

House Bill 1413

By: Representatives Walker of the 141st and Childers of the 13th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 11 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated,
2 relating to personal care facility licensing and employee records checks, to provide for
3 criminal records checks for personal care homes employment applicants; to amend Chapter 2
4 of Title 49 of the Official Code of Georgia Annotated, relating to the Department of Human
5 Resources, so as to provide that Code Sections 31-7-250 through 31-7-264 shall apply to
6 personal care homes; to provide an effective date; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 11 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to
11 personal care facility licensing and employee records checks, is amended by striking Code
12 Section 31-7-250, relating to definitions, and inserting in its place the following:

13 "31-7-250.

14 As used in this article, the term:

15 (1) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of
16 whether an appeal of the conviction has been sought.

17 (2) 'Crime' means commission of any of the following offenses:

18 (A) A a violation of Code Section 16-5-21, relating to aggravated assault;

19 (B) A a violation of Code Section 16-5-24, relating to aggravated battery;

20 (C) A a violation of Code Section 16-6-1, relating to rape;

21 (D) A felony a violation of Code Section 16-8-2, relating to theft by taking;

22 (E) A felony a violation of Code Section 16-8-3, relating to theft by deception;

23 (F) A felony a violation of Code Section 16-8-4, relating to theft by conversion;

24 (G) A a violation of Code Section 16-9-1 or 16-9-2, relating to forgery in the first and
25 second degree, respectively;

26 (H) A a violation of Code Section 16-5-1, relating to murder and felony murder;

1 (I) A a violation of Code Section 16-4-1, relating to criminal attempt as it concerns
2 attempted murder;

3 (J) A a violation of Code Section 16-8-40, relating to robbery;

4 (K) A a violation of Code Section 16-8-41, relating to armed robbery;

5 (L) A violation of Chapter 13 of Title 16, relating to controlled substances;

6 (M) A violation of Code Section 16-5-23.1, relating to battery;

7 (N) A violation of Code Section 16-6-5.1, relating to sexual assault against a person
8 in custody;

9 (O) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of
10 a disabled adult or elder person; or

11 (P) Any any other offense committed in another jurisdiction which, if committed in this
12 state, would be deemed to be such a crime without regard to its designation elsewhere.

13 (3) 'Criminal record' means any of the following:

14 (A) Conviction of a crime;

15 (B) Arrest, charge, and sentencing for a crime where:

16 (i) A plea of nolo contendere was entered to the charge;

17 (ii) First offender treatment without adjudication of guilt pursuant to the charge was
18 granted; or

19 (iii) Adjudication or sentence was otherwise withheld or not entered on the charge;

20 or

21 (C) Arrest and being charged for a crime if the charge is pending, unless the time for
22 prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

23 (4) 'Director' means the chief administrative or executive officer or manager of a facility.

24 (5) 'Employee' means any person, other than a director, ~~employed~~ utilized by a personal
25 care home to provide personal services to any resident on behalf of the personal care
26 home or to perform at any facilities of the personal care home any duties which involve
27 personal contact between that person and any paying resident of the personal care home.

28 (6) 'Facility' means real property of a personal care home where residents reside.

29 (7) 'Fingerprint records check determination' means a satisfactory or unsatisfactory
30 determination by the department based upon a records check comparison of GCIC
31 information with fingerprints and other information in a records check application.

32 (8) 'GCIC' means the Georgia Crime Information Center established under Article 2 of
33 Chapter 3 of Title 35.

34 (9) 'GCIC information' means criminal history record information as defined in Code
35 Section 35-3-30.

36 (10) 'License' means the permit or document issued by the department to authorize the
37 personal care home to which it is issued to operate a facility under this chapter.

1 (11) 'Personal care home' or 'home' means a home required to be licensed or permitted
2 under Code Section 31-7-12.

3 (11.1) 'Personal services' includes, but is not limited to, individual assistance with or
4 supervision of self-administered medication and essential activities of daily living such
5 as eating, bathing, grooming, dressing, and toileting.

6 (12) 'Preliminary records check application' means an application for a preliminary
7 records check determination on forms provided by the department.

8 (13) 'Preliminary records check determination' means a satisfactory or unsatisfactory
9 determination by the department based only upon a comparison of GCIC information
10 with other than fingerprint information regarding the person upon whom the records
11 check is being performed.

12 (14) 'Records check application' means two sets of classifiable fingerprints, a records
13 search fee to be established by the department by rule and regulation, payable in such
14 form as the department may direct to cover the cost of a fingerprint records check under
15 this article, and an affidavit by the applicant disclosing the nature and date of any arrest,
16 charge, or conviction of the applicant for the violation of any law, except for motor
17 vehicle parking violations, whether or not the violation occurred in this state, and such
18 additional information as the department may require.

19 (15) 'Regular license' means a permit which will remain in effect for the personal care
20 home, until and unless the facility ceases to operate or revocation proceedings are
21 commenced.

22 (16) 'Satisfactory determination' means a written determination that a person for whom
23 a records check was performed was found to have no criminal record.

24 (17) 'Temporary license' means a provisional permit which expires six months or 12
25 months from the date of issuance, unless extended for good cause by the department.

26 (18) 'Unsatisfactory determination' means a written determination that a person for whom
27 a records check was performed has a criminal record."

28 SECTION 2.

29 Said title is further amended by striking Code Section 31-7-252, relating to director records
30 check applications and employee preliminary records check applications, and inserting in its
31 place the following:

32 "31-7-252.

33 Accompanying any application for a new license for a facility, the applicant shall furnish
34 to the department a records check application and a preliminary records check application
35 for the director ~~and a preliminary records check application for each employee~~ of such
36 facility. In lieu of such records check applications, the applicant may submit evidence,

1 satisfactory to the department, that within the immediately preceding 12 months the
 2 director received a satisfactory fingerprint records check determination ~~and each employee~~
 3 ~~received a satisfactory preliminary records check determination.~~ The department shall
 4 contract either with GCIC ~~and~~ or other appropriate law enforcement agencies which have
 5 access to GCIC information to perform itself or have those agencies perform for the
 6 department a preliminary records check for each records check application ~~and preliminary~~
 7 ~~records check application~~ submitted thereto by the department; and the department shall
 8 make a written determination based upon that records check."

9 **SECTION 3.**

10 Said title is further amended by striking Code Section 31-7-253, relating to written
 11 notification as to records check determinations, effect of unsatisfactory determinations, and
 12 issuance of temporary licenses, and inserting in its place the following:

13 "31-7-253.

14 After being furnished the required records check ~~application and preliminary records check~~
 15 ~~application~~ applications under Code Section 31-7-252, the department shall notify in
 16 writing the license applicant as to each person for whom an application was received
 17 regarding whether the department's determination as to that person's preliminary records
 18 check was satisfactory or unsatisfactory. If the preliminary records check determination
 19 was satisfactory as to the director ~~and each employee~~ of an applicant's the facility, that
 20 applicant may be issued a temporary license for that facility if the applicant otherwise
 21 qualifies for a license under Article 1 of this chapter. If the determination was
 22 unsatisfactory as to the director of an applicant's the facility, the applicant shall designate
 23 another director for that facility after receiving notification of the determination and
 24 proceed under Code Section 31-7-252 and this Code section to obtain a preliminary records
 25 check for that newly designated director. ~~If the determination was unsatisfactory as to any~~
 26 ~~employee of an applicant's facility, the applicant shall, after receiving notification of that~~
 27 ~~determination, take such steps as are necessary so that such person is no longer an~~
 28 ~~employee.~~ The applicant may not be issued a temporary license for that facility until the
 29 department has determined under the procedures of Code Section 31-7-252 and this Code
 30 section that the director ~~and each employee~~ has a satisfactory preliminary records
 31 check determination."

SECTION 4.

1
2 Said title is further amended by striking Code Section 31-7-254, relating to transmission of
3 director's fingerprints to GCIC for review and notification to the department of findings, and
4 inserting in its place the following:

5 "31-7-254.

6 After issuing a temporary license based upon a satisfactory preliminary records check
7 determination of the director ~~and each employee~~ under Code Section 31-7-253, the
8 department shall transmit to GCIC both sets of fingerprints and the records search fee from
9 that director's records check application. Upon receipt thereof, GCIC shall promptly
10 transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau
11 records and an appropriate report and shall retain the other set and promptly conduct a
12 search of its records and records to which it has access. Within 75 days after receiving
13 fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department
14 in writing of any derogatory finding, including but not limited to any criminal record, of
15 the fingerprint records check or if there is no such finding."

SECTION 5.

16
17 Said title is further amended by striking Code Section 31-7-255, relating to issuance of
18 regular licenses, and inserting in its place the following:

19 "31-7-255.

20 After receiving a GCIC notification regarding a director's fingerprint records check under
21 Code Section 31-7-254, the department shall make a determination based thereon and
22 notify in writing the license applicant as to whether that records check was satisfactory or
23 unsatisfactory. If the fingerprint records check determination was satisfactory as to the
24 director of ~~an applicant's~~ the facility ~~and each employee of that facility has received a~~
25 ~~satisfactory preliminary records check~~, that applicant may be issued a regular license for
26 that facility. If the fingerprint records check determination was unsatisfactory as to the
27 director of ~~an applicant's~~ the facility, after receiving notification of that determination, that
28 applicant shall designate another director for such facility, for which director the applicant
29 has not received or made an unsatisfactory preliminary or fingerprint records check
30 determination, and proceed under the requirements of Code Sections 31-7-252 through
31 31-7-254 and this Code section to obtain a preliminary records check and fingerprint
32 records check determination for the newly designated director. The applicant may not be
33 issued a regular license for that facility until the ~~facility~~ director has a satisfactory
34 fingerprint records check determination ~~and each employee has a satisfactory preliminary~~
35 ~~records check determination."~~

1 the GCIC. A personal care home shall not employ a person with an unsatisfactory
2 determination.

3 (d) If the personal care home is unable to obtain a criminal record check from the local law
4 enforcement agency of the applicant's previous state of residence, it shall transmit a
5 records check application to the department which shall process the application through the
6 GCIC. A personal care home shall not employ a person with an unsatisfactory
7 determination.

8 (e) The fee for a criminal records check under this Code section shall be no greater than
9 the actual cost of processing the request, and shall be paid by the personal care home or by
10 the applicant for employment. The law enforcement agency of this state receiving the
11 request shall perform a criminal record check for a personal care home within a reasonable
12 time but in any event within a period not to exceed three days of receiving the request.

13 (f) Each application form provided by the employer to the applicant for employment shall
14 conspicuously state the following: 'FOR THIS TYPE OF EMPLOYMENT, STATE LAW
15 REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT.'

16 ~~(b)~~ (g) Both temporary and regular licenses are subject to suspension or revocation or the
17 department may refuse to issue a regular license if a person becomes a director or employee
18 subsequent to the granting of a license and that person does not undergo the records checks
19 applicable to that director or employee and receive a satisfactory determination.

20 ~~(c)~~ (h) After the issuance of a regular or temporary license, the department may require a
21 fingerprint records check on any director or employee to confirm identification for records
22 search purposes, ~~when an unsatisfactory preliminary records check is received, when~~
23 ~~subsequent to a preliminary records check the department has reason to believe the~~
24 ~~applicant has a criminal record;~~ or when subsequent to a preliminary records check, the
25 department has reason to believe that the director or employee has a criminal record. The
26 department may require a fingerprints record check on any director or employee during the
27 course of an abuse investigation involving the director or employee.

28 ~~(d)~~ (i) No personal care home may have any person as an employee after January 1, 1986
29 July 1, 2002, unless there is on file in the personal care home an employment history for
30 that person and a satisfactory determination that the person does not have a criminal record.

31 ~~(e)~~ (j) Except as provided in subsection (l) of this Code section, a director ~~A director~~ of a
32 facility having an employee whom that director knows or should reasonably know to have
33 a criminal record, as defined in Code Section 31-7-250, shall be guilty of a misdemeanor.

34 (k) The provisions of this Code Section shall not apply to a member of the administrative
35 staff or an applicant for an administrative staff position of a personal care home whose
36 duties do not include personal contact between that person and any paying resident of the
37 home.

1 (l) Where a personal care home determines that an applicant for employment has a
2 criminal record but there are matters in mitigation of the criminal record, no physical harm
3 was done to the victim, and the personal care home would like to hire the applicant, the
4 personal care home may submit an application for a preliminary records check to the
5 department on behalf of the potential employee on forms provided by the department. The
6 personal care home shall not hire the potential employee to work in the home until the
7 personal care home receives notification from the department that the applicant either has
8 a satisfactory criminal record check or an administrative law judge has determined that the
9 applicant is authorized to work in a personal care home.

10 (m) Except as provided in subsection (1) of this Code section, a personal care home that
11 hires an applicant for employment with a criminal record is in violation of licensing
12 requirements and the department is authorized to impose a civil penalty pursuant to the
13 authority granted it under the rules and regulations for the enforcement of licensing
14 requirements."

15 **SECTION 9.**

16 Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to the Department
17 of Human Resources, is amended in Code Section 49-2-14, relating to record search for
18 conviction data on prospective Department of Human Resources employees, by striking
19 subsection (e) and inserting in its place the following:

20 "(e) Notwithstanding the provisions of subsection (c) of this Code section, when a
21 contractor to this department is a personal care home, the provisions of Code Sections
22 31-7-250 through 31-7-264 shall apply.

23 (f) The department may promulgate written rules and regulations to implement the
24 provisions of this Code section."

25 **SECTION 10.**

26 This Act shall become effective on July 1, 2002.

27 **SECTION 11 .**

28 All laws and parts of laws in conflict with this Act are repealed.