

The House Committee on Judiciary offers the following substitute to HB 155:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to the Department of Human Resources, so as to permit the department to obtain criminal background information on owners of personal care homes, private home care providers, community living arrangements, and child welfare agencies; to provide for definitions; to provide for the establishment of a method of obtaining criminal history background checks; to prohibit certain owners with certain criminal records from operating licensed facilities; to provide for administrative remedies; to provide for confidentiality of certain information; to provide for rules and regulations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to the Department of Human Resources, is amended by adding a new Code section to read as follows:

"49-2-14.1.

(a) As used in this Code section, the term:

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

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

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

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

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

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of age or older;

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

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

H. B. 155 (SUB)

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

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

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

(N) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

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

(A) Conviction of a crime;

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

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

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

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

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

(4) 'Facility' means a:

(A) Personal care home required to be licensed or permitted under Code Section 31-7-12;

(B) Private home care provider required to be licensed under Article 13 of Chapter 7 of Title 31;

(C) Community living arrangement subject to licensure under paragraph (16) of subsection (b) and subsection (c) of Code Section 37-1-20; or

(D) Child welfare agency, including a child-caring institution, child-placing agency, and maternity home required to be licensed under Code Section 49-5-12.

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

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

(7) 'License' means the document issued by the department to authorize the facility to operate.

(8) 'Owner' means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) 'Records check application' means two sets of classifiable fingerprints and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility. The department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record.

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC both sets of fingerprints and the records search fee from each fingerprint records check application. Upon receipt thereof, the GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

1 (B) The department may either perform criminal background checks under agreement
2 with the GCIC or contract with the GCIC and appropriate law enforcement agencies
3 which have access to GCIC and Federal Bureau of Investigation information to have
4 those agencies perform for the department criminal background checks for owners. The
5 department or the appropriate law enforcement agencies may charge reasonable fees
6 for performing criminal background checks.

7 (3) The department's determination regarding an owner's criminal record, or any action
8 by the department revoking or refusing to grant a license based on such determination,
9 shall constitute a contested case for purposes of Chapter 13 of Title 50, the 'Georgia
10 Administrative Procedure Act,' except that any hearing required to be held pursuant
11 thereto may be held reasonably expeditiously after such determination or action by the
12 department. In a hearing, the hearing officer shall consider in mitigation the length of
13 time since the crime was committed, the absence of additional criminal charges, the
14 circumstances surrounding the commission of the crime, other indicia of rehabilitation,
15 the facility's history of compliance with the regulations, and the owner's involvement
16 with the licensed facility in arriving at a decision as to whether the criminal record
17 requires the denial or revocation of the license to operate the facility. Where a hearing
18 is required, at least 30 days prior to such hearing, the hearing officer shall notify the
19 office of the prosecuting attorney who initiated the prosecution of the crime in question
20 in order to allow the prosecutor to object to a possible determination that the conviction
21 would not be a bar for the grant or continuation of a license as contemplated within this
22 Code section. If objections are made, the hearing officer shall take such objections into
23 consideration in considering the case.

24 (4) Neither the GCIC, the department, any law enforcement agency, nor the employees
25 of any such entities shall be responsible for the accuracy of information nor have any
26 liability for defamation, invasion of privacy, negligence, or any other claim in connection
27 with any dissemination of information or determination based thereon pursuant to this
28 Code section.

29 (d) All information received from the Federal Bureau of Investigation or the GCIC shall
30 be for the exclusive purpose of approving or denying the granting of a license to a new
31 facility or the revision of a license of an existing facility when a new owner is proposed and
32 shall not be released or otherwise disclosed to any other person or agency except to any
33 person or agency with a legal right to inspect the facility. All such information collected
34 by the department shall be maintained by the department pursuant to laws regarding and
35 the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is
36 applicable. Penalties for the unauthorized release or disclosure of any such information

1 shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal
2 Bureau of Investigation and the GCIC, as is applicable.

3 (e) The requirements of this Code section are supplemental to any requirements for a
4 license imposed by Article 3 of Chapter 5 of this title or Article 11 of Chapter 7 of Title 31.

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

7 **SECTION 2.**

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