section 810.02, relating to burglary (presently, felony burglary is a disqualifying offense for those being screening under DJJ).
- Section 810.14, relating to voyeurism, if the offense is a felony.
- Section 810.145, relating to video voyeurism, if the offense is a felony.
- Section 944.40, relating to escape (presently, escape is a disqualifying offense for those being screening under DJJ).
- Any crime that constitutes domestic violence.

**Section 35** deletes existing authority that allows employees to work pending the outcome of their background screening. This section also inserts requirements for attestation and affidavits by employees and employers that are being stricken in s. 435.04, F.S.

**Section 36** provides that an employer may not hire an employee until the screening process is completed and that if an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person.

**Section 37** provides that:

- An exemption from disqualification may not be granted for a disqualifying felony until at least three years after the applicant has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony.
- Only the head of an agency may grant an exemption from disqualification.
- The agency may consider as part of its deliberations of the employee's rehabilitation subsequent arrests and convictions, even if that subsequent crime is not a disqualifying offense.
- The standard of review by the administrative law judge of the agency's decision as to rehabilitation is whether the agency's intended action is an abuse of discretion.
- An exemption may not be granted from disqualification from employment for any person who has been designated as a sexual predator pursuant to s. 775.21, F.S.

**Section 38** provides that each agency is responsible for collecting and paying any fee related to fingerprints retained on its behalf to FDLE. The amount of the annual fee and procedures for the submission and retention of fingerprint information and for the dissemination of search results is to be established by rule of FDLE.

**Section 40** of the bill removes a reference to ch. 435, F.S., for background screening of construction contractors under the Department of Business and Professional Regulation. These persons will still undergo fingerprinting and criminal background screening at the state and national level, but not pursuant to ch. 435, F.S., since they do not deal primarily with vulnerable children or adults.

**Section 41** authorizes agencies to request the retention of fingerprints by FDLE and to adopt rules that require employers to keep the agency informed of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of each person whose fingerprints are retained. This section also allows FDLE to participate in a federal fingerprint retention program once one is implemented, provided that FDLE is funded and equipped to participate.

**Section 42** makes technical changes by removing obsolete references in s. 943.053, F.S.

**Section 43** amends the background screening provisions of the Department of Juvenile Justice for consistency with other changes made by this bill; to remove redundant provisions; to add an additional disqualifying offense for the criminal use of personal identification information; to add the disqualifying offense of assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers (which is being struck from s. 435.04, F.S.); and to authorize the adoption of rules that describe the procedure and requirements necessary to implement the employment screening and fingerprint retention services.

**Sections 39, 44, 45, 46, 47, 48, 49, and 50** correct cross-references to conform to changes made by the bill.

**Section 51** provides that the changes made by the bill are intended to be prospective in nature and that persons are not required to be rescreened who are employed or licensed on the effective date of the bill until such time they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in the bill.

**Section 52** provides that the bill takes effect July 1, 2010.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 39.821, F.S., relating to qualifications of guardians ad litem.

Section 2. Amends s. 215.5586, F.S., relating to the My Safe Florida Home Program.

Section 3. Amends s. 393.0655, F.S., relating to screening of direct service providers.

Section 4. Amends s. 394.4572, F.S., relating to screening of mental health personnel.

Section 5. Amends s. 400.215, F.S., relating to personnel screening requirement.

Section 6. Amends s. 400.506, F.S., relating to licensure of nurse registries; requirements; penalties.

Section 7. Amends s. 400.512, F.S., relating to screening of home health agency personnel; nurse registry personnel; and companions and homemakers.

Section 8. Amends s. 400.6065, F.S., relating to background screening.

Section 9. Amends s. 400.801, F.S., relating to homes for special services.

Section 10. Amends s. 400.805, F.S., relating to transitional living facilities.

Section 11. Creates s. 400.9065, F.S., relating to background screening.

Section 12. Amends s. 400.934, F.S., relating to minimum standards.

Section 13. Amends s. 400.953, F.S., relating to background screening of home medical equipment provider personnel.

Section 14. Repeals s. 400.955, F.S., relating to procedures for screening of home medical equipment provider personnel.

Section 15. Amends s. 400.964, F.S., relating to personnel screening requirement.

Section 16. Amends s. 400.980, F.S., relating to health care services pools.

Section 17. Amends s. 400.991, F.S., relating to license requirements; background screenings; prohibitions.

Section 18. Amends s. 408.806, F.S., relating to license application process.

Section 19. Amends s. 408.808, F.S., relating to license categories.

Section 20. Amends s. 408.809, F.S., relating to background screening; prohibited offenses.

Section 21. Amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.

Section 22. Amends s. 409.221, F.S., relating to consumer-directed care program.



- Section 23. Amends s. 409.907, F.S., relating to medicaid provider agreements.
- Section 24. Amends s. 429.14, F.S., relating to administrative penalties.
- Section 25. Amends s. 429.174, F.S., relating to background screening.
- Section 26. Amends s. 429.67, F.S., relating to licensure.
- Section 27. Amends s. 429.69, F.S., relating to denial, revocation, and suspension of a license.
- Section 28. Amends s. 429.911, F.S., relating to denial, suspension, revocation of license; emergency action; administrative fines; investigations and inspections.
- Section 29. Amends s. 429.919, F.S., relating to background screening.
- Section 30. Creates s. 430.60, F.S., relating to screening of direct service providers.
- Section 31. Amends s. 435.01, F.S., relating to applicability of this chapter.
- Section 32. Amends s. 435.02, F.S., relating to definitions.
- Section 33. Amends s. 435.03, F.S., relating to Level 1 screening standards.
- Section 34. Amends s. 435.04, F.S., relating to Level 2 screening standards.
- Section 35. Amends s. 435.05, F.S., relating to requirements for covered employees and employers.
- Section 36. Amends s. 435.06, F.S., relating to exclusion from employment.
- Section 37. Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 38. Amends s. 435.08, F.S., relating to payment for processing of fingerprints and state criminal records checks.
- Section 39. Amends s. 464.203, F.S., relating to certified nursing assistants; certification requirement.
- Section 40. Amends s. 489.115, F.S., relating to certification and registration; endorsement; reciprocity; renewals; continuing education.
- Section 41. Amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.
- Section 42. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.
- Section 43. Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.
- Section 44. Amends s. 381.60225, F.S., relating to background screening.
- Section 45. Amends s. 409.912, F.S., relating to cost-effective purchasing of health care.
- Section 46. Amends s. 464.018, F.S., relating to disciplinary actions.
- Section 47. Amends s. 468.3101, F.S., relating to disciplinary grounds and actions.
- Section 48. Amends s. 744.309, F.S., relating to who may be appointed guardian of a resident ward.

Section 49. Amends s. 744.474, F.S., relating to reasons for removal of guardian.

Section 50. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 51. Provides the changes made by this act are intended to be prospective in nature.

Section 52. Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill will result in an increase in the number of persons required to be background screened, resulting in an increase in the related fees collected by the Florida Department of Law Enforcement.

#### 2. Expenditures:

The Florida Department of Law Enforcement will expend additional resources in performing the higher number of Level 2 background screens. However, the Department has reported that it does not need additional positions unless an agency requests that FDLE retain fingerprints on its behalf.

AHCA anticipates that certain nursing homes could request up to \$200,000 annually for reimbursement of increased background screening costs associated with this bill that would be an allowable cost on the Medicaid Nursing Home Cost Reports. The total state impact using the anticipated Federal Medical Assistance Percentage (FMAP) rates for FY 2010-11 would be \$78,474. The balance would be federal earnings.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill should have no impact on local government revenues.

#### 2. Expenditures:

Staff is not aware of any local governments that use ch. 435, F.S., for background screening, though they do perform criminal background checks on certain employees. The bill will have no fiscal impact on background screening done outside of the ch. 435, F.S., process. It may be that some local governments are associated, or help fund, local programs that do use such screening.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the number of persons who will need to undergo background screening prior to working with vulnerable persons. It also will require the screening to be done using Level 2 standards instead of Level 1, which has a greater cost associated with it. Level 1 costs \$24, and Level 2 costs that same \$24, plus an additional \$19.25 (electronic fingerprints) or \$30.25 (hard card fingerprints). By increasing the cost and the number of those persons required to be screened, there will be an impact on employers and employees. It is anticipated that in most cases, the fees will be passed on to the employee and the employer may or may not reimburse that employee.

### D. FISCAL COMMENTS:

The bill does not create a direct negative fiscal impact on state government, except for potential Medicaid reimbursement for allowable expenses (background screening) for some nursing homes. However, while it does not mandate retention of fingerprints, it does authorize an agency to request

such retention by the Florida Department of Law Enforcement. If such a request is made, then that agency would realize associated costs that would be passed on to employers. The agency could also realize additional workload in maintaining a list of employers for whom fingerprints should be retained, as well as, making any notifications to employers should the agency be notified that a person whose fingerprints have been retained has been arrested.

The following agencies have reported that the bill will have a neutral or no fiscal impact on revenues or expenditures (assuming they do not end up having to retain fingerprints):

- Florida Department of Law Enforcement
- Department of Children and Families
- Agency for Persons with Disabilities
- Agency for Health Care Administration –see AHCA’s additional comments below
- Department of Elder Affairs
- Department of Juvenile Justice

The following agency has reported that the bill will have a fiscal impact:

- Guardian ad Litem – this agency pays for the screening of their volunteers and employees. By increasing the screening to Level 2, they predict an additional \$30 per volunteer will be spent. They anticipate approximately 2,400 screens to be done next year, resulting in an increased expenditure of \$72,000. However, the agency is not required by law to pay for these screenings.

#### **Agency for Health Care Administration**

While the Agency for Health Care Administration reports that the bill’s fiscal impact will be neutral, it also provides the following comments:

The Agency’s background screening workload is expected to increase based upon the shift from Level 1 to Level 2 screening that will require screening currently sent directly to FDLE to be conducted through the Agency. The workload will also increase because of the increase in the number of persons subject to screening based on the uniform definition of when screening is required (access to client living areas, property or funds).

The Agency expects to process approximately 86,000 additional screenings each year. The resources necessary to do this work will be offset by the efficiencies gained through use of electronic fingerprint (Livescan), and movement of OPS staff funding of \$142,098 within the Agency. Therefore no new resources will be required.

Shift existing OPS funding: In January 2010, the Division of Medicaid provided \$142,098 in OPS funds to the Background Screening section to consolidate background screening within the Agency. These resources assist with the direct staff screening requirements of certain Medicaid providers which in some cases are duplicative of screenings for licensure, bringing efficiency to Agency background screening duties. Moving the OPS funding to Health Quality Assurance will secure the necessary resources to support the additional Level 2 workload in the bill. Funds would be moved from Org. Code 68500000000 to 68304030000.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill provides specific rulemaking direction in several places in the bill related to implementation of fingerprints screening, retention of fingerprints, and the electronic submission of fingerprints. All rulemaking is directed to be accomplished pursuant to ch. 120, F.S.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On February 16, 2010, the Criminal & Civil Justice Policy Council adopted 10 amendments to the proposed council bill (PCB). This analysis is drafted to the PCB as amended by the Council. The amendments are:

#### **Amendment 1 – Remove lines 186 - 218**

Requires screening for all employees and volunteers that have direct unsupervised contact with patients in mental health programs and facilities.

#### **Amendment 2 – Remove lines 696 – 722**

Clarifies that only contractors and employees with direct client contact must be screened for those groups under the Agency for Health Care Administration.

#### **Amendment 3 – Remove lines 814 - 816**

Clarifies that FDLE is to collect screening fees as provided in existing law.

#### **Amendment 4 – Remove lines 1215 – 1230**

Revises the applicability provision for clarity and gives agencies rulemaking authority to implement the screening provisions.

#### **Amendment 5 – Remove lines 1357 - 1375**

Clarifies language regarding the electronic submission of prints to remove reference to an approved FBI format and to clarify that the fingerprints are to be submitted to FDLE.

#### **Amendment 6 – Remove line 1614**

Clarifies that an employee who has been arrested for a disqualifying offense may not return to work until the "arrest is resolved in such a way that the employer determines that the employee is still eligible for employment."

Amendment 7 – Remove lines 1753 – 1786

Revises fingerprint retention language to clarify when notification must be given of a change in affiliation, employment, or contractual status.

Amendment 8 – Remove line 1916

Changes "federal criminal records check" to "national criminal records check."

Amendment 9 – Remove line 1991

Technical - removes an extra word.

Amendment 10 – Between lines 92 – 93

Changes background screening for Guardians ad Litem from Level 1 to Level 2.

1                                   A bill to be entitled  
 2       An act relating to background screening; amending s.  
 3       39.821, F.S.; revising background screening requirements  
 4       for the Guardian Ad Litem Program; amending s. 215.5586,  
 5       F.S.; removing reference to chapter 435, F.S., for  
 6       background screening of hurricane mitigation inspectors;  
 7       amending s. 393.0655, F.S.; adding additional  
 8       disqualifying offenses for the screening of direct service  
 9       providers for persons with developmental disabilities;  
 10      amending s. 394.4572, F.S.; revising background screening  
 11      requirements for mental health personnel; amending s.  
 12      400.215, F.S.; revising background screening requirements  
 13      for nursing home personnel; amending s. 400.506, F.S.;  
 14      conforming provisions to changes made by the act; amending  
 15      s. 400.512, F.S.; revising background screening  
 16      requirements for home health agency personnel, nurse  
 17      registry personnel, and companions and homemakers;  
 18      amending s. 400.6065, F.S.; revising background screening  
 19      requirements for hospices; amending s. 400.801, F.S.;  
 20      revising background screening requirements for homes for  
 21      special services; amending s. 400.805, F.S.; revising  
 22      background screening requirements for transitional living  
 23      facilities; creating s. 400.9065, F.S.; providing  
 24      background screening requirements for prescribed pediatric  
 25      extended care centers; amending s. 400.934, F.S.; revising  
 26      minimum standards for home medical equipment providers;  
 27      amending s. 400.953, F.S.; revising background screening  
 28      requirements for home medical equipment providers;

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29 | repealing s. 400.955, F.S., relating to the procedures for  
30 | screening of home medical equipment provider personnel;  
31 | amending s. 400.964, F.S.; revising background screening  
32 | requirements for intermediate care facilities for  
33 | developmentally disabled persons; amending s. 400.980,  
34 | F.S.; revising background screening requirements for  
35 | health care services pools; amending s. 400.991, F.S.;  
36 | revising background screening requirements for health care  
37 | clinics; amending s. 408.806, F.S.; adding a requirement  
38 | for an affidavit relating to background screening to the  
39 | license application process under the Agency for Health  
40 | Care Administration; amending s. 408.808, F.S.; conforming  
41 | provisions to changes made by the act; amending s.  
42 | 408.809, F.S.; revising background screening requirements  
43 | under the Agency for Health Care Administration; requiring  
44 | electronic submission of fingerprints; amending s.  
45 | 409.175, F.S.; revising background screening requirements  
46 | for employees and volunteers in summer day camps and  
47 | summer 24-hour camps; amending s. 409.221, F.S.; revising  
48 | background screening requirements for persons who render  
49 | consumer-directed care; amending s. 409.907, F.S.;  
50 | revising background screening requirements for Medicaid  
51 | providers; amending s. 429.14, F.S.; revising  
52 | administrative penalty provisions relating to assisted  
53 | living facilities; amending s. 429.174, F.S.; revising  
54 | background screening requirements for assisted living  
55 | facilities; amending s. 429.67, F.S.; revising licensure  
56 | requirements for adult family-care homes; amending s.

57 | 429.69, F.S.; revising background screening requirements  
58 | for adult family-care homes; amending s. 429.911, F.S.;  
59 | revising administrative penalty provisions relating to  
60 | adult day care centers; amending s. 429.919, F.S.;  
61 | revising background screening requirements for adult day  
62 | care centers; creating s. 430.60, F.S.; providing  
63 | background screening requirements for direct service  
64 | providers under the Department of Elderly Affairs;  
65 | amending s. 435.01, F.S.; revising provisions related to  
66 | the applicability of the chapter, statutory references to  
67 | the chapter, and rulemaking; providing construction with  
68 | respect to the doctrine of incorporation by reference;  
69 | amending s. 435.02, F.S.; revising and adding definitions;  
70 | amending s. 435.03, F.S.; revising level 1 screening  
71 | standards; adding disqualifying offenses; amending s.  
72 | 435.04, F.S.; revising level 2 screening standards;  
73 | requiring electronic submission of fingerprints after a  
74 | certain date; authorizing agencies to contract for  
75 | electronic fingerprinting; adding disqualifying offenses;  
76 | amending s. 435.05, F.S.; revising background check  
77 | requirements for covered employees and employers; amending  
78 | s. 435.06, F.S.; revising provisions relating to exclusion  
79 | from employment; providing that an employer may not hire,  
80 | select, or otherwise allow an employee contact with any  
81 | vulnerable person until the screening process is  
82 | completed; requiring removal of an employee arrested for  
83 | disqualifying offenses from roles requiring background  
84 | screening until the employee's eligibility for employment



85 | determined; amending s. 435.07, F.S.; revising provisions  
 86 | relating to exemptions from disqualification; amending s.  
 87 | 435.08, F.S.; revising provisions relating to the payment  
 88 | for processing of fingerprints and criminal history  
 89 | records checks; amending s. 464.203, F.S.; conforming  
 90 | provisions to changes made by the act; amending s.  
 91 | 489.115, F.S.; removing reference to chapter 435, F.S.,  
 92 | for background screening of construction contractors;  
 93 | amending s. 943.05, F.S.; revising provisions relating to  
 94 | the Criminal Justice Information Program under the  
 95 | Department of Law Enforcement; authorizing agencies to  
 96 | request the retention of certain fingerprints by the  
 97 | department; providing for rulemaking to require employers  
 98 | to keep the agencies informed of any change in the  
 99 | affiliation, employment, or contractual status of each  
 100 | person whose fingerprints are retained in certain  
 101 | circumstances; providing departmental duties upon  
 102 | notification that a federal fingerprint retention program  
 103 | is in effect; amending s. 943.053, F.S.; removing obsolete  
 104 | references relating to the dissemination of criminal  
 105 | justice information; amending s. 985.644, F.S.; revising  
 106 | background screening requirements for the Department of  
 107 | Juvenile Justice; authorizing rulemaking; amending ss.  
 108 | 381.60225, 409.912, 464.018, 468.3101, 744.309, 744.474,  
 109 | and 985.04, F.S.; conforming provisions to changes made to  
 110 | ch. 435, F.S., by this act; providing for prospective  
 111 | application of the act; providing an effective date.

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

114

115 Section 1. Subsection (1) of section 39.821, Florida  
 116 Statutes, is amended to read:

117 39.821 Qualifications of guardians ad litem.—

118 (1) Because of the special trust or responsibility placed  
 119 in a guardian ad litem, the Guardian Ad Litem Program may use  
 120 any private funds collected by the program, or any state funds  
 121 so designated, to conduct a security background investigation  
 122 before certifying a volunteer to serve. A security background  
 123 investigation must include, but need not be limited to,  
 124 employment history checks, checks of references, local criminal  
 125 records checks through local law enforcement agencies, and  
 126 statewide criminal records checks through the Department of Law  
 127 Enforcement. Upon request, an employer shall furnish a copy of  
 128 the personnel record for the employee or former employee who is  
 129 the subject of a security background investigation conducted  
 130 under this section. The information contained in the personnel  
 131 record may include, but need not be limited to, disciplinary  
 132 matters and the reason why the employee was terminated from  
 133 employment. An employer who releases a personnel record for  
 134 purposes of a security background investigation is presumed to  
 135 have acted in good faith and is not liable for information  
 136 contained in the record without a showing that the employer  
 137 maliciously falsified the record. A security background  
 138 investigation conducted under this section must ensure that a  
 139 person is not certified as a guardian ad litem if the person has  
 140 been convicted of, regardless of adjudication, or entered a plea

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141 of nolo contendere or guilty to, any offense prohibited under  
142 the provisions listed in s. 435.04. All applicants certified  
143 after July 1, 2010, must undergo a level 2 background screening  
144 pursuant to chapter 435 before being certified ~~the provisions of~~  
145 ~~the Florida Statutes specified in s. 435.04(2) or under any~~  
146 ~~similar law in another jurisdiction. Before certifying an~~  
147 ~~applicant to serve as a guardian ad litem, the Guardian Ad Litem~~  
148 ~~Program may request a federal criminal records check of the~~  
149 ~~applicant through the Federal Bureau of Investigation. In~~  
150 analyzing and evaluating the information obtained in the  
151 security background investigation, the program must give  
152 particular emphasis to past activities involving children,  
153 including, but not limited to, child-related criminal offenses  
154 or child abuse. The program has the sole discretion in  
155 determining whether to certify a person based on his or her  
156 security background investigation. The information collected  
157 pursuant to the security background investigation is  
158 confidential and exempt from s. 119.07(1).

159 Section 2. Paragraph (b) of subsection (1) of section  
160 215.5586, Florida Statutes, is amended to read:

161 215.5586 My Safe Florida Home Program.—There is  
162 established within the Department of Financial Services the My  
163 Safe Florida Home Program. The department shall provide fiscal  
164 accountability, contract management, and strategic leadership  
165 for the program, consistent with this section. This section does  
166 not create an entitlement for property owners or obligate the  
167 state in any way to fund the inspection or retrofitting of  
168 residential property in this state. Implementation of this

169 program is subject to annual legislative appropriations. It is  
 170 the intent of the Legislature that the My Safe Florida Home  
 171 Program provide trained and certified inspectors to perform  
 172 inspections for owners of site-built, single-family, residential  
 173 properties and grants to eligible applicants as funding allows.  
 174 The program shall develop and implement a comprehensive and  
 175 coordinated approach for hurricane damage mitigation that may  
 176 include the following:

177 (1) HURRICANE MITIGATION INSPECTIONS.—

178 (b) To qualify for selection by the department as a wind  
 179 certification entity to provide hurricane mitigation  
 180 inspections, the entity shall, at a minimum, meet the following  
 181 requirements:

182 1. Use hurricane mitigation inspectors who:

- 183 a. Are certified as a building inspector under s. 468.607;
- 184 b. Are licensed as a general or residential contractor  
 185 under s. 489.111;
- 186 c. Are licensed as a professional engineer under s.  
 187 471.015 and who have passed the appropriate equivalency test of  
 188 the building code training program as required by s. 553.841;
- 189 d. Are licensed as a professional architect under s.  
 190 481.213; or
- 191 e. Have at least 2 years of experience in residential  
 192 construction or residential building inspection and have  
 193 received specialized training in hurricane mitigation  
 194 procedures. Such training may be provided by a class offered  
 195 online or in person.

196 2. Use hurricane mitigation inspectors who also:

197 a. Have undergone drug testing and a level-2 background  
 198 screening checks pursuant to s. 435.04. The department may  
 199 conduct criminal record checks of inspectors used by wind  
 200 certification entities. Inspectors must submit a set of the  
 201 fingerprints to the department for state and national criminal  
 202 history checks and must pay the fingerprint processing fee set  
 203 forth in s. 624.501. The fingerprints shall be sent by the  
 204 department to the Department of Law Enforcement and forwarded to  
 205 the Federal Bureau of Investigation for processing. The results  
 206 shall be returned to the department for screening. The  
 207 fingerprints shall be taken by a law enforcement agency,  
 208 designated examination center, or other department-approved  
 209 entity; and

210 b. Have been certified, in a manner satisfactory to the  
 211 department, to conduct the inspections.

212 3. Provide a quality assurance program including a  
 213 reinspection component.

214 Section 3. Subsection (5) is added to section 393.0655,  
 215 Florida Statutes, to read:

216 393.0655 Screening of direct service providers.—

217 (5) DISQUALIFYING OFFENSES.—The background screening  
 218 conducted under this section must ensure that, in addition to  
 219 the disqualifying offenses listed in s. 435.04, no person  
 220 subject to the provisions of this section has been found guilty  
 221 of, regardless of adjudication, or entered a plea of nolo  
 222 contendere or guilty to, any offense prohibited under any of the  
 223 following provisions of the Florida Statutes or under any  
 224 similar statute of another jurisdiction:

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

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

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

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

229 (e) Section 817.034, relating to fraudulent acts through

230 mail, wire, radio, electromagnetic, photoelectronic, or

231 photooptical systems.

232 (f) Section 817.234, relating to false and fraudulent

233 insurance claims.

234 (g) Section 817.505, relating to patient brokering.

235 (h) Section 817.568, relating to criminal use of personal

236 identification information.

237 (i) Section 817.60, relating to obtaining a credit card

238 through fraudulent means.

239 (j) Section 817.61, relating to fraudulent use of credit

240 cards, if the offense was a felony.

241 (k) Section 831.01, relating to forgery.

242 (l) Section 831.02, relating to uttering forged

243 instruments.

244 (m) Section 831.07, relating to forging bank bills,

245 checks, drafts, or promissory notes.

246 (n) Section 831.09, relating to uttering forged bank

247 bills, checks, drafts, or promissory notes.

248 Section 4. Section 394.4572, Florida Statutes, is amended  
249 to read:

250 394.4572 Screening of mental health personnel.—

251 (1) (a) The department and the Agency for Health Care

252 Administration shall require level 2 background employment

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253 screening pursuant to chapter 435 for mental health personnel  
 254 ~~using the standards for level 2 screening set forth in chapter~~  
 255 ~~435.~~ "Mental health personnel" includes all program directors,  
 256 professional clinicians, staff members, and volunteers working  
 257 in public or private mental health programs and facilities who  
 258 have direct contact with individuals held for examination or  
 259 admitted for mental health treatment ~~unmarried patients under~~  
 260 ~~the age of 18 years.~~ For purposes of this chapter, employment  
 261 screening of mental health personnel shall also include, but is  
 262 not limited to, employment screening as provided under chapter  
 263 435 and s. 408.809.

264 (b) Students in the health care professions who are  
 265 interning in a mental health facility licensed under chapter  
 266 395, where the primary purpose of the facility is not the  
 267 treatment of minors, are exempt from the fingerprinting and  
 268 screening requirements, if provided they are under direct  
 269 supervision in the actual physical presence of a licensed health  
 270 care professional.

271 ~~(c) Mental health personnel working in a facility licensed~~  
 272 ~~under chapter 395 who have less than 15 hours per week of direct~~  
 273 ~~contact with patients or who are health care professionals~~  
 274 ~~licensed by the Agency for Health Care Administration or a board~~  
 275 ~~thereunder are exempt from the fingerprinting and screening~~  
 276 ~~requirements, except for persons working in mental health~~  
 277 ~~facilities where the primary purpose of the facility is the~~  
 278 ~~treatment of minors.~~

279 (d) A volunteer who assists on an intermittent basis for  
 280 less than 40 hours per month is exempt from the fingerprinting

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281 and screening requirements, provided the volunteer is under  
 282 direct and constant supervision by persons who meet the  
 283 screening requirements of paragraph (a).

284 (2) The department or the Agency for Health Care  
 285 Administration may grant exemptions from disqualification as  
 286 provided in chapter 435 s. 435.06.

287 ~~(3) Prospective mental health personnel who have  
 288 previously been fingerprinted or screened pursuant to this  
 289 chapter, chapter 393, chapter 397, chapter 402, or chapter 409,  
 290 or teachers who have been fingerprinted pursuant to chapter  
 291 1012, who have not been unemployed for more than 90 days  
 292 thereafter, and who under the penalty of perjury attest to the  
 293 completion of such fingerprinting or screening and to compliance  
 294 with the provisions of this section and the standards for level  
 295 1 screening contained in chapter 435, shall not be required to  
 296 be re-fingerprinted or rescreened in order to comply with any  
 297 screening requirements of this part.~~

298 Section 5. Section 400.215, Florida Statutes, is amended  
 299 to read:

300 400.215 Personnel screening requirement.-

301 (1) The agency shall require level 2 background screening  
 302 for personnel as required in s. 408.809(1)(e) pursuant to as  
 303 ~~provided in chapter 435 and s. 408.809. for all employees or~~  
 304 ~~prospective employees of facilities licensed under this part who~~  
 305 ~~are expected to, or whose responsibilities may require them to:~~

- 306 ~~(a) Provide personal care or services to residents;~~
- 307 ~~(b) Have access to resident living areas; or~~
- 308 ~~(c) Have access to resident funds or other personal~~



309 ~~property.~~

310 ~~(2) Employers and employees shall comply with the~~  
 311 ~~requirements of s. 435.05.~~

312 ~~(a) Notwithstanding the provisions of s. 435.05(1),~~  
 313 ~~facilities must have in their possession evidence that level 1~~  
 314 ~~screening has been completed before allowing an employee to~~  
 315 ~~begin working with patients as provided in subsection (1). All~~  
 316 ~~information necessary for conducting background screening using~~  
 317 ~~level 1 standards as specified in s. 435.03 shall be submitted~~  
 318 ~~by the nursing facility to the agency. Results of the background~~  
 319 ~~screening shall be provided by the agency to the requesting~~  
 320 ~~nursing facility.~~

321 ~~(b) Employees qualified under the provisions of paragraph~~  
 322 ~~(a) who have not maintained continuous residency within the~~  
 323 ~~state for the 5 years immediately preceding the date of request~~  
 324 ~~for background screening must complete level 2 screening, as~~  
 325 ~~provided in chapter 435. Such employees may work in a~~  
 326 ~~conditional status up to 180 days pending the receipt of written~~  
 327 ~~findings evidencing the completion of level 2 screening. Level 2~~  
 328 ~~screening shall not be required of employees or prospective~~  
 329 ~~employees who attest in writing under penalty of perjury that~~  
 330 ~~they meet the residency requirement. Completion of level 2~~  
 331 ~~screening shall require the employee or prospective employee to~~  
 332 ~~furnish to the nursing facility a full set of fingerprints to~~  
 333 ~~enable a criminal background investigation to be conducted. The~~  
 334 ~~nursing facility shall submit the completed fingerprint card to~~  
 335 ~~the agency. The agency shall establish a record of the request~~  
 336 ~~in the database provided for in paragraph (c) and forward the~~

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337 ~~request to the Department of Law Enforcement, which is~~  
338 ~~authorized to submit the fingerprints to the Federal Bureau of~~  
339 ~~Investigation for a national criminal history records check. The~~  
340 ~~results of the national criminal history records check shall be~~  
341 ~~returned to the agency, which shall maintain the results in the~~  
342 ~~database provided for in paragraph (c). The agency shall notify~~  
343 ~~the administrator of the requesting nursing facility or the~~  
344 ~~administrator of any other facility licensed under chapter 393,~~  
345 ~~chapter 394, chapter 395, chapter 397, chapter 429, or this~~  
346 ~~chapter, as requested by such facility, as to whether or not the~~  
347 ~~employee has qualified under level 1 or level 2 screening. An~~  
348 ~~employee or prospective employee who has qualified under level 2~~  
349 ~~screening and has maintained such continuous residency within~~  
350 ~~the state shall not be required to complete a subsequent level 2~~  
351 ~~screening as a condition of employment at another facility.~~

352 ~~(c) The agency shall establish and maintain a database of~~  
353 ~~background screening information which shall include the results~~  
354 ~~of both level 1 and level 2 screening. The Department of Law~~  
355 ~~Enforcement shall timely provide to the agency, electronically,~~  
356 ~~the results of each statewide screening for incorporation into~~  
357 ~~the database. The agency shall, upon request from any facility,~~  
358 ~~agency, or program required by or authorized by law to screen~~  
359 ~~its employees or applicants, notify the administrator of the~~  
360 ~~facility, agency, or program of the qualifying or disqualifying~~  
361 ~~status of the employee or applicant named in the request.~~

362 ~~(d) Applicants and employees shall be excluded from~~  
363 ~~employment pursuant to s. 435.06.~~

364 ~~(3) The applicant is responsible for paying the fees~~

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365 ~~associated with obtaining the required screening. Payment for~~  
366 ~~the screening shall be submitted to the agency. The agency shall~~  
367 ~~establish a schedule of fees to cover the costs of level 1 and~~  
368 ~~level 2 screening. Facilities may reimburse employees for these~~  
369 ~~costs. The Department of Law Enforcement shall charge the agency~~  
370 ~~for a level 1 or level 2 screening a rate sufficient to cover~~  
371 ~~the costs of such screening pursuant to s. 943.053(3). The~~  
372 ~~agency shall, as allowable, reimburse nursing facilities for the~~  
373 ~~cost of conducting background screening as required by this~~  
374 ~~section. This reimbursement will not be subject to any rate~~  
375 ~~ceilings or payment targets in the Medicaid Reimbursement plan.~~

376 ~~(4)(a) As provided in s. 435.07, the agency may grant an~~  
377 ~~exemption from disqualification to an employee or prospective~~  
378 ~~employee who is subject to this section and who has not received~~  
379 ~~a professional license or certification from the Department of~~  
380 ~~Health.~~

381 ~~(b) As provided in s. 435.07, the appropriate regulatory~~  
382 ~~board within the Department of Health, or that department itself~~  
383 ~~when there is no board, may grant an exemption from~~  
384 ~~disqualification to an employee or prospective employee who is~~  
385 ~~subject to this section and who has received a professional~~  
386 ~~license or certification from the Department of Health or a~~  
387 ~~regulatory board within that department.~~

388 ~~(5) Any provision of law to the contrary notwithstanding,~~  
389 ~~persons who have been screened and qualified as required by this~~  
390 ~~section and who have not been unemployed for more than 180 days~~  
391 ~~thereafter, and who under penalty of perjury attest to not~~  
392 ~~having been convicted of a disqualifying offense since the~~

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393 ~~completion of such screening, shall not be required to be~~  
394 ~~rescreened. An employer may obtain, pursuant to s. 435.10,~~  
395 ~~written verification of qualifying screening results from the~~  
396 ~~previous employer or other entity which caused such screening to~~  
397 ~~be performed.~~

398 ~~(6) The agency and the Department of Health shall have~~  
399 ~~authority to adopt rules pursuant to the Administrative~~  
400 ~~Procedure Act to implement this section.~~

401 ~~(7) All employees shall comply with the requirements of~~  
402 ~~this section by October 1, 1998. No current employee of a~~  
403 ~~nursing facility as of the effective date of this act shall be~~  
404 ~~required to submit to rescreening if the nursing facility has in~~  
405 ~~its possession written evidence that the person has been~~  
406 ~~screened and qualified according to level 1 standards as~~  
407 ~~specified in s. 435.03(1). Any current employee who meets the~~  
408 ~~level 1 requirement but does not meet the 5-year residency~~  
409 ~~requirement as specified in this section must provide to the~~  
410 ~~employing nursing facility written attestation under penalty of~~  
411 ~~perjury that the employee has not been convicted of a~~  
412 ~~disqualifying offense in another state or jurisdiction. All~~  
413 ~~applicants hired on or after October 1, 1998, shall comply with~~  
414 ~~the requirements of this section.~~

415 ~~(8) There is no monetary or unemployment liability on the~~  
416 ~~part of, and no cause of action for damages arising against an~~  
417 ~~employer that, upon notice of a disqualifying offense listed~~  
418 ~~under chapter 435 or an act of domestic violence, terminates the~~  
419 ~~employee against whom the report was issued, whether or not the~~  
420 ~~employee has filed for an exemption with the Department of~~

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421 ~~Health or the Agency for Health Care Administration.~~

422 Section 6. Subsection (9) of section 400.506, Florida  
 423 Statutes, is amended to read:

424 400.506 Licensure of nurse registries; requirements;  
 425 penalties.—

426 (9) Each nurse registry must comply with the background  
 427 screening requirements ~~procedures set forth~~ in s. 400.512 for  
 428 ~~maintaining records of the work history of~~ all persons referred  
 429 for contract and is subject to the standards and conditions set  
 430 ~~forth in that section.~~ However, an initial screening may not be  
 431 required for persons who have been continuously registered with  
 432 the nurse registry since October 1, 2000.

433 Section 7. Section 400.512, Florida Statutes, is amended  
 434 to read:

435 400.512 Screening of home health agency personnel; nurse  
 436 registry personnel; and companions and homemakers.—The agency  
 437 shall require level 2 background screening for personnel as  
 438 required in s. 408.809(1)(e) pursuant to chapter 435 and s.  
 439 408.809 ~~employment or contractor screening as provided in~~  
 440 ~~chapter 435, using the level 1 standards for screening set forth~~  
 441 ~~in that chapter, for home health agency personnel; persons~~  
 442 ~~referred for employment by nurse registries; and persons~~  
 443 ~~employed by companion or homemaker services registered under s.~~  
 444 ~~400.509.~~

445 ~~(1)(a) The Agency for Health Care Administration may, upon~~  
 446 ~~request, grant exemptions from disqualification from employment~~  
 447 ~~or contracting under this section as provided in s. 435.07,~~  
 448 ~~except for health care practitioners licensed by the Department~~

449 ~~of Health or a regulatory board within that department.~~

450 ~~(b) The appropriate regulatory board within the Department~~  
 451 ~~of Health, or that department itself when there is no board,~~  
 452 ~~may, upon request of the licensed health care practitioner,~~  
 453 ~~grant exemptions from disqualification from employment or~~  
 454 ~~contracting under this section as provided in s. 435.07.~~

455 ~~(2) The administrator of each home health agency, the~~  
 456 ~~managing employee of each nurse registry, and the managing~~  
 457 ~~employee of each companion or homemaker service registered under~~  
 458 ~~s. 400.509 must sign an affidavit annually, under penalty of~~  
 459 ~~perjury, stating that all personnel hired or contracted with or~~  
 460 ~~registered on or after October 1, 2000, who enter the home of a~~  
 461 ~~patient or client in their service capacity have been screened.~~

462 ~~(3) As a prerequisite to operating as a home health~~  
 463 ~~agency, nurse registry, or companion or homemaker service under~~  
 464 ~~s. 400.509, the administrator or managing employee,~~  
 465 ~~respectively, must submit to the agency his or her name and any~~  
 466 ~~other information necessary to conduct a complete screening~~  
 467 ~~according to this section. The agency shall submit the~~  
 468 ~~information to the Department of Law Enforcement for state~~  
 469 ~~processing. The agency shall review the record of the~~  
 470 ~~administrator or manager with respect to the offenses specified~~  
 471 ~~in this section and shall notify the owner of its findings. If~~  
 472 ~~disposition information is missing on a criminal record, the~~  
 473 ~~administrator or manager, upon request of the agency, must~~  
 474 ~~obtain and supply within 30 days the missing disposition~~  
 475 ~~information to the agency. Failure to supply missing information~~  
 476 ~~within 30 days or to show reasonable efforts to obtain such~~

477 ~~information will result in automatic disqualification.~~

478 ~~(4) Proof of compliance with the screening requirements of~~  
 479 ~~chapter 435 shall be accepted in lieu of the requirements of~~  
 480 ~~this section if the person has been continuously employed or~~  
 481 ~~registered without a breach in service that exceeds 180 days,~~  
 482 ~~the proof of compliance is not more than 2 years old, and the~~  
 483 ~~person has been screened by the Department of Law Enforcement. A~~  
 484 ~~home health agency, nurse registry, or companion or homemaker~~  
 485 ~~service registered under s. 400.509 shall directly provide proof~~  
 486 ~~of compliance to another home health agency, nurse registry, or~~  
 487 ~~companion or homemaker service registered under s. 400.509. The~~  
 488 ~~recipient home health agency, nurse registry, or companion or~~  
 489 ~~homemaker service registered under s. 400.509 may not accept any~~  
 490 ~~proof of compliance directly from the person who requires~~  
 491 ~~screening. Proof of compliance with the screening requirements~~  
 492 ~~of this section shall be provided upon request to the person~~  
 493 ~~screened by the home health agencies; nurse registries; or~~  
 494 ~~companion or homemaker services registered under s. 400.509.~~

495 ~~(5) There is no monetary liability on the part of, and no~~  
 496 ~~cause of action for damages arises against, a licensed home~~  
 497 ~~health agency, licensed nurse registry, or companion or~~  
 498 ~~homemaker service registered under s. 400.509, that, upon notice~~  
 499 ~~that the employee or contractor has been found guilty of,~~  
 500 ~~regardless of adjudication, or entered a plea of nolo contendere~~  
 501 ~~or guilty to, any offense prohibited under s. 435.03 or under~~  
 502 ~~any similar statute of another jurisdiction, terminates the~~  
 503 ~~employee or contractor, whether or not the employee or~~  
 504 ~~contractor has filed for an exemption with the agency in~~

505 ~~accordance with chapter 435 and whether or not the time for~~  
 506 ~~filing has expired.~~

507 ~~(6) The costs of processing the statewide correspondence~~  
 508 ~~criminal records checks must be borne by the home health agency,~~  
 509 ~~the nurse registry, or the companion or homemaker service~~  
 510 ~~registered under s. 400.509, or by the person being screened, at~~  
 511 ~~the discretion of the home health agency, nurse registry, or s.~~  
 512 ~~400.509 registrant.~~

513 Section 8. Section 400.6065, Florida Statutes, is amended  
 514 to read:

515 400.6065 Background screening.—The agency shall require  
 516 level 2 background employment or contractor screening for  
 517 personnel as required in s. 408.809(1)(e) pursuant to chapter  
 518 435 and s. 408.809 as provided in chapter 435, using the level 1  
 519 ~~standards for screening set forth in that chapter, for hospice~~  
 520 ~~personnel.~~

521 Section 9. Subsection (2) of section 400.801, Florida  
 522 Statutes, is amended to read:

523 400.801 Homes for special services.—

524 (2) (a) The requirements of part II of chapter 408 apply to  
 525 the provision of services that require licensure pursuant to  
 526 this section and part II of chapter 408 and entities licensed by  
 527 or applying for such licensure from the agency pursuant to this  
 528 section. A license issued by the agency is required in order to  
 529 operate a home for special services in this state.

530 (b) The agency shall require level 2 background screening  
 531 for personnel as required in s. 408.809(1)(e) pursuant to  
 532 chapter 435 and s. 408.809.



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533 Section 10. Paragraph (d) is added to subsection (2) of  
 534 section 400.805, Florida Statutes, to read:

535 400.805 Transitional living facilities.—

536 (2)

537 (d) The agency shall require level 2 background screening  
 538 for personnel as required in s. 408.809(1)(e) pursuant to  
 539 chapter 435 and s. 408.809.

540 Section 11. Section 400.9065, Florida Statutes, is created  
 541 to read:

542 400.9065 Background screening.—The agency shall require  
 543 level 2 background screening for personnel as required in s.  
 544 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

545 Section 12. Subsection (16) of section 400.934, Florida  
 546 Statutes, is amended to read:

547 400.934 Minimum standards.—As a requirement of licensure,  
 548 home medical equipment providers shall:

549 (16) Establish procedures for maintaining a record of the  
 550 employment history, including background screening as required  
 551 by ss. ~~s.~~ 400.953, and 408.809(1) and chapter 435 of all home  
 552 medical equipment provider personnel. A home medical equipment  
 553 provider must require its personnel to submit an employment  
 554 history to the home medical equipment provider and must verify  
 555 the employment history for at least the previous 5 years, unless  
 556 through diligent efforts such verification is not possible.  
 557 There is no monetary liability on the part of, and no cause of  
 558 action for damages arising against a former employer, a  
 559 prospective employee, or a prospective independent contractor  
 560 with a licensed home medical equipment provider, who reasonably

561 and in good faith communicates his or her honest opinions about  
 562 a former employee's job performance. This subsection does not  
 563 affect the official immunity of an officer or employee of a  
 564 public corporation.

565 Section 13. Section 400.953, Florida Statutes, is amended  
 566 to read:

567 400.953 Background screening of home medical equipment  
 568 provider personnel.—The agency shall require level 2 background  
 569 screening for personnel as required in s. 408.809(1)(e) pursuant  
 570 to chapter 435 and s. 408.809 employment screening as provided  
 571 in chapter 435, using the level 1 standards for screening set  
 572 forth in that chapter, for home medical equipment provider  
 573 personnel.

574 ~~(1) The agency may grant exemptions from disqualification~~  
 575 ~~from employment under this section as provided in s. 435.07.~~

576 ~~(2) The general manager of each home medical equipment~~  
 577 ~~provider must sign an affidavit annually, under penalty of~~  
 578 ~~perjury, stating that all home medical equipment provider~~  
 579 ~~personnel hired on or after July 1, 1999, who enter the home of~~  
 580 ~~a patient in the capacity of their employment have been screened~~  
 581 ~~and that its remaining personnel have worked for the home~~  
 582 ~~medical equipment provider continuously since before July 1,~~  
 583 ~~1999.~~

584 ~~(3) Proof of compliance with the screening requirements of~~  
 585 ~~s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,~~  
 586 ~~s. 402.313, s. 409.175, s. 464.008, or s. 985.644 or this part~~  
 587 ~~must be accepted in lieu of the requirements of this section if~~  
 588 ~~the person has been continuously employed in the same type of~~

589 ~~occupation for which he or she is seeking employment without a~~  
 590 ~~breach in service that exceeds 180 days, the proof of compliance~~  
 591 ~~is not more than 2 years old, and the person has been screened~~  
 592 ~~by the Department of Law Enforcement. An employer or contractor~~  
 593 ~~shall directly provide proof of compliance to another employer~~  
 594 ~~or contractor, and a potential employer or contractor may not~~  
 595 ~~accept any proof of compliance directly from the person~~  
 596 ~~requiring screening. Proof of compliance with the screening~~  
 597 ~~requirements of this section shall be provided, upon request, to~~  
 598 ~~the person screened by the home medical equipment provider.~~

599 ~~(4) There is no monetary liability on the part of, and no~~  
 600 ~~cause of action for damages arising against, a licensed home~~  
 601 ~~medical equipment provider that, upon notice that an employee~~  
 602 ~~has been found guilty of, regardless of adjudication, or entered~~  
 603 ~~a plea of nolo contendere or guilty to, any offense prohibited~~  
 604 ~~under s. 435.03 or under any similar statute of another~~  
 605 ~~jurisdiction, terminates the employee, whether or not the~~  
 606 ~~employee has filed for an exemption with the agency and whether~~  
 607 ~~or not the time for filing has expired.~~

608 ~~(5) The costs of processing the statewide correspondence~~  
 609 ~~criminal records checks must be borne by the home medical~~  
 610 ~~equipment provider or by the person being screened, at the~~  
 611 ~~discretion of the home medical equipment provider.~~

612 ~~(6) Neither the agency nor the home medical equipment~~  
 613 ~~provider may use the criminal records or juvenile records of a~~  
 614 ~~person for any purpose other than determining whether that~~  
 615 ~~person meets minimum standards of good moral character for home~~  
 616 ~~medical equipment provider personnel.~~

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617 ~~(7)(a) It is a misdemeanor of the first degree, punishable~~  
 618 ~~as provided in s. 775.082 or s. 775.083, for any person~~  
 619 ~~willfully, knowingly, or intentionally to:~~

620 ~~1. Fail, by false statement, misrepresentation,~~  
 621 ~~impersonation, or other fraudulent means, to disclose in any~~  
 622 ~~application for paid employment a material fact used in making a~~  
 623 ~~determination as to the person's qualifications to be an~~  
 624 ~~employee under this section;~~

625 ~~2. Operate or attempt to operate an entity licensed under~~  
 626 ~~this part with persons who do not meet the minimum standards for~~  
 627 ~~good moral character as contained in this section; or~~

628 ~~3. Use information from the criminal records obtained~~  
 629 ~~under this section for any purpose other than screening that~~  
 630 ~~person for employment as specified in this section, or release~~  
 631 ~~such information to any other person for any purpose other than~~  
 632 ~~screening for employment under this section.~~

633 ~~(b) It is a felony of the third degree, punishable as~~  
 634 ~~provided in s. 775.082, s. 775.083, or s. 775.084, for any~~  
 635 ~~person willfully, knowingly, or intentionally to use information~~  
 636 ~~from the juvenile records of a person obtained under this~~  
 637 ~~section for any purpose other than screening for employment~~  
 638 ~~under this section.~~

639 Section 14. Section 400.955, Florida Statutes, is  
 640 repealed.

641 Section 15. Section 400.964, Florida Statutes, is amended  
 642 to read:

643 400.964 Personnel screening requirement.—

644 ~~(1)~~ The agency shall require level 2 background screening

645 for personnel as required in s. 408.809(1)(e) pursuant to  
 646 chapter 435 and s. 408.809 ~~as provided in chapter 435 for all~~  
 647 ~~employees or prospective employees of facilities licensed under~~  
 648 ~~this part who are expected to be, or whose responsibilities are~~  
 649 ~~such that they would be considered to be, a direct service~~  
 650 ~~provider.~~

651 ~~(2) Employers and employees shall comply with the~~  
 652 ~~requirements of chapter 435.~~

653 ~~(3) Applicants and employees shall be excluded from~~  
 654 ~~employment pursuant to s. 435.06.~~

655 ~~(4) The applicant is responsible for paying the fees~~  
 656 ~~associated with obtaining the required screening. Payment for~~  
 657 ~~the screening must be submitted to the agency as prescribed by~~  
 658 ~~the agency.~~

659 ~~(5) Notwithstanding any other provision of law, persons~~  
 660 ~~who have been screened and qualified as required by this section~~  
 661 ~~and who have not been unemployed for more than 180 days~~  
 662 ~~thereafter, and who under penalty of perjury attest to not~~  
 663 ~~having been convicted of a disqualifying offense since the~~  
 664 ~~completion of such screening are not required to be rescreened.~~  
 665 ~~An employer may obtain, pursuant to s. 435.10, written~~  
 666 ~~verification of qualifying screening results from the previous~~  
 667 ~~employer or other entity that caused such screening to be~~  
 668 ~~performed.~~

669 ~~(6) The agency may adopt rules to administer this section.~~

670 ~~(7) All employees must comply with the requirements of~~  
 671 ~~this section by October 1, 2000. A person employed by a facility~~  
 672 ~~licensed pursuant to this part as of the effective date of this~~

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673 ~~act is not required to submit to rescreening if the facility has~~  
674 ~~in its possession written evidence that the person has been~~  
675 ~~screened and qualified according to level 1 standards as~~  
676 ~~specified in s. 435.03. Any current employee who meets the level~~  
677 ~~1 requirement but does not meet the 5-year residency requirement~~  
678 ~~must provide to the employing facility written attestation under~~  
679 ~~penalty of perjury that the employee has not been convicted of a~~  
680 ~~disqualifying offense in another state or jurisdiction. All~~  
681 ~~applicants hired on or after October 1, 1999, must comply with~~  
682 ~~the requirements of this section.~~

683 ~~(8) There is no monetary or unemployment liability on the~~  
684 ~~part of, and no cause of action for damages arises against an~~  
685 ~~employer that, upon notice of a disqualifying offense listed~~  
686 ~~under chapter 435 or an act of domestic violence, terminates the~~  
687 ~~employee, whether or not the employee has filed for an exemption~~  
688 ~~with the Department of Health or the Agency for Health Care~~  
689 ~~Administration.~~

690 Section 16. Subsection (3) of section 400.980, Florida  
691 Statutes, is amended to read:

692 400.980 Health care services pools.—

693 (3) ~~Upon receipt of a completed, signed, and dated~~  
694 ~~application,~~ The agency shall require level 2 background  
695 screening for personnel as required in s. 408.809(1)(e) pursuant  
696 to chapter 435 and s. 408.809, ~~in accordance with the level 1~~  
697 ~~standards for screening set forth in chapter 435, of every~~  
698 ~~individual who will have contact with patients.~~

699 Section 17. Subsection (5) of section 400.991, Florida  
700 Statutes, is amended to read:

701 400.991 License requirements; background screenings;  
 702 prohibitions.—

703 (5) ~~Each applicant for licensure shall comply with the~~  
 704 ~~following requirements:~~

705 (a) As used in this subsection, the term "applicant" means  
 706 individuals owning or controlling, directly or indirectly, 5  
 707 percent or more of an interest in a clinic; the medical or  
 708 clinic director, or a similarly titled person who is responsible  
 709 for the day-to-day operation of the licensed clinic; the  
 710 financial officer or similarly titled individual who is  
 711 responsible for the financial operation of the clinic; and  
 712 licensed health care practitioners at the clinic.

713 (b) ~~Upon receipt of a completed, signed, and dated~~  
 714 ~~application,~~ The agency shall require level 2 background  
 715 screening for applicants and personnel as required in s.  
 716 408.809(1)(e) pursuant to chapter 435 and s. 408.809 of the  
 717 ~~applicant, in accordance with the level 2 standards for~~  
 718 ~~screening set forth in chapter 435. Proof of compliance with the~~  
 719 ~~level 2 background screening requirements of chapter 435 which~~  
 720 ~~has been submitted within the previous 5 years in compliance~~  
 721 ~~with any other health care licensure requirements of this state~~  
 722 ~~is acceptable in fulfillment of this paragraph. Applicants who~~  
 723 ~~own less than 10 percent of a health care clinic are not~~  
 724 ~~required to submit fingerprints under this section.~~

725 (c) Each applicant must submit to the agency, with the  
 726 application, a description and explanation of any exclusions,  
 727 permanent suspensions, or terminations of an applicant from the  
 728 Medicare or Medicaid programs. Proof of compliance with the

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729 requirements for disclosure of ownership and control interest  
 730 under the Medicaid or Medicare programs may be accepted in lieu  
 731 of this submission. The description and explanation may indicate  
 732 whether such exclusions, suspensions, or terminations were  
 733 voluntary or not voluntary on the part of the applicant.

734 ~~(d) A license may not be granted to a clinic if the~~  
 735 ~~applicant has been found guilty of, regardless of adjudication,~~  
 736 ~~or has entered a plea of nolo contendere or guilty to, any~~  
 737 ~~offense prohibited under the level 2 standards for screening set~~  
 738 ~~forth in chapter 435, or a violation of insurance fraud under s.~~  
 739 ~~817.234, within the past 5 years. If the applicant has been~~  
 740 ~~convicted of an offense prohibited under the level 2 standards~~  
 741 ~~or insurance fraud in any jurisdiction, the applicant must show~~  
 742 ~~that his or her civil rights have been restored prior to~~  
 743 ~~submitting an application.~~

744 Section 18. Paragraph (h) is added to subsection (1) of  
 745 section 408.806, Florida Statutes, to read:

746 408.806 License application process.—

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

753 (h) An affidavit, under penalty of perjury, stating that  
 754 all persons subject to background screening as required by this  
 755 part, authorizing statutes, and applicable rules have been  
 756 screened and are qualified.



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757 Section 19. Subsection (2) of section 408.808, Florida  
 758 Statutes, is amended to read:

759 408.808 License categories.—

760 (2) PROVISIONAL LICENSE. ~~A provisional license may be~~  
 761 ~~issued to an applicant pursuant to s. 408.809(3).~~ An applicant  
 762 against whom a proceeding denying or revoking a license is  
 763 pending at the time of license renewal may be issued a  
 764 provisional license effective until final action not subject to  
 765 further appeal. A provisional license may also be issued to an  
 766 applicant applying for a change of ownership. A provisional  
 767 license shall be limited in duration to a specific period of  
 768 time, not to exceed 12 months, as determined by the agency.

769 Section 20. Section 408.809, Florida Statutes, is amended  
 770 to read:

771 408.809 Background screening; prohibited offenses.—

772 (1) Level 2 background screening pursuant to chapter 435  
 773 must be conducted through the agency on each of the following  
 774 persons, who shall be considered an employee for the purposes of  
 775 conducting screening under chapter 435:

776 (a) The licensee, if an individual.

777 (b) The administrator or a similarly titled person who is  
 778 responsible for the day-to-day operation of the provider.

779 (c) The financial officer or similarly titled individual  
 780 who is responsible for the financial operation of the licensee  
 781 or provider.

782 (d) Any person who is a controlling interest if the agency  
 783 has reason to believe that such person has been convicted of any  
 784 offense prohibited by s. 435.04. For each controlling interest

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785 | who has been convicted of any such offense, the licensee shall  
786 | submit to the agency a description and explanation of the  
787 | conviction at the time of license application.

788 |       (e) Any person, as required by authorizing statutes,  
789 | seeking employment with a licensee or provider who is expected  
790 | to, or whose responsibilities may require him or her to, provide  
791 | personal care or services directly to clients; and any person,  
792 | as required by authorizing statutes, contracting with a licensee  
793 | or provider whose responsibilities require him or her to provide  
794 | personal care or services directly to clients. Evidence of  
795 | contractor screening may be retained by the contractor's  
796 | employer or the licensee. A person who is employed by or  
797 | contracts with a licensee on or before June 30, 2010, is not  
798 | required to submit to rescreening until such time as he or she  
799 | is otherwise required to be rescreened pursuant to law if that  
800 | licensee has in its possession written evidence that the person  
801 | has been screened and qualified according to standards specified  
802 | in s. 435.03 or s. 435.04.

803 |       (2) Every 5 years following his or her licensure,  
804 | employment, or entry into a contract in a capacity that under  
805 | subsection (1) would require level 2 background screening under  
806 | chapter 435, each such person must submit to level 2 background  
807 | rescreening as a condition of retaining such license or  
808 | continuing in such employment or contractual status. For any  
809 | such rescreening, the agency shall request the Department of Law  
810 | Enforcement to forward the person's fingerprints to the Federal  
811 | Bureau of Investigation for a national criminal history record  
812 | check. If the fingerprints of such a person are not retained by

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813 the Department of Law Enforcement under s. 943.05(2)(g), the  
 814 person must file a complete set of fingerprints with the agency.  
 815 Upon the submission of fingerprints for this purpose, the agency  
 816 shall request the Department of Law Enforcement to forward the  
 817 fingerprints to the Federal Bureau of Investigation for a  
 818 national criminal history record check, and the fingerprints may  
 819 be retained by the Department of Law Enforcement under s.  
 820 943.05(2)(g). The cost of the state and national criminal  
 821 history records checks required by level 2 screening may be  
 822 borne by the licensee or the person fingerprinted. Proof of  
 823 compliance with level 2 screening standards submitted within the  
 824 previous 5 years to meet any provider or professional licensure  
 825 requirements of the agency, the Department of Health, the Agency  
 826 for Persons with Disabilities, ~~or~~ the Department of Children and  
 827 Family Services, or the Department of Financial Services for an  
 828 applicant for a certificate of authority to operate a continuing  
 829 care retirement community under chapter 651 satisfies the  
 830 requirements of this section, provided that such proof is  
 831 accompanied, under penalty of perjury, by an affidavit of  
 832 compliance with the provisions of chapter 435 and this section  
 833 using forms provided by the agency. ~~Proof of compliance with the~~  
 834 ~~background screening requirements of the Department of Financial~~  
 835 ~~Services submitted within the previous 5 years for an applicant~~  
 836 ~~for a certificate of authority to operate a continuing care~~  
 837 ~~retirement community under chapter 651 satisfies the Department~~  
 838 ~~of Law Enforcement and Federal Bureau of Investigation portions~~  
 839 ~~of a level 2 background check.~~

840 (3) All fingerprints must be provided in electronic

841 format. Screening results shall be reviewed by the agency with  
 842 respect to the offenses specified in s. 435.04 and this section  
 843 and maintained in a database. The qualifying or disqualifying  
 844 status of the person named in the request shall be posted on a  
 845 secure website accessible to all licensees. A provisional  
 846 ~~license may be granted to an applicant when each individual~~  
 847 ~~required by this section to undergo background screening has met~~  
 848 ~~the standards for the Department of Law Enforcement background~~  
 849 ~~check but the agency has not yet received background screening~~  
 850 ~~results from the Federal Bureau of Investigation. A standard~~  
 851 ~~license may be granted to the licensee upon the agency's receipt~~  
 852 ~~of a report of the results of the Federal Bureau of~~  
 853 ~~Investigation background screening for each individual required~~  
 854 ~~by this section to undergo background screening that confirms~~  
 855 ~~that all standards have been met or upon the granting of an~~  
 856 ~~exemption from disqualification by the agency as set forth in~~  
 857 ~~chapter 435.~~

858 ~~(4) When a person is newly employed in a capacity that~~  
 859 ~~requires screening under this section, the licensee must notify~~  
 860 ~~the agency of the change within the time period specified in the~~  
 861 ~~authorizing statute or rules and must submit to the agency~~  
 862 ~~information necessary to conduct level 2 screening or provide~~  
 863 ~~evidence of compliance with background screening requirements of~~  
 864 ~~this section. The person may serve in his or her capacity~~  
 865 ~~pending the agency's receipt of the report from the Federal~~  
 866 ~~Bureau of Investigation if he or she has met the standards for~~  
 867 ~~the Department of Law Enforcement background check. However, the~~  
 868 ~~person may not continue to serve in his or her capacity if the~~

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869 ~~report indicates any violation of background screening standards~~  
 870 ~~unless an exemption from disqualification has been granted by~~  
 871 ~~the agency as set forth in chapter 435.~~

872 (4)~~(5)~~ ~~Effective October 1, 2009,~~ In addition to the  
 873 offenses listed in ss. 435.03 and 435.04, all persons required  
 874 to undergo background screening pursuant to this part or  
 875 authorizing statutes must not have been found guilty of,  
 876 regardless of adjudication, or entered a plea of nolo contendere  
 877 or guilty to, any of the following offenses or any similar  
 878 offense of another jurisdiction:

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

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

881 (c) Section 409.920, relating to Medicaid provider fraud,  
 882 ~~if the offense was a felony.~~

883 (d) Section 409.9201, relating to Medicaid fraud,~~if the~~  
 884 ~~offense was a felony.~~

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

886 ~~(f) Chapter 784, relating to assault, battery, and~~  
 887 ~~culpable negligence, if the offense was a felony.~~

888 ~~(g) Section 810.02, relating to burglary.~~

889 (f)~~(h)~~ Section 817.034, relating to fraudulent acts  
 890 through mail, wire, radio, electromagnetic, photoelectronic, or  
 891 photooptical systems.

892 (g)~~(i)~~ Section 817.234, relating to false and fraudulent  
 893 insurance claims.

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

895 (i)~~(k)~~ Section 817.568, relating to criminal use of  
 896 personal identification information.

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897        (j)~~(l)~~ Section 817.60, relating to obtaining a credit card  
 898 through fraudulent means.

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

901        (l)~~(n)~~ Section 831.01, relating to forgery.

902        (m)~~(o)~~ Section 831.02, relating to uttering forged  
 903 instruments.

904        (n)~~(p)~~ Section 831.07, relating to forging bank bills,  
 905 checks, drafts, or promissory notes.

906        (o)~~(q)~~ Section 831.09, relating to uttering forged bank  
 907 bills, checks, drafts, or promissory notes.

908        (p)~~(r)~~ Section 831.30, relating to fraud in obtaining  
 909 medicinal drugs.

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

914  
 915 A person who serves as a controlling interest of or is employed  
 916 by a licensee on September 30, 2009, is not required by law to  
 917 submit to rescreening if that licensee has in its possession  
 918 written evidence that the person has been screened and qualified  
 919 according to the standards specified in s. 435.03 or s. 435.04.  
 920 However, if such person has a disqualifying offense listed in  
 921 this section, he or she may apply for an exemption from the  
 922 appropriate licensing agency before September 30, 2009, and if  
 923 agreed to by the employer, may continue to perform his or her  
 924 duties until the licensing agency renders a decision on the

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925 application for exemption for offenses listed in this section.  
 926 Exemptions from disqualification may be granted pursuant to s.  
 927 435.07.

928 ~~(5)(6)~~ The costs associated with obtaining the required  
 929 screening must be borne either by the licensee or the person  
 930 subject to screening. Licensees may reimburse persons for these  
 931 costs. The Department of Law Enforcement shall charge the agency  
 932 for screening pursuant to s. 943.053(3). The agency shall  
 933 establish a schedule of fees to cover the costs of screening ~~The~~  
 934 ~~attestations required under ss. 435.04(5) and 435.05(3) must be~~  
 935 ~~submitted at the time of license renewal, notwithstanding the~~  
 936 ~~provisions of ss. 435.04(5) and 435.05(3) which require annual~~  
 937 ~~submission of an affidavit of compliance with background~~  
 938 ~~screening requirements.~~

939 (6) (a) As provided in chapter 435, the agency may grant an  
 940 exemption from disqualification to a person who is subject to  
 941 this section and who has not received a professional license or  
 942 certification from the Department of Health if that person is  
 943 providing a service that is within the scope of his or her  
 944 licensed or certified practice.

945 (b) As provided in chapter 435, the appropriate regulatory  
 946 board within the Department of Health, or the department itself  
 947 when there is no board, may grant an exemption from  
 948 disqualification to a person who is subject to this section and  
 949 who has received a professional license or certification from  
 950 the Department of Health or a regulatory board within that  
 951 department and that person is providing a service within the  
 952 scope of his or her licensed or certified practice.

953 (7) The agency and the Department of Health may adopt  
 954 rules pursuant to ss. 120.536(1) and 120.54 to implement this  
 955 section, chapter 435, and authorizing statutes requiring  
 956 background screening and to implement and adopt criteria  
 957 relating to retaining fingerprints pursuant to s. 943.05(2).

958 (8) There is no unemployment compensation or other  
 959 monetary liability on the part of, and no cause of action for  
 960 damages arising against, an employer that, upon notice of a  
 961 disqualifying offense listed under chapter 435 or this section,  
 962 terminates the person against whom the report was issued,  
 963 whether or not that person has filed for an exemption with the  
 964 Department of Health or the agency.

965 Section 21. Paragraph (k) of subsection (2) of section  
 966 409.175, Florida Statutes, is amended to read:

967 409.175 Licensure of family foster homes, residential  
 968 child-caring agencies, and child-placing agencies; public  
 969 records exemption.—

970 (2) As used in this section, the term:

971 (k) "Screening" means the act of assessing the background  
 972 of personnel and includes, but is not limited to, employment  
 973 history checks as provided in chapter 435, using the level 2  
 974 standards for screening set forth in that chapter. Screening for  
 975 employees and volunteers in summer day camps and summer 24-hour  
 976 camps and screening for all volunteers included under the  
 977 definition of "personnel" shall be conducted as provided in  
 978 chapter 435, using the level 2 ~~level 1~~ standards set forth in  
 979 that chapter.

980 Section 22. Paragraph (i) of subsection (4) of section



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981 409.221, Florida Statutes, is amended to read:

982 409.221 Consumer-directed care program.—

983 (4) CONSUMER-DIRECTED CARE.—

984 (i) Background screening requirements.—All persons who  
 985 render care under this section must undergo level 2 background  
 986 screening pursuant to chapter 435 ~~shall comply with the~~  
 987 ~~requirements of s. 435.05. Persons shall be excluded from~~  
 988 ~~employment pursuant to s. 435.06.~~

989 ~~1. Persons excluded from employment may request an~~  
 990 ~~exemption from disqualification, as provided in s. 435.07.~~  
 991 ~~Persons not subject to certification or professional licensure~~  
 992 ~~may request an exemption from the agency. In considering a~~  
 993 ~~request for an exemption, the agency shall comply with the~~  
 994 ~~provisions of s. 435.07.~~

995 ~~2.~~ The agency shall, as allowable, reimburse consumer-  
 996 employed caregivers for the cost of conducting background  
 997 screening as required by this section.

998  
 999 For purposes of this section, a person who has undergone  
 1000 screening, who is qualified for employment under this section  
 1001 and applicable rule, and who has not been unemployed for more  
 1002 than 90 ~~180~~ days following such screening is not required to be  
 1003 rescreened. Such person must attest under penalty of perjury to  
 1004 not having been convicted of a disqualifying offense since  
 1005 completing such screening.

1006 Section 23. Subsection (8) of section 409.907, Florida  
 1007 Statutes, is amended to read:

1008 409.907 Medicaid provider agreements.—The agency may make

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1009 payments for medical assistance and related services rendered to  
 1010 Medicaid recipients only to an individual or entity who has a  
 1011 provider agreement in effect with the agency, who is performing  
 1012 services or supplying goods in accordance with federal, state,  
 1013 and local law, and who agrees that no person shall, on the  
 1014 grounds of handicap, race, color, or national origin, or for any  
 1015 other reason, be subjected to discrimination under any program  
 1016 or activity for which the provider receives payment from the  
 1017 agency.

1018 (8) (a) Each provider, or each principal of the provider if  
 1019 the provider is a corporation, partnership, association, or  
 1020 other entity, seeking to participate in the Medicaid program  
 1021 must submit a complete set of his or her fingerprints to the  
 1022 agency for the purpose of conducting a criminal history record  
 1023 check. Principals of the provider include any officer, director,  
 1024 billing agent, managing employee, or affiliated person, or any  
 1025 partner or shareholder who has an ownership interest equal to 5  
 1026 percent or more in the provider. However, a director of a not-  
 1027 for-profit corporation or organization is not a principal for  
 1028 purposes of a background investigation as required by this  
 1029 section if the director: serves solely in a voluntary capacity  
 1030 for the corporation or organization, does not regularly take  
 1031 part in the day-to-day operational decisions of the corporation  
 1032 or organization, receives no remuneration from the not-for-  
 1033 profit corporation or organization for his or her service on the  
 1034 board of directors, has no financial interest in the not-for-  
 1035 profit corporation or organization, and has no family members  
 1036 with a financial interest in the not-for-profit corporation or

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1037 organization; and if the director submits an affidavit, under  
 1038 penalty of perjury, to this effect to the agency and the not-  
 1039 for-profit corporation or organization submits an affidavit,  
 1040 under penalty of perjury, to this effect to the agency as part  
 1041 of the corporation's or organization's Medicaid provider  
 1042 agreement application. Notwithstanding the above, the agency may  
 1043 require a background check for any person reasonably suspected  
 1044 by the agency to have been convicted of a crime. This subsection  
 1045 shall not apply to:

- 1046 1. A hospital licensed under chapter 395;
- 1047 2. A nursing home licensed under chapter 400;
- 1048 3. A hospice licensed under chapter 400;
- 1049 4. An assisted living facility licensed under chapter 429;
- 1050 5. A unit of local government, except that requirements of  
 1051 this subsection apply to nongovernmental providers and entities  
 1052 when contracting with the local government to provide Medicaid  
 1053 services. The actual cost of the state and national criminal  
 1054 history record checks must be borne by the nongovernmental  
 1055 provider or entity; or
- 1056 6. Any business that derives more than 50 percent of its  
 1057 revenue from the sale of goods to the final consumer, and the  
 1058 business or its controlling parent either is required to file a  
 1059 form 10-K or other similar statement with the Securities and  
 1060 Exchange Commission or has a net worth of \$50 million or more.

1061 (b) Background screening shall be conducted in accordance  
 1062 with chapter 435 and s. 408.809 ~~The agency shall submit the~~  
 1063 ~~fingerprints to the Department of Law Enforcement. The~~  
 1064 ~~department shall conduct a state criminal background~~

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1065 ~~investigation and forward the fingerprints to the Federal Bureau~~  
 1066 ~~of Investigation for a national criminal history record check.~~  
 1067 The cost of the state and national criminal record check shall  
 1068 be borne by the provider.

1069 (c) ~~The agency may permit a provider to participate in the~~  
 1070 ~~Medicaid program pending the results of the criminal record~~  
 1071 ~~check. However, such permission is fully revocable if the record~~  
 1072 ~~check reveals any crime-related history as provided in~~  
 1073 ~~subsection (10).~~

1074 ~~(d)~~ Proof of compliance with the requirements of level 2  
 1075 screening under chapter 435 s. 435.04 conducted within 12 months  
 1076 prior to the date that the Medicaid provider application is  
 1077 submitted to the agency shall fulfill the requirements of this  
 1078 subsection. ~~Proof of compliance with the requirements of level 1~~  
 1079 ~~screening under s. 435.03 conducted within 12 months prior to~~  
 1080 ~~the date that the Medicaid provider application is submitted to~~  
 1081 ~~the agency shall meet the requirement that the Department of Law~~  
 1082 ~~Enforcement conduct a state criminal history record check.~~

1083 Section 24. Subsection (1) of section 429.14, Florida  
 1084 Statutes, is amended to read:

1085 429.14 Administrative penalties.—

1086 (1) In addition to the requirements of part II of chapter  
 1087 408, the agency may deny, revoke, and suspend any license issued  
 1088 under this part and impose an administrative fine in the manner  
 1089 provided in chapter 120 against a licensee ~~of an assisted living~~  
 1090 ~~facility~~ for a violation of any provision of this part, part II  
 1091 of chapter 408, or applicable rules, or for any of the following  
 1092 actions by a licensee ~~of an assisted living facility~~, for the

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1093 actions of any person subject to level 2 background screening  
 1094 under s. 408.809, or for the actions of any facility employee:

1095 (a) An intentional or negligent act seriously affecting  
 1096 the health, safety, or welfare of a resident of the facility.

1097 (b) The determination by the agency that the owner lacks  
 1098 the financial ability to provide continuing adequate care to  
 1099 residents.

1100 (c) Misappropriation or conversion of the property of a  
 1101 resident of the facility.

1102 (d) Failure to follow the criteria and procedures provided  
 1103 under part I of chapter 394 relating to the transportation,  
 1104 voluntary admission, and involuntary examination of a facility  
 1105 resident.

1106 (e) A citation of any of the following deficiencies as  
 1107 specified in s. 429.19:

1108 1. One or more cited class I deficiencies.

1109 2. Three or more cited class II deficiencies.

1110 3. Five or more cited class III deficiencies that have  
 1111 been cited on a single survey and have not been corrected within  
 1112 the times specified.

1113 (f) Failure to comply with the ~~A determination that a~~  
 1114 ~~person subject to level 2 background screening under s. 408.809~~  
 1115 ~~does not meet the screening standards of this part, s.~~  
 1116 408.809(1), chapter 435 s. 435.04 ~~or that the facility is~~  
 1117 ~~retaining an employee subject to level 1 background screening~~  
 1118 ~~standards under s. 429.174 who does not meet the screening~~  
 1119 ~~standards of s. 435.03 and for whom exemptions from~~  
 1120 ~~disqualification have not been provided by the agency.~~

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1121 (g) ~~A determination that an employee, volunteer,~~  
 1122 ~~administrator, or owner, or person who otherwise has access to~~  
 1123 ~~the residents of a facility does not meet the criteria specified~~  
 1124 ~~in s. 435.03(2), and the owner or administrator has not taken~~  
 1125 ~~action to remove the person. Exemptions from disqualification~~  
 1126 ~~may be granted as set forth in s. 435.07. No administrative~~  
 1127 ~~action may be taken against the facility if the person is~~  
 1128 ~~granted an exemption.~~

1129 ~~(h)~~ Violation of a moratorium.

1130 ~~(h)~~~~(i)~~ Failure of the license applicant, the licensee  
 1131 during relicensure, or a licensee that holds a provisional  
 1132 license to meet the minimum license requirements of this part,  
 1133 or related rules, at the time of license application or renewal.

1134 ~~(i)~~~~(j)~~ An intentional or negligent life-threatening act in  
 1135 violation of the uniform firesafety standards for assisted  
 1136 living facilities or other firesafety standards that threatens  
 1137 the health, safety, or welfare of a resident of a facility, as  
 1138 communicated to the agency by the local authority having  
 1139 jurisdiction or the State Fire Marshal.

1140 ~~(j)~~~~(k)~~ Knowingly operating any unlicensed facility or  
 1141 providing without a license any service that must be licensed  
 1142 under this chapter or chapter 400.

1143 ~~(k)~~~~(l)~~ Any act constituting a ground upon which  
 1144 application for a license may be denied.

1145 Section 25. Section 429.174, Florida Statutes, is amended  
 1146 to read:

1147 429.174 Background screening; ~~exemptions.~~ The agency shall  
 1148 require level 2 background screening for personnel as required

1149 in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809 The  
 1150 ~~owner or administrator of an assisted living facility must~~  
 1151 ~~conduct level 1 background screening, as set forth in chapter~~  
 1152 ~~435, on all employees hired on or after October 1, 1998, who~~  
 1153 ~~perform personal services as defined in s. 429.02(16). The~~  
 1154 ~~agency may exempt an individual from employment disqualification~~  
 1155 ~~as set forth in chapter 435. Such persons shall be considered as~~  
 1156 ~~having met this requirement if:~~

1157 ~~(1) Proof of compliance with level 1 screening~~  
 1158 ~~requirements obtained to meet any professional license~~  
 1159 ~~requirements in this state is provided and accompanied, under~~  
 1160 ~~penalty of perjury, by a copy of the person's current~~  
 1161 ~~professional license and an affidavit of current compliance with~~  
 1162 ~~the background screening requirements.~~

1163 ~~(2) The person required to be screened has been~~  
 1164 ~~continuously employed in the same type of occupation for which~~  
 1165 ~~the person is seeking employment without a breach in service~~  
 1166 ~~which exceeds 180 days, and proof of compliance with the level 1~~  
 1167 ~~screening requirement which is no more than 2 years old is~~  
 1168 ~~provided. Proof of compliance shall be provided directly from~~  
 1169 ~~one employer or contractor to another, and not from the person~~  
 1170 ~~screened. Upon request, a copy of screening results shall be~~  
 1171 ~~provided by the employer retaining documentation of the~~  
 1172 ~~screening to the person screened.~~

1173 ~~(3) The person required to be screened is employed by a~~  
 1174 ~~corporation or business entity or related corporation or~~  
 1175 ~~business entity that owns, operates, or manages more than one~~  
 1176 ~~facility or agency licensed under this chapter, and for whom a~~

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1177 ~~level 1 screening was conducted by the corporation or business~~  
 1178 ~~entity as a condition of initial or continued employment.~~

1179 Section 26. Subsection (4) of section 429.67, Florida  
 1180 Statutes, is amended to read:

1181 429.67 Licensure.—

1182 ~~(4) Upon receipt of a completed license application or~~  
 1183 ~~license renewal, and the fee, The agency shall~~ require level 2  
 1184 initiate a level 1 background screening for personnel as  
 1185 required in s. 408.809(1)(e), including as provided under  
 1186 ~~chapter 435 on the adult family-care home provider, the~~  
 1187 ~~designated relief person, and all adult household members,~~  
 1188 pursuant to chapter 435 and s. 408.809, and all staff members.

1189 ~~(a) Proof of compliance with level 1 screening standards~~  
 1190 ~~which has been submitted within the previous 5 years to meet any~~  
 1191 ~~facility or professional licensure requirements of the agency or~~  
 1192 ~~the Department of Health satisfies the requirements of this~~  
 1193 ~~subsection. Such proof must be accompanied, under penalty of~~  
 1194 ~~perjury, by a copy of the person's current professional license~~  
 1195 ~~and an affidavit of current compliance with the background~~  
 1196 ~~screening requirements.~~

1197 ~~(b) The person required to be screened must have been~~  
 1198 ~~continuously employed in the same type of occupation for which~~  
 1199 ~~the person is seeking employment without a breach in service~~  
 1200 ~~that exceeds 180 days, and proof of compliance with the level 1~~  
 1201 ~~screening requirement which is no more than 2 years old must be~~  
 1202 ~~provided. Proof of compliance shall be provided directly from~~  
 1203 ~~one employer or contractor to another, and not from the person~~  
 1204 ~~screened. Upon request, a copy of screening results shall be~~



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1205 ~~provided to the person screened by the employer retaining~~  
 1206 ~~documentation of the screening.~~

1207 Section 27. Section 429.69, Florida Statutes, is amended  
 1208 to read:

1209 429.69 Denial, revocation, and suspension of a license.—In  
 1210 addition to the requirements of part II of chapter 408, the  
 1211 agency may deny, suspend, and revoke a license for any of the  
 1212 following reasons:

1213 (1) Failure to comply with the ~~of any of the persons~~  
 1214 ~~required to undergo~~ background screening standards of this part,  
 1215 s. 408.809(1), or chapter 435 under s. 429.67 to meet the level  
 1216 ~~1 screening standards of s. 435.03, unless an exemption from~~  
 1217 ~~disqualification has been provided by the agency.~~

1218 (2) Failure to correct cited fire code violations that  
 1219 threaten the health, safety, or welfare of residents.

1220 Section 28. Paragraph (c) of subsection (2) of section  
 1221 429.911, Florida Statutes, is amended to read:

1222 429.911 Denial, suspension, revocation of license;  
 1223 emergency action; administrative fines; investigations and  
 1224 inspections.—

1225 (2) Each of the following actions by the owner of an adult  
 1226 day care center or by its operator or employee is a ground for  
 1227 action by the agency against the owner of the center or its  
 1228 operator or employee:

1229 (c) A Failure to comply with the ~~of persons subject to~~  
 1230 ~~level 2~~ background screening standards of this part, s.  
 1231 408.809(1), or chapter 435 under s. 408.809 to meet the  
 1232 ~~screening standards of s. 435.04, or the retention by the center~~

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1233 ~~of an employee subject to level 1 background screening standards~~  
 1234 ~~under s. 429.174 who does not meet the screening standards of s.~~  
 1235 ~~435.03 and for whom exemptions from disqualification have not~~  
 1236 ~~been provided by the agency.~~

1237 Section 29. Section 429.919, Florida Statutes, is amended  
 1238 to read:

1239 429.919 Background screening.~~The agency shall require~~  
 1240 level 2 background screening for personnel as required in s.  
 1241 408.809(1)(e) pursuant to chapter 435 and s. 408.809 ~~The owner~~  
 1242 ~~or administrator of an adult day care center must conduct level~~  
 1243 ~~1 background screening as set forth in chapter 435 on all~~  
 1244 ~~employees hired on or after October 1, 1998, who provide basic~~  
 1245 ~~services or supportive and optional services to the~~  
 1246 ~~participants. Such persons satisfy this requirement if:~~

1247 ~~(1) Proof of compliance with level 1 screening~~  
 1248 ~~requirements obtained to meet any professional license~~  
 1249 ~~requirements in this state is provided and accompanied, under~~  
 1250 ~~penalty of perjury, by a copy of the person's current~~  
 1251 ~~professional license and an affidavit of current compliance with~~  
 1252 ~~the background screening requirements.~~

1253 ~~(2) The person required to be screened has been~~  
 1254 ~~continuously employed, without a breach in service that exceeds~~  
 1255 ~~180 days, in the same type of occupation for which the person is~~  
 1256 ~~seeking employment and provides proof of compliance with the~~  
 1257 ~~level 1 screening requirement which is no more than 2 years old.~~  
 1258 ~~Proof of compliance must be provided directly from one employer~~  
 1259 ~~or contractor to another, and not from the person screened. Upon~~  
 1260 ~~request, a copy of screening results shall be provided to the~~

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1261 ~~person screened by the employer retaining documentation of the~~  
 1262 ~~screening.~~

1263 ~~(3) The person required to be screened is employed by a~~  
 1264 ~~corporation or business entity or related corporation or~~  
 1265 ~~business entity that owns, operates, or manages more than one~~  
 1266 ~~facility or agency licensed under chapter 400 or this chapter,~~  
 1267 ~~and for whom a level 1 screening was conducted by the~~  
 1268 ~~corporation or business entity as a condition of initial or~~  
 1269 ~~continued employment.~~

1270 Section 30. Section 430.60, Florida Statutes, is created  
 1271 to read:

1272 430.60 Screening of direct service providers.-

1273 (1) (a) Level 2 background screening pursuant to chapter  
 1274 435 is required for direct service providers. Background  
 1275 screening shall include employment history checks as provided in  
 1276 s. 435.03(1) and local criminal records checks through local law  
 1277 enforcement agencies.

1278 (b) For purposes of this section, the term "direct service  
 1279 provider" means a person 18 years of age or older who is  
 1280 unrelated to his or her clients and who has direct, face-to-face  
 1281 contact with a client while providing services to the client and  
 1282 has access to the client's living areas or to the client's funds  
 1283 or personal property. The term includes coordinators, managers,  
 1284 and supervisors of residential facilities and volunteers.

1285 (2) Licensed physicians, nurses, or other professionals  
 1286 licensed by the Department of Health are not subject to  
 1287 background screening pursuant to this section if they are  
 1288 providing a service that is within the scope of their licensed

1289 practice.

1290 (3) Refusal on the part of an employer to dismiss a  
 1291 manager, supervisor, or direct service provider who has been  
 1292 found to be in noncompliance with standards of this section  
 1293 shall result in the automatic denial, termination, or revocation  
 1294 of the license or certification, rate agreement, purchase order,  
 1295 or contract, in addition to any other remedies authorized by  
 1296 law.

1297 (4) The background screening conducted pursuant to this  
 1298 section must ensure that, in addition to the disqualifying  
 1299 offenses listed in s. 435.04, no person subject to the  
 1300 provisions of this section has been found guilty of, regardless  
 1301 of adjudication, or entered a plea of nolo contendere or guilty  
 1302 to, any offense prohibited under any of the following provisions  
 1303 of the Florida Statutes or under any similar statute of another  
 1304 jurisdiction:

1305 (a) Any authorizing statutes, if the offense was a felony.

1306 (b) Section 409.920, relating to Medicaid provider fraud.

1307 (c) Section 409.9201, relating to Medicaid fraud.

1308 (d) Section 817.034, relating to fraudulent acts through  
 1309 mail, wire, radio, electromagnetic, photoelectronic, or  
 1310 photooptical systems.

1311 (e) Section 817.234, relating to false and fraudulent  
 1312 insurance claims.

1313 (f) Section 817.505, relating to patient brokering.

1314 (g) Section 817.568, relating to criminal use of personal  
 1315 identification information.

1316 (h) Section 817.60, relating to obtaining a credit card

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1317 through fraudulent means.

1318 (i) Section 817.61, relating to fraudulent use of credit  
 1319 cards, if the offense was a felony.

1320 (j) Section 831.01, relating to forgery.

1321 (k) Section 831.02, relating to uttering forged  
 1322 instruments.

1323 (l) Section 831.07, relating to forging bank bills,  
 1324 checks, drafts, or promissory notes.

1325 (m) Section 831.09, relating to uttering forged bank  
 1326 bills, checks, drafts, or promissory notes.

1327 Section 31. Section 435.01, Florida Statutes, is amended  
 1328 to read:

1329 435.01 Applicability of this chapter; statutory  
 1330 references; rulemaking.—

1331 (1) (a) Unless otherwise provided by law, whenever a  
 1332 background screening for employment or a background security  
 1333 check is required by law to be conducted pursuant to this  
 1334 chapter for employment, unless otherwise provided by law, the  
 1335 provisions of this chapter shall apply.

1336 (b) Unless expressly provided otherwise, a reference in  
 1337 any section of the Florida Statutes to chapter 435 or to any  
 1338 section or sections or portion of a section of chapter 435  
 1339 includes, and shall be understood as including, all subsequent  
 1340 amendments to chapter 435 or to the referenced section or  
 1341 sections or portions of a section. The purpose of this chapter  
 1342 is to facilitate uniform background screening and, to this end,  
 1343 a reference to this chapter, or to any section or subdivision  
 1344 within this chapter, constitutes a general reference under the

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1345 doctrine of incorporation by reference.

1346 (2) Agencies may adopt rules pursuant to ss. 120.536(1)  
 1347 and 120.54 necessary to implement the provisions of this  
 1348 chapter.

1349 Section 32. Section 435.02, Florida Statutes, is amended  
 1350 to read:

1351 435.02 Definitions.--For the purposes of this chapter, the  
 1352 term:

1353 (1)-(3) "Licensing Agency" means any state, ~~or~~ county, or  
 1354 municipal agency that ~~which~~ grants licenses or registration  
 1355 permitting the operation of an employer or is itself an employer  
 1356 or that otherwise facilitates the screening of employees  
 1357 pursuant to this chapter. When there is no state ~~licensing~~  
 1358 agency or the ~~municipal or county licensing~~ agency chooses not  
 1359 to conduct employment screening, "licensing agency" means the  
 1360 Department of Children and Family Services.

1361 (2)-(1) "Employee" means any person required by law to be  
 1362 screened pursuant to the provisions of this chapter.

1363 (3)-(2) "Employer" means any person or entity required by  
 1364 law to conduct screening of employees pursuant to this chapter.

1365 (4) "Employment" means any activity or service sought to  
 1366 be performed by an employee that requires the employee to be  
 1367 subject to screening pursuant to this chapter.

1368 (5) "Vulnerable person" means a minor or a vulnerable  
 1369 adult as defined in s. 415.102.

1370 Section 33. Section 435.03, Florida Statutes, is amended  
 1371 to read:

1372 435.03 Level 1 screening standards.--

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1373           (1) All employees required by law to be screened pursuant  
 1374 to this section must ~~shall be required to~~ undergo background  
 1375 screening as a condition of employment and continued employment  
 1376 that includes. ~~For the purposes of this subsection, level 1~~  
 1377 ~~screenings shall include,~~ but need not be limited to, employment  
 1378 history checks and statewide criminal correspondence checks  
 1379 through the ~~Florida~~ Department of Law Enforcement, and may  
 1380 include local criminal records checks through local law  
 1381 enforcement agencies.

1382           (2) Any person required by law to be screened pursuant to  
 1383 this section ~~for whom employment screening is required by~~  
 1384 ~~statute~~ must not have been found guilty of, regardless of  
 1385 adjudication, or entered a plea of nolo contendere or guilty to,  
 1386 any offense prohibited under any provision of s. 435.04(2) ~~of~~  
 1387 ~~the following provisions of the Florida Statutes~~ or under any  
 1388 similar statute of another jurisdiction.†

1389           ~~(a) Section 393.135, relating to sexual misconduct with~~  
 1390 ~~certain developmentally disabled clients and reporting of such~~  
 1391 ~~sexual misconduct.~~

1392           ~~(b) Section 394.4593, relating to sexual misconduct with~~  
 1393 ~~certain mental health patients and reporting of such sexual~~  
 1394 ~~misconduct.~~

1395           ~~(c) Section 415.111, relating to abuse, neglect, or~~  
 1396 ~~exploitation of a vulnerable adult.~~

1397           ~~(d) Section 782.04, relating to murder.~~

1398           ~~(e) Section 782.07, relating to manslaughter, aggravated~~  
 1399 ~~manslaughter of an elderly person or disabled adult, or~~  
 1400 ~~aggravated manslaughter of a child.~~

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- 1401        ~~(f) Section 782.071, relating to vehicular homicide.~~
- 1402        ~~(g) Section 782.09, relating to killing of an unborn quick~~
- 1403 ~~child by injury to the mother.~~
- 1404        ~~(h) Section 784.011, relating to assault, if the victim of~~
- 1405 ~~the offense was a minor.~~
- 1406        ~~(i) Section 784.021, relating to aggravated assault.~~
- 1407        ~~(j) Section 784.03, relating to battery, if the victim of~~
- 1408 ~~the offense was a minor.~~
- 1409        ~~(k) Section 784.045, relating to aggravated battery.~~
- 1410        ~~(l) Section 787.01, relating to kidnapping.~~
- 1411        ~~(m) Section 787.02, relating to false imprisonment.~~
- 1412        ~~(n) Section 794.011, relating to sexual battery.~~
- 1413        ~~(o) Former s. 794.041, relating to prohibited acts of~~
- 1414 ~~persons in familial or custodial authority.~~
- 1415        ~~(p) Chapter 796, relating to prostitution.~~
- 1416        ~~(q) Section 798.02, relating to lewd and lascivious~~
- 1417 ~~behavior.~~
- 1418        ~~(r) Chapter 800, relating to lewdness and indecent~~
- 1419 ~~exposure.~~
- 1420        ~~(s) Section 806.01, relating to arson.~~
- 1421        ~~(t) Chapter 812, relating to theft, robbery, and related~~
- 1422 ~~crimes, if the offense was a felony.~~
- 1423        ~~(u) Section 817.563, relating to fraudulent sale of~~
- 1424 ~~controlled substances, only if the offense was a felony.~~
- 1425        ~~(v) Section 825.102, relating to abuse, aggravated abuse,~~
- 1426 ~~or neglect of an elderly person or disabled adult.~~
- 1427        ~~(w) Section 825.1025, relating to lewd or lascivious~~
- 1428 ~~offenses committed upon or in the presence of an elderly person~~



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1429 ~~or disabled adult.~~

1430 ~~(x) Section 825.103, relating to exploitation of an~~

1431 ~~elderly person or disabled adult, if the offense was a felony.~~

1432 ~~(y) Section 826.04, relating to incest.~~

1433 ~~(z) Section 827.03, relating to child abuse, aggravated~~

1434 ~~child abuse, or neglect of a child.~~

1435 ~~(aa) Section 827.04, relating to contributing to the~~

1436 ~~delinquency or dependency of a child.~~

1437 ~~(bb) Former s. 827.05, relating to negligent treatment of~~

1438 ~~children.~~

1439 ~~(cc) Section 827.071, relating to sexual performance by a~~

1440 ~~child.~~

1441 ~~(dd) Chapter 847, relating to obscene literature.~~

1442 ~~(ee) Chapter 893, relating to drug abuse prevention and~~

1443 ~~control, only if the offense was a felony or if any other person~~

1444 ~~involved in the offense was a minor.~~

1445 ~~(ff) Section 916.1075, relating to sexual misconduct with~~

1446 ~~certain forensic clients and reporting of such sexual~~

1447 ~~misconduct.~~

1448 (3) The security background investigations under this

1449 section must ensure that no person subject to the provisions of

1450 this section has been found guilty of, regardless of

1451 adjudication, or entered a plea of nolo contendere or guilty to,

1452 any offense that constitutes domestic violence as defined in s.

1453 741.28, whether such act was committed in this state or in

1454 another jurisdiction ~~Standards must also ensure that the person:~~

1455 ~~(a) For employees and employers licensed or registered~~

1456 ~~pursuant to chapter 400 or chapter 429, and for employees and~~

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1457 ~~employers of developmental disabilities centers as defined in s.~~  
 1458 ~~393.063, intermediate care facilities for the developmentally~~  
 1459 ~~disabled as defined in s. 400.960, and mental health treatment~~  
 1460 ~~facilities as defined in s. 394.455, meets the requirements of~~  
 1461 ~~this chapter.~~

1462 ~~(b) Has not committed an act that constitutes domestic~~  
 1463 ~~violence as defined in s. 741.28.~~

1464 Section 34. Section 435.04, Florida Statutes, is amended  
 1465 to read:

1466 435.04 Level 2 screening standards.—

1467 (1)(a) All employees required by law to be screened  
 1468 pursuant to this section must ~~in positions designated by law as~~  
 1469 ~~positions of trust or responsibility shall be required to~~  
 1470 undergo security background investigations as a condition of  
 1471 employment and continued employment that includes. ~~For the~~  
 1472 ~~purposes of this subsection, security background investigations~~  
 1473 ~~shall include~~, but need not be limited to, fingerprinting for  
 1474 statewide criminal history records ~~all purposes and checks in~~  
 1475 ~~this subsection, statewide criminal and juvenile records checks~~  
 1476 through the ~~Florida~~ Department of Law Enforcement, and national  
 1477 ~~federal~~ criminal history records checks through the Federal  
 1478 Bureau of Investigation, and may include local criminal records  
 1479 checks through local law enforcement agencies.

1480 (b) Fingerprints submitted pursuant to this section on or  
 1481 after July 1, 2012, must be submitted electronically to the  
 1482 Department of Law Enforcement by, or on the behalf of, the  
 1483 employee or employer.

1484 (c) An agency may contract with one or more vendors to

1485 perform all or part of the electronic fingerprinting pursuant to  
 1486 this section. Such contracts must ensure that the owners and  
 1487 personnel of the vendor performing the electronic fingerprinting  
 1488 are qualified and will ensure the integrity and security of all  
 1489 personal information.

1490 (d) An agency may require by rule adopted pursuant to  
 1491 chapter 120 that fingerprints submitted pursuant to this section  
 1492 must be submitted electronically to the Department of Law  
 1493 Enforcement by, or on the behalf of, the employee or employer on  
 1494 a date earlier than July 1, 2012.

1495 (2) The security background investigations under this  
 1496 section must ensure that no persons subject to the provisions of  
 1497 this section have been found guilty of, regardless of  
 1498 adjudication, or entered a plea of nolo contendere or guilty to,  
 1499 any offense prohibited under any of the following provisions of  
 1500 the Florida Statutes or under any similar statute of another  
 1501 jurisdiction:

1502 (a) Section 393.135, relating to sexual misconduct with  
 1503 certain developmentally disabled clients and reporting of such  
 1504 sexual misconduct.

1505 (b) Section 394.4593, relating to sexual misconduct with  
 1506 certain mental health patients and reporting of such sexual  
 1507 misconduct.

1508 (c) Section 415.111, relating to adult abuse, neglect, or  
 1509 exploitation of aged persons or disabled adults.

1510 (d) Section 782.04, relating to murder.

1511 (e) Section 782.07, relating to manslaughter, aggravated  
 1512 manslaughter of an elderly person or disabled adult, or

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- 1513 aggravated manslaughter of a child.
- 1514 (f) Section 782.071, relating to vehicular homicide.
- 1515 (g) Section 782.09, relating to killing of an unborn quick
- 1516 child by injury to the mother.
- 1517 (h) Chapter 784, relating to assault, battery, and
- 1518 culpable negligence, if the offense was a felony.
- 1519 (i)~~(h)~~ Section 784.011, relating to assault, if the victim
- 1520 of the offense was a minor.
- 1521 ~~(i) Section 784.021, relating to aggravated assault.~~
- 1522 (j) Section 784.03, relating to battery, if the victim of
- 1523 the offense was a minor.
- 1524 ~~(k) Section 784.045, relating to aggravated battery.~~
- 1525 ~~(l) Section 784.075, relating to battery on a detention or~~
- 1526 ~~commitment facility staff.~~
- 1527 (k)~~(m)~~ Section 787.01, relating to kidnapping.
- 1528 (l)~~(n)~~ Section 787.02, relating to false imprisonment.
- 1529 (m) Section 787.025, relating to luring or enticing a
- 1530 child.
- 1531 (n)~~(o)~~ Section 787.04(2), relating to taking, enticing, or
- 1532 removing a child beyond the state limits with criminal intent
- 1533 pending custody proceedings.
- 1534 (o)~~(p)~~ Section 787.04(3), relating to carrying a child
- 1535 beyond the state lines with criminal intent to avoid producing a
- 1536 child at a custody hearing or delivering the child to the
- 1537 designated person.
- 1538 (p)~~(q)~~ Section 790.115(1), relating to exhibiting firearms
- 1539 or weapons within 1,000 feet of a school.
- 1540 (q)~~(r)~~ Section 790.115(2)(b), relating to possessing an

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1541 electric weapon or device, destructive device, or other weapon  
 1542 on school property.

1543 (r)~~(s)~~ Section 794.011, relating to sexual battery.

1544 (s)~~(t)~~ Former s. 794.041, relating to prohibited acts of  
 1545 persons in familial or custodial authority.

1546 (t) Section 794.05, relating to unlawful sexual activity  
 1547 with certain minors.

1548 (u) Chapter 796, relating to prostitution.

1549 (v) Section 798.02, relating to lewd and lascivious  
 1550 behavior.

1551 (w) Chapter 800, relating to lewdness and indecent  
 1552 exposure.

1553 (x) Section 806.01, relating to arson.

1554 (y) Section 810.02, relating to burglary.

1555 (z) Section 810.14, relating to voyeurism, if the offense  
 1556 is a felony.

1557 (aa) Section 810.145, relating to video voyeurism, if the  
 1558 offense is a felony.

1559 (bb)~~(y)~~ Chapter 812, relating to theft, robbery, and  
 1560 related crimes, if the offense is a felony.

1561 (cc)~~(z)~~ Section 817.563, relating to fraudulent sale of  
 1562 controlled substances, only if the offense was a felony.

1563 (dd)~~(aa)~~ Section 825.102, relating to abuse, aggravated  
 1564 abuse, or neglect of an elderly person or disabled adult.

1565 (ee)~~(bb)~~ Section 825.1025, relating to lewd or lascivious  
 1566 offenses committed upon or in the presence of an elderly person  
 1567 or disabled adult.

1568 (ff)~~(cc)~~ Section 825.103, relating to exploitation of an

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1569 elderly person or disabled adult, if the offense was a felony.

1570 (gg)~~(dd)~~ Section 826.04, relating to incest.

1571 (hh)~~(ee)~~ Section 827.03, relating to child abuse,  
1572 aggravated child abuse, or neglect of a child.

1573 (ii)~~(ff)~~ Section 827.04, relating to contributing to the  
1574 delinquency or dependency of a child.

1575 (jj)~~(gg)~~ Former s. 827.05, relating to negligent treatment  
1576 of children.

1577 (kk)~~(hh)~~ Section 827.071, relating to sexual performance  
1578 by a child.

1579 (ll)~~(ii)~~ Section 843.01, relating to resisting arrest with  
1580 violence.

1581 (mm)~~(jj)~~ Section 843.025, relating to depriving a law  
1582 enforcement, correctional, or correctional probation officer  
1583 means of protection or communication.

1584 (nn)~~(kk)~~ Section 843.12, relating to aiding in an escape.

1585 (oo)~~(ll)~~ Section 843.13, relating to aiding in the escape  
1586 of juvenile inmates in correctional institutions.

1587 (pp)~~(mm)~~ Chapter 847, relating to obscene literature.

1588 (qq)~~(nn)~~ Section 874.05(1), relating to encouraging or  
1589 recruiting another to join a criminal gang.

1590 (rr)~~(oo)~~ Chapter 893, relating to drug abuse prevention  
1591 and control, only if the offense was a felony or if any other  
1592 person involved in the offense was a minor.

1593 (ss)~~(pp)~~ Section 916.1075, relating to sexual misconduct  
1594 with certain forensic clients and reporting of such sexual  
1595 misconduct.

1596 (tt)~~(qq)~~ Section 944.35(3), relating to inflicting cruel

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1597 or inhuman treatment on an inmate resulting in great bodily  
1598 harm.

1599 (uu) Section 944.40, relating to escape.

1600 (vv)~~(rr)~~ Section 944.46, relating to harboring,  
1601 concealing, or aiding an escaped prisoner.

1602 (ww)~~(ss)~~ Section 944.47, relating to introduction of  
1603 contraband into a correctional facility.

1604 (xx)~~(tt)~~ Section 985.701, relating to sexual misconduct in  
1605 juvenile justice programs.

1606 (yy)~~(uu)~~ Section 985.711, relating to contraband  
1607 introduced into detention facilities.

1608 (3) The security background investigations under this  
1609 section must ensure that no person subject to this section has  
1610 been found guilty of, regardless of adjudication, or entered a  
1611 plea of nolo contendere or guilty to, any offense that  
1612 constitutes domestic violence as defined in s. 741.28, whether  
1613 such act was committed in this state or in another jurisdiction.

1614 ~~The security background investigations conducted under this~~  
1615 ~~section for employees of the Department of Juvenile Justice must~~  
1616 ~~ensure that no persons subject to the provisions of this section~~  
1617 ~~have been found guilty of, regardless of adjudication, or~~  
1618 ~~entered a plea of nolo contendere or guilty to, any offense~~  
1619 ~~prohibited under any of the following provisions of the Florida~~  
1620 ~~Statutes or under any similar statute of another jurisdiction:~~

1621 ~~(a) Section 784.07, relating to assault or battery of law~~  
1622 ~~enforcement officers, firefighters, emergency medical care~~  
1623 ~~providers, public transit employees or agents, or other~~  
1624 ~~specified officers.~~

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1625 ~~(b) Section 810.02, relating to burglary, if the offense~~  
 1626 ~~is a felony.~~

1627 ~~(c) Section 944.40, relating to escape.~~

1628  
 1629 ~~The Department of Juvenile Justice may not remove a~~  
 1630 ~~disqualification from employment or grant an exemption to any~~  
 1631 ~~person who is disqualified under this section for any offense~~  
 1632 ~~disposed of during the most recent 7-year period.~~

1633 ~~(4) Standards must also ensure that the person:~~

1634 ~~(a) For employees or employers licensed or registered~~  
 1635 ~~pursuant to chapter 400 or chapter 429, does not have a~~  
 1636 ~~confirmed report of abuse, neglect, or exploitation as defined~~  
 1637 ~~in s. 415.102(6), which has been uncontested or upheld under s.~~  
 1638 ~~415.103.~~

1639 ~~(b) Has not committed an act that constitutes domestic~~  
 1640 ~~violence as defined in s. 741.30.~~

1641 ~~(5) Under penalty of perjury, all employees in such~~  
 1642 ~~positions of trust or responsibility shall attest to meeting the~~  
 1643 ~~requirements for qualifying for employment and agreeing to~~  
 1644 ~~inform the employer immediately if convicted of any of the~~  
 1645 ~~disqualifying offenses while employed by the employer. Each~~  
 1646 ~~employer of employees in such positions of trust or~~  
 1647 ~~responsibilities which is licensed or registered by a state~~  
 1648 ~~agency shall submit to the licensing agency annually or at the~~  
 1649 ~~time of license renewal, under penalty of perjury, an affidavit~~  
 1650 ~~of compliance with the provisions of this section.~~

1651 Section 35. Section 435.05, Florida Statutes, is amended  
 1652 to read:



1653 435.05 Requirements for covered employees and employers.—  
 1654 Except as otherwise provided by law, the following requirements  
 1655 shall apply to covered employees and employers:

1656 (1) (a) Every person required by law to be screened  
 1657 pursuant to the provisions of this chapter must ~~employed in a~~  
 1658 ~~position for which employment screening is required must,~~ within  
 1659 ~~5 working days after starting to work,~~ submit to the employer a  
 1660 complete set of information necessary to conduct a screening  
 1661 under this chapter ~~section~~.

1662 (b) For level 1 screening, the employer must submit the  
 1663 information necessary for screening to the ~~Florida~~ Department of  
 1664 Law Enforcement within 5 working days after receiving it. The  
 1665 ~~Florida~~ Department of Law Enforcement will conduct a search of  
 1666 its records and will respond to the employer or agency. The  
 1667 employer will inform the employee whether screening has revealed  
 1668 any disqualifying information.

1669 (c) For level 2 screening, the employer or ~~licensing~~  
 1670 agency must submit the information necessary for screening to  
 1671 the ~~Florida~~ Department of Law Enforcement within 5 working days  
 1672 after receiving it. The ~~Florida~~ Department of Law Enforcement  
 1673 will perform a criminal history record check of its ~~conduct a~~  
 1674 ~~search of its criminal and juvenile records~~ and will request  
 1675 that the Federal Bureau of Investigation perform a national  
 1676 criminal history record check ~~conduct a search~~ of its records  
 1677 for each employee for whom the request is made. The ~~Florida~~  
 1678 Department of Law Enforcement will respond to the employer or  
 1679 ~~licensing~~ agency, and the employer or ~~licensing~~ agency will  
 1680 inform the employee whether screening has revealed disqualifying

1681 information.

1682 (d) The person whose background is being checked must  
 1683 supply any missing criminal or other necessary information upon  
 1684 request to the requesting employer or agency within 30 days  
 1685 after receiving the ~~employer makes a request for the information~~  
 1686 ~~or be subject to automatic disqualification.~~

1687 (2) Every employee must attest, subject to penalty of  
 1688 perjury, to meeting the requirements for qualifying for  
 1689 employment pursuant to this chapter and agreeing to inform the  
 1690 employer immediately if arrested for any of the disqualifying  
 1691 offenses while employed by the employer ~~Unless otherwise~~  
 1692 ~~prohibited by state or federal law, new employees may be placed~~  
 1693 ~~on probationary status pending a determination of compliance~~  
 1694 ~~with minimum standards set forth in this chapter.~~

1695 (3) Each employer that is licensed or registered with an  
 1696 agency and is required by law to conduct level 2 background  
 1697 screening must submit to the agency sign an affidavit annually  
 1698 or at the time of license renewal, under penalty of perjury, a  
 1699 signed affidavit attesting to compliance with the provisions of  
 1700 this chapter stating that all covered employees have been  
 1701 ~~screened or are newly hired and are awaiting the results of the~~  
 1702 ~~required screening checks.~~

1703 Section 36. Section 435.06, Florida Statutes, is amended  
 1704 to read:

1705 435.06 Exclusion from employment.—

1706 (1) When an employer or ~~licensing~~ agency has reasonable  
 1707 cause to believe that grounds exist for the denial or  
 1708 termination of employment of any employee as a result of

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1709 background screening, it shall notify the employee in writing,  
 1710 stating the specific record that ~~which~~ indicates noncompliance  
 1711 with the standards in this chapter ~~section~~. It shall be the  
 1712 responsibility of the affected employee to contest his or her  
 1713 disqualification or to request exemption from disqualification.  
 1714 The only basis for contesting the disqualification shall be  
 1715 proof of mistaken identity.

1716 (2) (a) An employer may not hire, select, or otherwise  
 1717 allow an employee to have contact with any vulnerable person  
 1718 that would place the employee in a role that would require  
 1719 background screening until such time as the screening process is  
 1720 completed and demonstrates the absence of any grounds for the  
 1721 denial or termination of employment. If the screening process  
 1722 shows any grounds for the denial or termination of employment,  
 1723 the employer may not hire, select, or otherwise allow the  
 1724 employee to have contact with any vulnerable person that would  
 1725 place the employee in a role that would require background  
 1726 screening unless the employee is granted an exemption for the  
 1727 disqualification by the agency as provided under s. 435.07.

1728 (b) If at any time an employer becomes aware that an  
 1729 employee has been arrested for a disqualifying offense, the  
 1730 employer must remove the employee from contact with any  
 1731 vulnerable person that would place the employee in a role that  
 1732 would require background screening until such time as the arrest  
 1733 is resolved in such a way that the employer determines that the  
 1734 employee is still eligible for employment under this chapter.

1735 (c) The employer must either terminate the employment of  
 1736 any of its personnel found to be in noncompliance with the

1737 minimum standards of this chapter ~~for good moral character~~  
 1738 ~~contained in this section~~ or place the employee in a position  
 1739 for which background screening is not required unless the  
 1740 employee is granted an exemption from disqualification pursuant  
 1741 to s. 435.07.

1742 (3) Any employee ~~person who is required to undergo~~  
 1743 ~~employment screening and~~ who refuses to cooperate in such  
 1744 screening or refuses to timely submit the information necessary  
 1745 to complete the screening, including fingerprints when required,  
 1746 must ~~shall~~ be disqualified for employment in such position or,  
 1747 if employed, must ~~shall~~ be dismissed.

1748 Section 37. Section 435.07, Florida Statutes, is amended  
 1749 to read:

1750 435.07 Exemptions from disqualification.—Unless otherwise  
 1751 provided by law, the provisions of this section shall apply to  
 1752 exemptions from disqualification pursuant to this chapter.

1753 (1) The head of the appropriate ~~licensing~~ agency may grant  
 1754 to any employee otherwise disqualified from employment an  
 1755 exemption from disqualification for:

1756 (a) Felonies for which at least 3 years have elapsed since  
 1757 the applicant for the exemption has completed or been lawfully  
 1758 released from confinement, supervision, or sanction for the  
 1759 disqualifying felony ~~committed more than 3 years prior to the~~  
 1760 ~~date of disqualification;~~

1761 (b) Misdemeanors prohibited under any of the Florida  
 1762 Statutes cited in this chapter or under similar statutes of  
 1763 other jurisdictions;

1764 (c) Offenses that were felonies when committed but are now

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1765 | misdemeanors; or  
 1766 |       (d) Findings of delinquency; ~~or~~  
 1767 |       ~~(e) Commissions of acts of domestic violence as defined in~~  
 1768 | ~~s. 741.30.~~

1769 |  
 1770 | For the purposes of this subsection, the term "felonies" means  
 1771 | both felonies prohibited under any of the Florida Statutes cited  
 1772 | in this chapter or under similar statutes of other  
 1773 | jurisdictions.

1774 |       (2) Persons employed, or applicants for employment, by  
 1775 | treatment providers who treat adolescents 13 years of age and  
 1776 | older who are disqualified from employment solely because of  
 1777 | crimes under s. 817.563, s. 893.13, or s. 893.147 may be  
 1778 | exempted from disqualification from employment pursuant to this  
 1779 | chapter section without application of the 3-year waiting period  
 1780 | in paragraph (1) (a).

1781 |       (3) (a) In order for the head of an agency ~~a licensing~~  
 1782 | ~~department~~ to grant an exemption to any employee, the employee  
 1783 | must demonstrate by clear and convincing evidence that the  
 1784 | employee should not be disqualified from employment. Employees  
 1785 | seeking an exemption have the burden of setting forth clear and  
 1786 | convincing ~~sufficient~~ evidence of rehabilitation, including, but  
 1787 | not limited to, the circumstances surrounding the criminal  
 1788 | incident for which an exemption is sought, the time period that  
 1789 | has elapsed since the incident, the nature of the harm caused to  
 1790 | the victim, and the history of the employee since the incident,  
 1791 | or any other evidence or circumstances indicating that the  
 1792 | employee will not present a danger if employment or continued

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1793 employment is allowed.

1794 (b) The agency may consider as part of its deliberations  
 1795 of the employee's rehabilitation the fact that the employee has,  
 1796 subsequent to the conviction for the disqualifying offense for  
 1797 which the exemption is being sought, been arrested for or  
 1798 convicted of another crime, even if that crime is not a  
 1799 disqualifying offense.

1800 (c) The decision of the head of an agency licensing  
 1801 ~~department~~ regarding an exemption may be contested through the  
 1802 hearing procedures set forth in chapter 120. The standard of  
 1803 review by the administrative law judge is whether the agency's  
 1804 intended action is an abuse of discretion.

1805 (4) (a) Disqualification from employment under this chapter  
 1806 ~~subsection (1)~~ may not be removed from, nor may an exemption be  
 1807 granted to, any personnel who is found guilty of, regardless of  
 1808 adjudication, or who has entered a plea of nolo contendere or  
 1809 guilty to, any felony covered by s. 435.03 or s. 435.04 solely  
 1810 by reason of any pardon, executive clemency, or restoration of  
 1811 civil rights.

1812 (b) Disqualification from employment under this chapter  
 1813 may not be removed from, nor may an exemption be granted to, any  
 1814 person who has been designated as a sexual predator pursuant to  
 1815 s. 775.21.

1816 (5) Exemptions granted by one ~~licensing~~ agency shall be  
 1817 considered by subsequent ~~licensing~~ agencies, but are not binding  
 1818 on the subsequent ~~licensing~~ agency.

1819 Section 38. Section 435.08, Florida Statutes, is amended  
 1820 to read:

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1821 435.08 Payment for processing of fingerprints and state  
 1822 criminal records checks.—Either the employer or the employee is  
 1823 responsible for paying the costs of screening. Payment shall be  
 1824 submitted to the ~~Florida~~ Department of Law Enforcement with the  
 1825 request for screening. The appropriate agency is responsible for  
 1826 collecting and paying any fee related to fingerprints retained  
 1827 on its behalf to the Department of Law Enforcement for costs  
 1828 resulting from the fingerprint information retention services.  
 1829 The amount of the annual fee and procedures for the submission  
 1830 and retention of fingerprint information and for the  
 1831 dissemination of search results shall be established by rule of  
 1832 the Department of Law Enforcement.

1833 Section 39. Subsection (1) of section 464.203, Florida  
 1834 Statutes, is amended to read:

1835 464.203 Certified nursing assistants; certification  
 1836 requirement.—

1837 (1) The board shall issue a certificate to practice as a  
 1838 certified nursing assistant to any person who demonstrates a  
 1839 minimum competency to read and write and successfully passes the  
 1840 required background ~~Level I or Level II~~ screening pursuant to s.  
 1841 400.215 and meets one of the following requirements:

1842 (a) Has successfully completed an approved training  
 1843 program and achieved a minimum score, established by rule of the  
 1844 board, on the nursing assistant competency examination, which  
 1845 consists of a written portion and skills-demonstration portion  
 1846 approved by the board and administered at a site and by  
 1847 personnel approved by the department.

1848 (b) Has achieved a minimum score, established by rule of

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1849 the board, on the nursing assistant competency examination,  
 1850 which consists of a written portion and skills-demonstration  
 1851 portion, approved by the board and administered at a site and by  
 1852 personnel approved by the department and:

- 1853 1. Has a high school diploma, or its equivalent; or
- 1854 2. Is at least 18 years of age.

1855 (c) Is currently certified in another state; is listed on  
 1856 that state's certified nursing assistant registry; and has not  
 1857 been found to have committed abuse, neglect, or exploitation in  
 1858 that state.

1859 (d) Has completed the curriculum developed under the  
 1860 Enterprise Florida Jobs and Education Partnership Grant and  
 1861 achieved a minimum score, established by rule of the board, on  
 1862 the nursing assistant competency examination, which consists of  
 1863 a written portion and skills-demonstration portion, approved by  
 1864 the board and administered at a site and by personnel approved  
 1865 by the department.

1866 Section 40. Subsection (9) of section 489.115, Florida  
 1867 Statutes, is amended to read:

1868 489.115 Certification and registration; endorsement;  
 1869 reciprocity; renewals; continuing education.—

1870 (9) An initial applicant shall submit, along with the  
 1871 application, a complete set of fingerprints in a form and manner  
 1872 required by the department. The fingerprints shall be submitted  
 1873 to the Department of Law Enforcement for state processing, and  
 1874 the Department of Law Enforcement shall forward them to the  
 1875 Federal Bureau of Investigation for the purpose of processing  
 1876 the fingerprint submission to determine if the applicant has a



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1877 criminal history record ~~conducting a level 2 background check~~  
1878 ~~pursuant to s. 435.04.~~ The department shall and the board may  
1879 review the background results to determine if an applicant meets  
1880 licensure requirements. The cost for the fingerprint processing  
1881 shall be borne by the person subject to the background  
1882 screening. These fees are to be collected by the authorized  
1883 agencies or vendors. The authorized agencies or vendors are  
1884 responsible for paying the processing costs to the Department of  
1885 Law Enforcement.

1886 Section 41. Paragraphs (g) and (h) of subsection (2) of  
1887 section 943.05, Florida Statutes, are amended, and subsection  
1888 (4) is added to that section, to read:

1889 943.05 Criminal Justice Information Program; duties; crime  
1890 reports.—

1891 (2) The program shall:

1892 (g) Upon official written request from the agency  
1893 executive director or secretary, or from his or her designee, or  
1894 from qualified entities participating in the volunteer and  
1895 employee criminal history screening system under s. 943.0542, or  
1896 as otherwise required ~~As authorized~~ by law, retain fingerprints  
1897 submitted by criminal and noncriminal justice agencies to the  
1898 department for a criminal history background screening in a  
1899 manner provided by rule and enter the fingerprints in the  
1900 statewide automated fingerprint identification system authorized  
1901 by paragraph (b). Such fingerprints shall thereafter be  
1902 available for all purposes and uses authorized for arrest  
1903 fingerprint submissions ~~cards~~ entered into the statewide  
1904 automated fingerprint identification system pursuant to s.

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1905 943.051.

1906 (h)~~1~~. For each agency or qualified entity that officially  
 1907 requests retention of fingerprints or for which retention is  
 1908 otherwise required ~~As authorized~~ by law, search all arrest  
 1909 fingerprint submissions ~~cards~~ received under s. 943.051 against  
 1910 the fingerprints retained in the statewide automated fingerprint  
 1911 identification system under paragraph (g).

1912 1. Any arrest record that is identified with the retained  
 1913 fingerprints of a person subject to background screening as  
 1914 provided in paragraph (g) shall be reported to the appropriate  
 1915 agency or qualified entity.

1916 2. ~~To Agencies may~~ participate in this search process,  
 1917 agencies or qualified entities must notify each person  
 1918 fingerprinted that his or her fingerprints will be retained, pay  
 1919 ~~by payment of~~ an annual fee to the department, and inform by  
 1920 ~~informing~~ the department of any change in the affiliation,  
 1921 employment, or contractual status ~~or place of affiliation,~~  
 1922 ~~employment, or contracting of~~ each person ~~the persons~~ whose  
 1923 fingerprints are retained under paragraph (g) when such change  
 1924 removes or eliminates the agency or qualified entity's basis or  
 1925 need for receiving reports of any arrest of that person, so that  
 1926 the agency or qualified entity will not be obligated to pay the  
 1927 upcoming annual fee for the retention and searching of that  
 1928 person's fingerprints to the department. The department shall  
 1929 adopt a rule setting the amount of the annual fee to be imposed  
 1930 upon each participating agency or qualified entity for  
 1931 performing these searches and establishing the procedures for  
 1932 the retention of fingerprints and the dissemination of search

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1933 results. The fee may be borne by the agency, qualified entity,  
 1934 or person subject to fingerprint retention or as otherwise  
 1935 provided by law. ~~Fees may be waived or reduced by the executive~~  
 1936 director for good cause shown. Consistent with the recognition  
 1937 of criminal justice agencies expressed in s. 943.053(3), these  
 1938 services will be provided to criminal justice agencies for  
 1939 criminal justice purposes free of charge.

1940 3. Agencies that participate in the fingerprint retention  
 1941 and search process may adopt rules pursuant to ss. 120.536(1)  
 1942 and 120.54 to require employers to keep the agency informed of  
 1943 any change in the affiliation, employment, or contractual status  
 1944 of each person whose fingerprints are retained under paragraph  
 1945 (g) when such change removes or eliminates the agency's basis or  
 1946 need for receiving reports of any arrest of that person, so that  
 1947 the agency will not be obligated to pay the upcoming annual fee  
 1948 for the retention and searching of that person's fingerprints to  
 1949 the department.

1950 (4) Upon notification that a federal fingerprint retention  
 1951 program is in effect, and subject to the department being funded  
 1952 and equipped to participate in such a program, the department  
 1953 shall, when state and national criminal history records checks  
 1954 and retention of submitted prints are authorized or required by  
 1955 law, retain the fingerprints as provided in paragraphs (2) (g)  
 1956 and (h) and advise the Federal Bureau of Investigation to retain  
 1957 the fingerprints at the national level for searching against  
 1958 arrest fingerprint submissions received at the national level.

1959 Section 42. Subsections (6) and (11) of section 943.053,  
 1960 Florida Statutes, are amended to read:

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1961 943.053 Dissemination of criminal justice information;  
 1962 fees.—

1963 (6) Notwithstanding any other provision of law, the  
 1964 department shall provide to the ~~Florida~~ Department of Revenue  
 1965 ~~Child Support Enforcement~~ access to Florida criminal records  
 1966 which are not exempt from disclosure under chapter 119, and to  
 1967 such information as may be lawfully available from other states  
 1968 via the National Law Enforcement Telecommunications System, for  
 1969 the purpose of locating subjects who owe or potentially owe  
 1970 support, as defined in s. 409.2554, or to whom such obligation  
 1971 is owed pursuant to Title IV-D of the Social Security Act. Such  
 1972 information may be provided to child support enforcement  
 1973 authorities in other states for these specific purposes.

1974 (11) A criminal justice agency that is authorized under  
 1975 federal rules or law to conduct a criminal history background  
 1976 check on an agency employee who is not certified by the Criminal  
 1977 Justice Standards and Training Commission under s. 943.12 may  
 1978 submit to the department the fingerprints of the noncertified  
 1979 employee to obtain state and national criminal history  
 1980 information. ~~Effective January 15, 2007,~~ The fingerprints  
 1981 submitted shall be retained and entered in the statewide  
 1982 automated fingerprint identification system authorized by s.  
 1983 943.05 and shall be available for all purposes and uses  
 1984 authorized for arrest fingerprint submissions ~~cards~~ entered in  
 1985 the statewide automated fingerprint identification system  
 1986 pursuant to s. 943.051. The department shall search all arrest  
 1987 fingerprint submissions ~~cards~~ received pursuant to s. 943.051  
 1988 against the fingerprints retained in the statewide automated

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1989 fingerprint identification system pursuant to this section. In  
 1990 addition to all purposes and uses authorized for arrest  
 1991 fingerprint submissions ~~cards~~ for which submitted fingerprints  
 1992 may be used, any arrest record that is identified with the  
 1993 retained employee fingerprints must be reported to the  
 1994 submitting employing agency.

1995 Section 43. Section 985.644, Florida Statutes, is amended  
 1996 to read:

1997 985.644 Departmental contracting powers; personnel  
 1998 standards and screening.—

1999 (1) ~~The department of Juvenile Justice or the Department~~  
 2000 ~~of Children and Family Services, as appropriate,~~ may contract  
 2001 with the Federal Government, other state departments and  
 2002 agencies, county and municipal governments and agencies, public  
 2003 and private agencies, and private individuals and corporations  
 2004 in carrying out the purposes of, and the responsibilities  
 2005 established in, this chapter.

2006 (a) ~~When the Department of Juvenile Justice or the~~  
 2007 ~~Department of Children and Family Services contracts with a~~  
 2008 ~~provider for any program for children, all personnel, including~~  
 2009 ~~owners, operators, employees, and volunteers, in the facility~~  
 2010 ~~must be of good moral character.~~ Each contract entered into by  
 2011 the either department for services delivered on an appointment  
 2012 or intermittent basis by a provider that does not have regular  
 2013 custodial responsibility for children and each contract with a  
 2014 school for before or aftercare services must ensure that the all  
 2015 owners, operators, and ~~all~~ personnel who have direct contact  
 2016 with children are subject to level 2 background screening

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2017 | pursuant to chapter 435 ~~of good moral character.~~

2018 |       **(b)** A volunteer who assists the department or any program  
 2019 | for children on an intermittent basis for less than 40 hours per  
 2020 | month need not be screened if the volunteer is under direct and  
 2021 | constant supervision by persons who meet the screening  
 2022 | requirements.

2023 |       ~~(b) The Department of Juvenile Justice and the Department~~  
 2024 | ~~of Children and Family Services shall require employment~~  
 2025 | ~~screening pursuant to chapter 435, using the level 2 standards~~  
 2026 | ~~set forth in that chapter for personnel in programs for children~~  
 2027 | ~~or youths.~~

2028 |       ~~(c) The Department of Juvenile Justice or the Department~~  
 2029 | ~~of Children and Family Services may grant exemptions from~~  
 2030 | ~~disqualification from working with children as provided in s.~~  
 2031 | ~~435.07.~~

2032 |       **(2)** ~~The department may contract with the Federal~~  
 2033 | ~~Government, other state departments and agencies, county and~~  
 2034 | ~~municipal governments and agencies, public and private agencies,~~  
 2035 | ~~and private individuals and corporations in carrying out the~~  
 2036 | ~~purposes and the responsibilities of the delinquency services~~  
 2037 | ~~and programs of the department.~~

2038 |       ~~(3)~~ The department shall adopt a rule pursuant to chapter  
 2039 | 120 establishing a procedure to provide notice of policy changes  
 2040 | that affect contracted delinquency services and programs. A  
 2041 | policy is defined as an operational requirement that applies to  
 2042 | only the specified contracted delinquency service or program.  
 2043 | The procedure shall include:

2044 |       **(a)** Public notice of policy development.

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2045 (b) Opportunity for public comment on the proposed policy.

2046 (c) Assessment for fiscal impact upon the department and  
2047 providers.

2048 (d) The department's response to comments received.

2049 ~~(4) When the department contracts with a provider for any~~  
2050 ~~delinquency service or program, all personnel, including all~~  
2051 ~~owners, operators, employees, and volunteers in the facility or~~  
2052 ~~providing the service or program shall be of good moral~~  
2053 ~~character. A volunteer who assists on an intermittent basis for~~  
2054 ~~less than 40 hours per month is not required to be screened if~~  
2055 ~~the volunteer is under direct and constant supervision by~~  
2056 ~~persons who meet the screening requirements.~~

2057 (3)(5)(a) All employees of the department and all  
2058 personnel of contract providers for any program for children,  
2059 including all owners, operators, employees, persons who have  
2060 access to confidential juvenile records, and volunteers, must  
2061 complete ~~For any person employed by the department, or by a~~  
2062 ~~provider under contract with the department, in delinquency~~  
2063 ~~facilities, services, or programs, the department shall require:~~

2064 1. A level 2 employment screening pursuant to chapter 435  
2065 prior to employment. The security background investigations  
2066 conducted under this section must ensure that, in addition to  
2067 the disqualifying offenses listed in s. 435.04, no person  
2068 subject to the background screening provisions of this section  
2069 has been found guilty of, regardless of adjudication, or entered  
2070 a plea of nolo contendere or guilty to, any offense prohibited  
2071 under any of the following provisions of the Florida Statutes or  
2072 under any similar statute of another jurisdiction:

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2073           a. Section 784.07, relating to assault or battery of law  
 2074 enforcement officers, firefighters, emergency medical care  
 2075 providers, public transit employees or agents, or other  
 2076 specified officers.

2077           b. Section 817.568, relating to criminal use of personal  
 2078 identification information.

2079           2. A national ~~federal~~ criminal records check by the  
 2080 Federal Bureau of Investigation every 5 years following the date  
 2081 of the person's employment.

2082           (b) Except for law enforcement, correctional, and  
 2083 correctional probation officers, to whom s. 943.13(5) applies,  
 2084 the department shall electronically submit to the Department of  
 2085 Law Enforcement:

2086           1. Fingerprint information obtained during the employment  
 2087 screening required by subparagraph (a)1.

2088           2. ~~Beginning on December 15, 2005,~~ Fingerprint information  
 2089 for all persons employed by the department, or by a provider  
 2090 under contract with the department, in delinquency facilities,  
 2091 services, or programs if such fingerprint information has not  
 2092 previously been electronically submitted to the Department of  
 2093 Law Enforcement under this paragraph.

2094           (c) All fingerprint information electronically submitted  
 2095 to the Department of Law Enforcement under paragraph (b) shall  
 2096 be retained by the Department of Law Enforcement and entered  
 2097 into the statewide automated fingerprint identification system  
 2098 authorized by s. 943.05(2) (b). Thereafter, such fingerprint  
 2099 information shall be available for all purposes and uses  
 2100 authorized for arrest fingerprint information entered into the



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2101 statewide automated fingerprint identification system pursuant  
2102 to s. 943.051 until the fingerprint information is removed  
2103 pursuant to paragraph (e). The Department of Law Enforcement  
2104 shall search all arrest fingerprint information received  
2105 pursuant to s. 943.051 against the fingerprint information  
2106 entered into the statewide automated fingerprint system pursuant  
2107 to this subsection. Any arrest records identified as a result of  
2108 the search shall be reported to the department in the manner and  
2109 timeframe established by the Department of Law Enforcement by  
2110 rule.

2111 (d) The department shall pay an annual fee to the  
2112 Department of Law Enforcement for its costs resulting from the  
2113 fingerprint information retention services required by this  
2114 subsection. The amount of the annual fee and procedures for the  
2115 submission and retention of fingerprint information and for the  
2116 dissemination of search results shall be established by the  
2117 Department of Law Enforcement by a rule that is applicable to  
2118 the department individually pursuant to this subsection or that  
2119 is applicable to the department and other employing agencies  
2120 pursuant to rulemaking authority otherwise provided by law.

2121 (e) The department shall notify the Department of Law  
2122 Enforcement when a person whose fingerprint information is  
2123 retained by the Department of Law Enforcement under this  
2124 subsection is no longer employed by the department, or by a  
2125 provider under contract with the department, in a delinquency  
2126 facility, service, or program. This notice shall be provided by  
2127 the department to the Department of Law Enforcement no later  
2128 than 6 months after the date of the change in the person's

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2129 employment status. Fingerprint information for persons  
 2130 identified by the department in the notice shall be removed from  
 2131 the statewide automated fingerprint system.

2132 (6) The department may grant exemptions from  
 2133 disqualification from working with children as provided in s.  
 2134 435.07.

2135 (7) The department may adopt rules pursuant to ss.  
 2136 120.536(1) and 120.54 to describe the procedure and requirements  
 2137 necessary to implement the employment screening and fingerprint  
 2138 retention services for all employees of the department and all  
 2139 personnel of contract providers for any program for children,  
 2140 including all owners, operators, employees, and volunteers,  
 2141 including the collection of associated fees.

2142 Section 44. Paragraph (a) of subsection (1) of section  
 2143 381.60225, Florida Statutes, is amended to read:

2144 381.60225 Background screening.—

2145 (1) Each applicant for certification must comply with the  
 2146 following requirements:

2147 (a) Upon receipt of a completed, signed, and dated  
 2148 application, the Agency for Health Care Administration shall  
 2149 require background screening, in accordance with the level 2  
 2150 standards for screening set forth in chapter 435, of the  
 2151 managing employee, or other similarly titled individual  
 2152 responsible for the daily operation of the organization, agency,  
 2153 or entity, and financial officer, or other similarly titled  
 2154 individual who is responsible for the financial operation of the  
 2155 organization, agency, or entity, including billings for  
 2156 services. The applicant must comply with the procedures for

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2157 | level 2 background screening as set forth in chapter 435, ~~as~~  
 2158 | ~~well as the requirements of s. 435.03(3).~~

2159 | Section 45. Subsection (32) of section 409.912, Florida  
 2160 | Statutes, is amended to read:

2161 | 409.912 Cost-effective purchasing of health care.—The  
 2162 | agency shall purchase goods and services for Medicaid recipients  
 2163 | in the most cost-effective manner consistent with the delivery  
 2164 | of quality medical care. To ensure that medical services are  
 2165 | effectively utilized, the agency may, in any case, require a  
 2166 | confirmation or second physician's opinion of the correct  
 2167 | diagnosis for purposes of authorizing future services under the  
 2168 | Medicaid program. This section does not restrict access to  
 2169 | emergency services or poststabilization care services as defined  
 2170 | in 42 C.F.R. part 438.114. Such confirmation or second opinion  
 2171 | shall be rendered in a manner approved by the agency. The agency  
 2172 | shall maximize the use of prepaid per capita and prepaid  
 2173 | aggregate fixed-sum basis services when appropriate and other  
 2174 | alternative service delivery and reimbursement methodologies,  
 2175 | including competitive bidding pursuant to s. 287.057, designed  
 2176 | to facilitate the cost-effective purchase of a case-managed  
 2177 | continuum of care. The agency shall also require providers to  
 2178 | minimize the exposure of recipients to the need for acute  
 2179 | inpatient, custodial, and other institutional care and the  
 2180 | inappropriate or unnecessary use of high-cost services. The  
 2181 | agency shall contract with a vendor to monitor and evaluate the  
 2182 | clinical practice patterns of providers in order to identify  
 2183 | trends that are outside the normal practice patterns of a  
 2184 | provider's professional peers or the national guidelines of a

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2185 provider's professional association. The vendor must be able to  
2186 provide information and counseling to a provider whose practice  
2187 patterns are outside the norms, in consultation with the agency,  
2188 to improve patient care and reduce inappropriate utilization.  
2189 The agency may mandate prior authorization, drug therapy  
2190 management, or disease management participation for certain  
2191 populations of Medicaid beneficiaries, certain drug classes, or  
2192 particular drugs to prevent fraud, abuse, overuse, and possible  
2193 dangerous drug interactions. The Pharmaceutical and Therapeutics  
2194 Committee shall make recommendations to the agency on drugs for  
2195 which prior authorization is required. The agency shall inform  
2196 the Pharmaceutical and Therapeutics Committee of its decisions  
2197 regarding drugs subject to prior authorization. The agency is  
2198 authorized to limit the entities it contracts with or enrolls as  
2199 Medicaid providers by developing a provider network through  
2200 provider credentialing. The agency may competitively bid single-  
2201 source-provider contracts if procurement of goods or services  
2202 results in demonstrated cost savings to the state without  
2203 limiting access to care. The agency may limit its network based  
2204 on the assessment of beneficiary access to care, provider  
2205 availability, provider quality standards, time and distance  
2206 standards for access to care, the cultural competence of the  
2207 provider network, demographic characteristics of Medicaid  
2208 beneficiaries, practice and provider-to-beneficiary standards,  
2209 appointment wait times, beneficiary use of services, provider  
2210 turnover, provider profiling, provider licensure history,  
2211 previous program integrity investigations and findings, peer  
2212 review, provider Medicaid policy and billing compliance records,

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2213 clinical and medical record audits, and other factors. Providers  
 2214 shall not be entitled to enrollment in the Medicaid provider  
 2215 network. The agency shall determine instances in which allowing  
 2216 Medicaid beneficiaries to purchase durable medical equipment and  
 2217 other goods is less expensive to the Medicaid program than long-  
 2218 term rental of the equipment or goods. The agency may establish  
 2219 rules to facilitate purchases in lieu of long-term rentals in  
 2220 order to protect against fraud and abuse in the Medicaid program  
 2221 as defined in s. 409.913. The agency may seek federal waivers  
 2222 necessary to administer these policies.

2223 (32) Each managed care plan that is under contract with  
 2224 the agency to provide health care services to Medicaid  
 2225 recipients shall annually conduct a background check with the  
 2226 Florida Department of Law Enforcement of all persons with  
 2227 ownership interest of 5 percent or more or executive management  
 2228 responsibility for the managed care plan and shall submit to the  
 2229 agency information concerning any such person who has been found  
 2230 guilty of, regardless of adjudication, or has entered a plea of  
 2231 nolo contendere or guilty to, any of the offenses listed in s.  
 2232 435.04 ~~435.03~~.

2233 Section 46. Paragraph (e) of subsection (1) of section  
 2234 464.018, Florida Statutes, is amended to read:

2235 464.018 Disciplinary actions.—

2236 (1) The following acts constitute grounds for denial of a  
 2237 license or disciplinary action, as specified in s. 456.072(2):

2238 (e) Having been found guilty of, regardless of  
 2239 adjudication, or entered a plea of nolo contendere or guilty to,  
 2240 any offense prohibited under s. 435.04 ~~435.03~~ or under any

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2241 similar statute of another jurisdiction; or having committed an  
 2242 act which constitutes domestic violence as defined in s. 741.28.

2243 Section 47. Paragraph (m) of subsection (1) of section  
 2244 468.3101, Florida Statutes, is amended to read:

2245 468.3101 Disciplinary grounds and actions.—

2246 (1) The department may make or require to be made any  
 2247 investigations, inspections, evaluations, and tests, and require  
 2248 the submission of any documents and statements, which it  
 2249 considers necessary to determine whether a violation of this  
 2250 part has occurred. The following acts shall be grounds for  
 2251 disciplinary action as set forth in this section:

2252 (m) Having been found guilty of, regardless of  
 2253 adjudication, or pleading guilty or nolo contendere to, any  
 2254 offense prohibited under s. 435.04 ~~435.03~~ or under any similar  
 2255 statute of another jurisdiction.

2256 Section 48. Subsection (3) of section 744.309, Florida  
 2257 Statutes, is amended to read:

2258 744.309 Who may be appointed guardian of a resident ward.—

2259 (3) DISQUALIFIED PERSONS.—No person who has been convicted  
 2260 of a felony or who, from any incapacity or illness, is incapable  
 2261 of discharging the duties of a guardian, or who is otherwise  
 2262 unsuitable to perform the duties of a guardian, shall be  
 2263 appointed to act as guardian. Further, no person who has been  
 2264 judicially determined to have committed abuse, abandonment, or  
 2265 neglect against a child as defined in s. 39.01 or s. 984.03(1),  
 2266 (2), and (37), or who has been found guilty of, regardless of  
 2267 adjudication, or entered a plea of nolo contendere or guilty to,  
 2268 any offense prohibited under s. 435.04 ~~435.03~~ or under any

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2269 similar statute of another jurisdiction, shall be appointed to  
 2270 act as a guardian. Except as provided in subsection (5) or  
 2271 subsection (6), a person who provides substantial services to  
 2272 the proposed ward in a professional or business capacity, or a  
 2273 creditor of the proposed ward, may not be appointed guardian and  
 2274 retain that previous professional or business relationship. A  
 2275 person may not be appointed a guardian if he or she is in the  
 2276 employ of any person, agency, government, or corporation that  
 2277 provides service to the proposed ward in a professional or  
 2278 business capacity, except that a person so employed may be  
 2279 appointed if he or she is the spouse, adult child, parent, or  
 2280 sibling of the proposed ward or the court determines that the  
 2281 potential conflict of interest is insubstantial and that the  
 2282 appointment would clearly be in the proposed ward's best  
 2283 interest. The court may not appoint a guardian in any other  
 2284 circumstance in which a conflict of interest may occur.

2285 Section 49. Subsection (12) of section 744.474, Florida  
 2286 Statutes, is amended to read:

2287 744.474 Reasons for removal of guardian.—A guardian may be  
 2288 removed for any of the following reasons, and the removal shall  
 2289 be in addition to any other penalties prescribed by law:

2290 (12) Having been found guilty of, regardless of  
 2291 adjudication, or entered a plea of nolo contendere or guilty to,  
 2292 any offense prohibited under s. 435.04 ~~435.03~~ or under any  
 2293 similar statute of another jurisdiction.

2294 Section 50. Paragraph (a) of subsection (6) of section  
 2295 985.04, Florida Statutes, is amended to read:

2296 985.04 Oaths; records; confidential information.—

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2297 (6) (a) Records maintained by the department, including  
 2298 copies of records maintained by the court, which pertain to a  
 2299 child found to have committed a delinquent act which, if  
 2300 committed by an adult, would be a crime specified in s. ~~ss.~~  
 2301 ~~435.03~~ and 435.04 may not be destroyed under this section for a  
 2302 period of 25 years after the youth's final referral to the  
 2303 department, except in cases of the death of the child. Such  
 2304 records, however, shall be sealed by the court for use only in  
 2305 meeting the screening requirements for personnel in s. 402.3055  
 2306 and the other sections cited above, or under departmental rule;  
 2307 however, current criminal history information must be obtained  
 2308 from the Department of Law Enforcement in accordance with s.  
 2309 943.053. The information shall be released to those persons  
 2310 specified in the above cited sections for the purposes of  
 2311 complying with those sections. The court may punish by contempt  
 2312 any person who releases or uses the records for any unauthorized  
 2313 purpose.

2314 Section 51. The changes made by this act are intended to  
 2315 be prospective in nature. It is not intended that persons who  
 2316 are employed or licensed on the effective date of this act be  
 2317 rescreened until such time as they are otherwise required to be  
 2318 rescreened pursuant to law, at which time they must meet the  
 2319 requirements for screening as set forth in this act.

2320 Section 52. This act shall take effect July 1, 2010.



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 7069 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4 **Amendment (with title amendment)**

5 Between lines 2313 and 2314, insert:

6 Section 51. Section 409.1758, Florida Statutes, is  
7 repealed.

8 Section 52. Paragraph (d) of subsection (4) of section  
9 456.039, Florida Statutes, is repealed.

10  
11  
12  
13 -----  
14 **T I T L E A M E N D M E N T**

15 Remove line 110 and insert:

16 ch. 435, F.S., by this act; repealing s. 409.1758, F.S.,  
17 relating to screening of summer camp personnel; repealing s.  
18 456.039(4)(d) , F.S., relating to designated health care

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19 professionals; information required for licensure; providing for  
20 prospective

COUNCIL/COMMITTEE AMENDMENT

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COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4 **Amendment**

5 Remove lines 217-224 and insert:

6 (5) DISQUALIFYING OFFENSES.—The background screening  
7 conducted under this section must ensure that, in addition to  
8 the disqualifying offenses listed in s. 435.04, no person  
9 subject to the provisions of this section has an arrest awaiting  
10 final disposition for, has been found guilty of, regardless of  
11 adjudication, or entered a plea of nolo contendere or guilty to,  
12 or has been adjudicated delinquent and the record has not been  
13 sealed or expunged for, any offense prohibited under any of the  
14 following provisions of the Florida Statutes or under any  
15 similar statute of another jurisdiction:  
16

COUNCIL/COMMITTEE AMENDMENT

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Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Council/Committee hearing bill: Policy Council

2 Representative(s) Snyder offered the following:

3  
4 **Amendment**

5 Remove lines 753-756 and insert:

6 (h) An affidavit, under penalty of perjury, as required in  
7 s. 435.05(3), stating compliance with the provisions of this  
8 section and chapter 435.  
9

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4 **Amendment**

5 Remove lines 788-927 and insert:

6 (e) Any person, as required by authorizing statutes,  
7 seeking employment with a licensee or provider who is expected  
8 to, or whose responsibilities may require him or her to, provide  
9 personal care or services directly to clients or have access to  
10 client funds, personal property, or living areas; and any  
11 person, as required by authorizing statutes, contracting with a  
12 licensee or provider whose responsibilities require him or her  
13 to provide personal care or personal services directly to  
14 clients. Evidence of contractor screening may be retained by the  
15 contractor's employer or the licensee.

16 (2) Every 5 years following his or her licensure,  
17 employment, or entry into a contract in a capacity that under  
18 subsection (1) would require level 2 background screening under  
19 chapter 435, each such person must submit to level 2 background

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20 rescreening as a condition of retaining such license or  
21 continuing in such employment or contractual status. For any  
22 such rescreening, the agency shall request the Department of Law  
23 Enforcement to forward the person's fingerprints to the Federal  
24 Bureau of Investigation for a national criminal history record  
25 check. If the fingerprints of such a person are not retained by  
26 the Department of Law Enforcement under s. 943.05(2)(g), the  
27 person must file a complete set of fingerprints with the agency  
28 and the agency shall forward the fingerprints to the Department  
29 of Law Enforcement for state processing, and the Department of  
30 Law Enforcement shall forward the fingerprints to the Federal  
31 Bureau of Investigation for a national criminal history record  
32 check. The fingerprints may be retained by the Department of Law  
33 Enforcement under s. 943.05(2)(g). The cost of the state and  
34 national criminal history records checks required by level 2  
35 screening may be borne by the licensee or the person  
36 fingerprinted. Proof of compliance with level 2 screening  
37 standards submitted within the previous 5 years to meet any  
38 provider or professional licensure requirements of the agency,  
39 the Department of Health, the Agency for Persons with  
40 Disabilities, ~~or~~ the Department of Children and Family Services,  
41 or the Department of Financial Services for an applicant for a  
42 certificate of authority or provisional certificate of authority  
43 to operate a continuing care retirement community under chapter  
44 651 satisfies the requirements of this section, provided the  
45 person subject to screening has not been unemployed for more  
46 than 90 consecutive days and that such proof is accompanied,  
47 under penalty of perjury, by an affidavit of compliance with the

COUNCIL/COMMITTEE AMENDMENT

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48 provisions of chapter 435 and this section using forms provided  
49 by the agency. ~~Proof of compliance with the background screening~~  
50 ~~requirements of the Department of Financial Services submitted~~  
51 ~~within the previous 5 years for an applicant for a certificate~~  
52 ~~of authority to operate a continuing care retirement community~~  
53 ~~under chapter 651 satisfies the Department of Law Enforcement~~  
54 ~~and Federal Bureau of Investigation portions of a level 2~~  
55 ~~background check.~~

56 (3) All fingerprints must be provided in electronic  
57 format. Screening results shall be reviewed by the agency with  
58 respect to the offenses specified in s. 435.04 and this section  
59 and the qualifying or disqualifying status of the person named  
60 in the request shall be maintained in a database. The qualifying  
61 or disqualifying status of the person named in the request shall  
62 be posted on a secure website for retrieval by the licensee or  
63 designated agent on the licensee's behalf. A provisional license  
64 ~~may be granted to an applicant when each individual required by~~  
65 ~~this section to undergo background screening has met the~~  
66 ~~standards for the Department of Law Enforcement background check~~  
67 ~~but the agency has not yet received background screening results~~  
68 ~~from the Federal Bureau of Investigation. A standard license may~~  
69 ~~be granted to the licensee upon the agency's receipt of a report~~  
70 ~~of the results of the Federal Bureau of Investigation background~~  
71 ~~screening for each individual required by this section to~~  
72 ~~undergo background screening that confirms that all standards~~  
73 ~~have been met or upon the granting of an exemption from~~  
74 ~~disqualification by the agency as set forth in chapter 435.~~

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75 ~~(4) When a person is newly employed in a capacity that~~  
76 ~~requires screening under this section, the licensee must notify~~  
77 ~~the agency of the change within the time period specified in the~~  
78 ~~authorizing statute or rules and must submit to the agency~~  
79 ~~information necessary to conduct level 2 screening or provide~~  
80 ~~evidence of compliance with background screening requirements of~~  
81 ~~this section. The person may serve in his or her capacity~~  
82 ~~pending the agency's receipt of the report from the Federal~~  
83 ~~Bureau of Investigation if he or she has met the standards for~~  
84 ~~the Department of Law Enforcement background check. However, the~~  
85 ~~person may not continue to serve in his or her capacity if the~~  
86 ~~report indicates any violation of background screening standards~~  
87 ~~unless an exemption from disqualification has been granted by~~  
88 ~~the agency as set forth in chapter 435.~~

89 ~~(4)(5) Effective October 1, 2009,~~ In addition to the  
90 offenses listed in s. ss. 435.03 and 435.04, all persons  
91 required to undergo background screening pursuant to this part  
92 or authorizing statutes must not have an arrest awaiting final  
93 disposition for, must not have been found guilty of, regardless  
94 of adjudication, or entered a plea of nolo contendere or guilty  
95 to, and must not have been adjudicated delinquent and the record  
96 has not been sealed or expunged for, any of the following  
97 offenses or any similar offense of another jurisdiction:

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

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

100 (c) Section 409.920, relating to Medicaid provider fraud,  
101 ~~if the offense was a felony.~~



COUNCIL/COMMITTEE AMENDMENT

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102 (d) Section 409.9201, relating to Medicaid fraud, ~~if the~~  
103 ~~offense was a felony.~~

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

105 ~~(f) Chapter 784, relating to assault, battery, and~~  
106 ~~culpable negligence, if the offense was a felony.~~

107 ~~(g) Section 810.02, relating to burglary.~~

108 (f) ~~(h)~~ Section 817.034, relating to fraudulent acts  
109 through mail, wire, radio, electromagnetic, photoelectronic, or  
110 photooptical systems.

111 (g) ~~(i)~~ Section 817.234, relating to false and fraudulent  
112 insurance claims.

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

114 (i) ~~(k)~~ Section 817.568, relating to criminal use of  
115 personal identification information.

116 (j) ~~(l)~~ Section 817.60, relating to obtaining a credit card  
117 through fraudulent means.

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

120 (l) ~~(n)~~ Section 831.01, relating to forgery.

121 (m) ~~(o)~~ Section 831.02, relating to uttering forged  
122 instruments.

123 (n) ~~(p)~~ Section 831.07, relating to forging bank bills,  
124 checks, drafts, or promissory notes.

125 (o) ~~(q)~~ Section 831.09, relating to uttering forged bank  
126 bills, checks, drafts, or promissory notes.

127 (p) ~~(r)~~ Section 831.30, relating to fraud in obtaining  
128 medicinal drugs.

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

133  
134 A person who serves as a controlling interest of, ~~or~~ is employed  
135 by, or contracts with, a licensee on June 30, 2010 ~~September 30,~~  
136 ~~2009,~~ who has been screened and qualified according to standards  
137 specified in s. 435.03 or s. 435.04 must be rescreened by June  
138 30, 2015. The agency may adopt rules pursuant to ss. 120.536(1)  
139 and 120.54 to establish a schedule to stagger the implementation  
140 of the required rescreening over the five-year period starting  
141 June 30, 2010 through June 30, 2015 ~~is not required by law to~~  
142 ~~submit to rescreening if that licensee has in its possession~~  
143 ~~written evidence that the person has been screened and qualified~~  
144 ~~according to the standards specified in s. 435.03 or s. 435.04.~~  
145 ~~However, if such person has a disqualifying offense listed in~~  
146 ~~this section, he or she may apply for an exemption from the~~  
147 ~~appropriate licensing agency before September 30, 2009, and if~~  
148 ~~agreed to by the employer, may continue to perform his or her~~  
149 ~~duties until the licensing agency renders a decision on the~~  
150 ~~application for exemption for offenses listed in this section.~~  
151 ~~Exemptions from disqualification may be granted pursuant to s.~~  
152 ~~435.07.~~

153

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COUNCIL/COMMITTEE ACTION

ADOPTED                                    \_\_\_ (Y/N)  
ADOPTED AS AMENDED                    \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION                \_\_\_ (Y/N)  
FAILED TO ADOPT                        \_\_\_ (Y/N)  
WITHDRAWN                               \_\_\_ (Y/N)  
OTHER                                     \_\_\_\_\_

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4       **Amendment**

5       Remove lines 1297-1304 and insert:

6       (4) The background screening conducted pursuant to this  
7 section must ensure that, in addition to the disqualifying  
8 offenses listed in s. 435.04, no person subject to the  
9 provisions of this section has an arrest awaiting final  
10 disposition for, has been found guilty of, regardless of  
11 adjudication, or entered a plea of nolo contendere or guilty to,  
12 or has been adjudicated delinquent and the record has not been  
13 sealed or expunged for, any offense prohibited under any of the  
14 following provisions of the Florida Statutes or under any  
15 similar statute of another jurisdiction:  
16

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COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4 **Amendment**

5 Remove lines 1379-1386 and insert:

6 through the ~~Florida~~ Department of Law Enforcement, a check of  
7 the Dru Sjodin National Sex Offender Registry, and may include  
8 local criminal records checks through local law enforcement  
9 agencies.

10 (2) Any person required by law to be screened pursuant to  
11 this section must not have an arrest awaiting final disposition  
12 for, for whom employment screening is required by statute must  
13 not have been found guilty of, regardless of adjudication, or  
14 entered a plea of nolo contendere or guilty to, and must not  
15 have been adjudicated delinquent and the record has not been  
16 sealed or expunged for, any offense prohibited under any  
17 provision of s. 435.04(2) ~~of~~

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COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4       **Amendment**

5       Remove lines 1480-1501 and insert:

6       (b) Fingerprints submitted pursuant to this section on or  
7 after July 1, 2012, must be submitted electronically to the  
8 Department of Law Enforcement.

9       (c) An agency may contract with one or more vendors to  
10 perform all or part of the electronic fingerprinting pursuant to  
11 this section. Such contracts must ensure that the owners and  
12 personnel of the vendor performing the electronic fingerprinting  
13 are qualified and will ensure the integrity and security of all  
14 personal information.

15       (d) An agency may require by rule adopted pursuant to  
16 chapter 120 that fingerprints submitted pursuant to this section  
17 must be submitted electronically to the Department of Law  
18 Enforcement on a date earlier than July 1, 2012.

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19 (2) The security background investigations under this  
20 section must ensure that no persons subject to the provisions of  
21 this section have been arrested for and are awaiting final  
22 disposition of, or have been found guilty of, regardless of  
23 adjudication, or entered a plea of nolo contendere or guilty to,  
24 or have been adjudicated delinquent and the record has not been  
25 sealed or expunged for, any offense prohibited under any of the  
26 following provisions of the Florida Statutes or under any  
27 similar statute of another jurisdiction:  
28

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ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4 **Amendment**

5 Remove lines 1748-1769 and insert:

6 (4) There is no unemployment compensation or other  
7 monetary liability on the part of, and no cause of action for  
8 damages arising against, an employer that, upon notice of a  
9 conviction or arrest for a disqualifying offense listed under  
10 this chapter, terminates the person against whom the report was  
11 issued or who was arrested, regardless of whether that person  
12 has filed for an exemption pursuant to this chapter.

13 Section 37. Section 435.07, Florida Statutes, is amended  
14 to read:

15 435.07 Exemptions from disqualification.—Unless otherwise  
16 provided by law, the provisions of this section shall apply to  
17 exemptions from disqualification for disqualifying offenses  
18 revealed pursuant to background screenings required by law to be  
19 conducted pursuant this chapter, regardless of whether those

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20 disqualifying offenses are listed in this chapter or are  
21 codified in other statutes.

22 (1) The head of the appropriate ~~licensing~~ agency may grant  
23 to any employee otherwise disqualified from employment an  
24 exemption from disqualification for:

25 (a) Felonies for which at least 3 years have elapsed since  
26 the applicant for the exemption has completed or been lawfully  
27 released from confinement, supervision, or sanction for the  
28 disqualifying felony committed more than 3 years prior to the  
29 date of disqualification;

30 (b) Misdemeanors prohibited under any of the Florida  
31 Statutes cited in this chapter or under similar statutes of  
32 other jurisdictions for which the applicant for the exemption  
33 has completed or been lawfully released from confinement,  
34 supervision, or sanction;

35 (c) Offenses that were felonies when committed but are now  
36 misdemeanors and for which the applicant for the exemption has  
37 completed or been lawfully released from confinement,  
38 supervision, or sanction; or

39 (d) Findings of delinquency. For offenses that would be  
40 felonies if committed by an adult and the record has not been  
41 sealed or expunged, then the exemption may not be granted until  
42 at least 3 years have elapsed since the applicant for the  
43 exemption has completed or been lawfully released from  
44 confinement, supervision, or sanction for the disqualifying  
45 offense; or

46 ~~(e) Commissions of acts of domestic violence as defined in~~  
47 ~~s. 741.30.~~



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ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4       **Amendment**

5       Remove lines 1812-1815 and insert:

6       (b) Disqualification from employment under this chapter  
7 may not be removed from, nor may an exemption be granted to, any  
8 person who has been designated as a:

- 9       1. sexual predator pursuant to s. 775.21;  
10       2. career offender pursuant to s. 775.261; or  
11       3. sexual offender pursuant to s. 943.0435, unless the  
12 person has had the sexual offender designation removed pursuant  
13 to s. 943.04354.  
14  
15

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COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

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1 Council/Committee hearing bill: Policy Council  
2 Representative(s) Snyder offered the following:

3  
4 **Amendment**

5 Remove lines 1866-1892 and insert:

6 Section 40. Subsection (9) of section 489.115, Florida  
7 Statutes, is amended to read:

8 489.115 Certification and registration; endorsement;  
9 reciprocity; renewals; continuing education.-

10 (9) An initial applicant shall submit, along with the  
11 application, a complete set of fingerprints to ~~in a form and~~  
12 ~~manner required by~~ the department. The fingerprints shall be  
13 submitted to the Department of Law Enforcement for state  
14 processing, and the Department of Law Enforcement shall forward  
15 them to the Federal Bureau of Investigation for national  
16 processing for the purpose of determining if the applicant has a  
17 criminal history record ~~conducting a level 2 background check~~  
18 ~~pursuant to s. 435.04~~. The department shall and the board may  
19 review the background results to determine if an applicant meets

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20 licensure requirements. The cost for the fingerprint processing  
21 shall be borne by the person subject to the background  
22 screening. These fees are to be collected by the authorized  
23 agencies or vendors. The authorized agencies or vendors are  
24 responsible for paying the processing costs to the Department of  
25 Law Enforcement.

26 Section 41. Paragraphs (g) and (h) of subsection (2) of  
27 section 943.05, Florida Statutes, are amended, and subsection  
28 (4) is added to that section, to read:

29 943.05 Criminal Justice Information Program; duties; crime  
30 reports.—

31 (2) The program shall:

32 (g) Upon official written request, and subject to the  
33 department having sufficient funds and equipment to participate  
34 in such a request, from the agency

35