

The Senate Veterans and Consumer Affairs Committee offered the following substitute to HB 1413:

ADOPTED SENATE

**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
4 2 of Title 49 of the Official Code of Georgia Annotated, relating to the Department of
5 Human Resources, so as to provide that Code Sections 31-7-250 through 31-7-264 shall
6 apply to personal care homes; to provide an effective date; to provide for related matters; to
7 repeal 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;

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

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

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

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

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

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

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

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

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

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

15 (A) Conviction of a crime;

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

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

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

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

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

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

25 (5) 'Employee' means any person, other than a director, ~~employed~~ utilized by a personal
26 care home to provide personal services to any resident on behalf of the personal care

27 home or to perform at any facilities of the personal care home any duties which involve
28 personal contact between that person and any paying resident of the personal care home.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 SECTION 2.

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

1 "31-7-252.

2 Accompanying any application for a new license for a facility, the applicant shall furnish
3 to the department a records check application and a preliminary records check application
4 for the director ~~and a preliminary records check application for each employee~~ of such
5 facility. In lieu of such records check applications, the applicant may submit evidence,
6 satisfactory to the department, that within the immediately preceding 12 months the
7 director received a satisfactory fingerprint records check determination ~~and each employee~~
8 ~~received a satisfactory preliminary records check determination~~. The department shall
9 contract either with GCIC ~~and or other~~ appropriate law enforcement agencies which have
10 access to GCIC information to perform itself or have those agencies perform for the
11 department a preliminary records check for each records check application ~~and preliminary~~
12 ~~records check application~~ submitted thereto by the department; and the department shall
13 make a written determination based upon that records check."

14 SECTION 3.

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

18 "31-7-253.

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

1 section that the director ~~and each employee have~~ has a satisfactory preliminary records
2 check determination."

3 SECTION 4.

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

7 "31-7-254.

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

18 SECTION 5.

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

21 "31-7-255.

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

1 issued a regular license for that facility until the facility director has a satisfactory
 2 fingerprint records check determination and each employee has a satisfactory preliminary
 3 records check determination."

4 SECTION 6.

5 Said title is further amended by striking Code Section 31-7-256, relating to expiration of
 6 facility licenses prior to July 1, 1985 and issuance of temporary or regular licenses, and
 7 inserting in its place the following:

8 "31-7-256.

9 Reserved. All licenses issued to facilities prior to July 1, 1985, shall expire December 31,
 10 1985. Upon the expiration of any license issued prior to July 1, 1985, the personal care
 11 home to which such license was issued shall be required to obtain a separate license for
 12 each of the personal care home's existing facilities and shall have a separate director for
 13 each such facility. An existing facility whose license so expires may only be issued a
 14 temporary license until that facility qualifies for a regular license, unless that facility
 15 submits evidence, satisfactory to the department, that within the immediately preceding 12
 16 months the director received a satisfactory fingerprint records check determination and
 17 each employee received a satisfactory preliminary records check determination, in which
 18 event that facility may be issued a regular license without first having to obtain a temporary
 19 license. A temporary or regular license may only be issued if the facility otherwise qualifies
 20 for a license pursuant to Article 1 of this chapter. Any new facility in this state first owned
 21 or operated on or after July 1, 1985, by a personal care home already licensed in this state
 22 shall be required to have a new license issued pursuant to Code Sections 31-7-251 through
 23 31-7-255."

24 SECTION 7.

25 Said title is further amended by striking Code Section 31-7-257, relating to procedure upon
 26 issuance of temporary licenses, and inserting in its place the following:

27 "31-7-257.

28 Reserved. After a temporary license is issued to an existing facility pursuant to Code
 29 Section 31-7-256, the personal care home to whom the license was issued shall furnish to
 30 the department a fingerprint records check application for the director and a preliminary
 31 records check application for each employee of each of the personal care home's facilities
 32 for which a temporary license was issued. After receiving those applications, the
 33 department shall proceed to have made records check determinations based upon such

1 ~~applications and may only issue a regular license to any such facility under the conditions~~
2 ~~and procedures provided in Code Sections 31-7-252 through 31-7-255."~~

3 SECTION 8.

4 Said title is further amended by striking Code Section 31-7-259, relating to preliminary
5 records check determination, suspension or revocation of license, refusal to issue regular
6 license, fingerprint check, employment history, and director's criminal liability, and inserting
7 in its place the following:

8 "31-7-259.

9 (a) Before a person may become a director of any facility that has received either a
10 temporary or regular license, that facility shall require that person to furnish to the
11 department a preliminary records check application and a records check application and the
12 department shall, under the procedures of Code Sections 31-7-252 and 31-7-253, make a
13 preliminary records check determination and send notice thereof to the facility and director
14 prior to the director beginning work. If the preliminary records check is unsatisfactory, the
15 facility shall not hire the director. If the subsequent fingerprint records check
16 determination is unsatisfactory, the facility shall take such steps as are necessary so that
17 such person is no longer the director of the facility.

18 ~~(a)(b) Before a person may become an employee of any facility after that facility has~~
19 ~~received a temporary or regular license, that facility shall require that person to furnish to~~
20 ~~the department a preliminary records check application, and the department shall, under the~~
21 ~~procedures of Code Sections 31-7-252 and 31-7-253, have made a preliminary records~~
22 ~~check determination and sent notice thereof to the facility and employee. If the~~
23 ~~determination is unsatisfactory, the facility shall take such steps as are necessary so that~~
24 ~~such person is no longer an employee. Before a person may become an employee of a~~
25 facility, each potential employee of a facility shall request a criminal record check from a
26 local law enforcement agency and submit the results of the criminal record check to the
27 facility. The personal care home shall be authorized to rely on written information received
28 from a local law enforcement agency, GCIC, or other official agency to determine whether
29 the applicant for employment has a criminal record. A personal care home shall not
30 employ a person with an unsatisfactory determination.

31 (c) In addition, where an applicant for employment at a personal care home has not been
32 a resident of the state for a period of three years preceding the date of application for
33 employment, the personal care home shall attempt to obtain a criminal record check from
34 the local law enforcement agency of the applicant's previous state of residence. If the local
35 criminal record check from either the applicant's previous state of residence or this state

1 indicates multistate offender status, the personal care home shall not employ the applicant
2 until a determination is made as to whether the applicant has a criminal record. If the
3 personal care home elects to determine the nature of the criminal activity, the personal care
4 home shall transmit the preliminary records check application and the records check
5 application on behalf of the potential employee to the department for processing through
6 the GCIC. A personal care home shall not employ a person with an unsatisfactory
7 determination.

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

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

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

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

25 ~~(e)~~(h) After the issuance of a regular or temporary license, the department may require a
26 fingerprint records check on any director or employee to confirm identification for records
27 search purposes, ~~when an unsatisfactory preliminary records check is received, when~~
28 ~~subsequent to a preliminary records check the department has reason to believe the~~
29 ~~applicant has a criminal record;~~ or when subsequent to a preliminary records check, the
30 department has reason to believe that the director or employee has a criminal record. The
31 department may require a fingerprints record check on any director or employee during the
32 course of an abuse investigation involving the director or employee. In such instances, the
33 department shall require the director or employee to furnish two full sets of fingerprints
34 which the department shall submit to the GCIC together with appropriate fees collected
35 from the director or employee or personal care home. Upon receipt thereof, the GCIC shall
36 promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search

1 of bureau records and an appropriate report and retain the other set and promptly conduct
 2 a search of its records and records to which it has access. The GCIC shall notify the
 3 department in writing of any derogatory finding, including but not limited to any criminal
 4 record obtained through the fingerprint record check or if there is no such finding. Where
 5 the department determines that the director or employee has a criminal record, the
 6 department shall notify the facility of the unsatisfactory determination and the facility shall
 7 take such steps as are necessary so that such person is no longer the director or an
 8 employee of the facility.

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

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

15 (k) The provisions of this Code section shall not apply to a member of the administrative
 16 staff or an applicant for an administrative staff position of a personal care home whose
 17 duties do not include management of resident funds or personal contact between that
 18 person and any paying resident of the home.

19 (l) Where a personal care home determines that an applicant for employment has a
 20 criminal record but there are matters in mitigation of the criminal record, no physical harm
 21 was done to the victim, and the personal care home would like to hire the applicant, the
 22 personal care home may submit an application for a preliminary records check to the
 23 department on behalf of the potential employee on forms provided by the department. The
 24 personal care home shall not hire the potential employee to work in the home until the
 25 personal care home receives notification from the department that the applicant either has
 26 a satisfactory criminal record check or an administrative law judge has determined that the
 27 applicant is authorized to work in a personal care home.

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

33 SECTION 9.

34 Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to the Department
 35 of Human Resources, is amended in Code Section 49-2-14, relating to record search for

1 conviction data on prospective Department of Human Resources employees, by striking
2 subsection (e) and inserting in its place the following:

3 "(e) Notwithstanding the provisions of subsection (c) of this Code section, when a
4 contractor to this department is a personal care home, the provisions of Code Sections
5 31-7-250 through 31-7-264 shall apply.

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

8 **SECTION 10.**

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

10 **SECTION 11.**

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