

House Bill 904

By: Representatives Jerguson of the 22nd, Hill of the 21st, Hamilton of the 23rd, Sellier of the 136th, Millar of the 79th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1A of Title 20 of the Official Code of Georgia Annotated, relating to early
2 care and learning, so as to require certain employees to have state and national fingerprint
3 record checks prior to employment; to revise certain definitions; to change certain provisions
4 relating to records check requirements for applicants and notification to such applicants; to
5 change certain provisions relating to requirements of individuals residing in family day-care
6 homes; to remove preliminary records checks of employees and require state and national
7 fingerprint determinations, except in limited circumstances; to provide that directors
8 convicted of certain criminal acts lose the ability to serve as directors; to provide for related
9 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 1A of Title 20 of the Official Code of Georgia Annotated, relating to early care and
14 learning, is amended by revising Article 2, relating to background checks, as follows:

15 style="text-align:center">"ARTICLE 2

16 20-1A-30.

17 As used in this article, the term:

18 (1) 'Center' means a day-care center, group day-care home, family day-care home, or
19 child care learning center which is required to be licensed or registered under Article 1
20 of this chapter.

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

23 (3) 'Crime' means:

24 (A) Any any felony;

1 (B) A a violation of Code Section 16-5-23, relating to simple battery, when the victim
2 is a minor;

3 (C) A a violation of Code Section 16-12-1, relating to contributing to the delinquency
4 of a minor;

5 (D) A a violation of Chapter 6 of Title 16, relating to sexual offenses;

6 (E) A a violation of Code Section 16-4-1, relating to criminal attempt when the crime
7 attempted is any of the crimes specified by this paragraph; or

8 (F) Any any other offenses committed in another jurisdiction which, if committed in
9 this state, would be one of the enumerated crimes listed in this paragraph.

10 (4) 'Criminal record' means:

11 (A) Conviction of a crime;

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

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

14 (ii) First offender treatment without adjudication of guilt pursuant to the charge was
15 granted; provided, however, that this division shall not apply to a violation of Chapter
16 13 of Title 16, relating to controlled substances, or any other offense committed in
17 another jurisdiction which, if it were committed in this state, would be a violation of
18 Chapter 13 of Title 16 if such violation or offense constituted only simple possession;
19 or

20 (iii) Adjudication or sentence was otherwise withheld or not entered on the charge;
21 provided, however, that this division shall not apply to a violation of Chapter 13 of
22 Title 16, relating to controlled substances, or any other offense committed in another
23 jurisdiction which, if it were committed in this state, would be a violation of Chapter
24 13 of Title 16 if such violation or offense constituted only simple possession; or

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

27 (5) 'Director' means the chief administrative or executive officer of a facility.

28 (6) 'Emergency temporary employee' means an employee other than a director whose
29 duties involve personal contact between that person and any child being cared for at the
30 facility and who is hired on an expedited basis to avoid noncompliance with staffing
31 standards for centers required by law, rule, or regulation.

32 (7) 'Employee' means any person, other than a director, employed by a center to perform
33 at any of the center's facilities any duties which involve personal contact between that
34 person and any child being cared for at the facility and also includes any adult person
35 who resides at the facility or who, with or without compensation, performs duties for the
36 center which involve personal contact between that person and any child being cared for
37 by the center.

1 (8) 'Employment history' means a record of where a person has worked for the past ten
2 years.

3 (9) 'Facility' means a center's real property at which children are received for care.

4 ~~(10) 'Fingerprint records check determination' means a satisfactory or unsatisfactory~~
5 ~~determination by the department based upon a records check comparison of GCIC~~
6 ~~information with fingerprints and other information in a records check application.~~

7 ~~(11)~~(10) 'GCIC' means the Georgia Crime Information Center established under Article
8 2 of Chapter 3 of Title 35.

9 ~~(12)~~(11) 'GCIC information' means criminal history record information, as defined in
10 Code Section 35-3-30, from GCIC.

11 ~~(13)~~(12) 'License' means the document issued by the department to authorize the center
12 to which it is issued to operate a facility.

13 ~~(14)~~(13) 'National fingerprint records check determination' means a ~~satisfactory or~~
14 ~~unsatisfactory~~ determination by the department in accordance with applicable ~~law~~ laws
15 based upon a report from the Federal Bureau of Investigation after a search of bureau
16 records and fingerprints.

17 ~~(15)~~(14) 'NCIC' means the National Crime Information Center. ~~'Preliminary records~~
18 ~~check application' means an application for a preliminary records check determination~~
19 ~~on forms provided by the department.~~

20 (15) 'NCIC information' means criminal history record information, as defined in Code
21 Section 35-3-30, from the Federal Bureau of Investigation.

22 (16) 'Preliminary records check determination' means a ~~satisfactory or unsatisfactory~~
23 determination by the department based only upon a comparison of GCIC information
24 with other than fingerprint information regarding the person upon whom the records
25 check is being performed.

26 (17) 'Records check application' means two sets of classifiable fingerprints, a records
27 search fee to be established by the board by rule and regulation, payable in such form as
28 the department may direct to cover the cost of a state fingerprint records check
29 determination and national fingerprint records check determination under this article, and
30 an affidavit by the applicant disclosing the nature and date of any arrest, charge, or
31 conviction of such applicant for the violation of any law, except for motor vehicle
32 parking violations, whether or not the violation occurred in this state, and such additional
33 information as the department may require.

34 (18) 'Satisfactory determination' means a written determination that a person for whom
35 a records check was performed was found to have no criminal record.

36 (19) 'State fingerprint records check determination' means a ~~satisfactory or unsatisfactory~~
37 determination by the department in accordance with applicable ~~law~~ laws based upon a

1 records check comparison of GCIC information with fingerprints and other information
2 in a records check application.

3 (20) 'Unsatisfactory determination' means a written determination that a person for
4 whom a records check was performed has a criminal record.

5 20-1A-31.

6 (a) Each center shall be required to obtain a separate license for each facility and shall
7 have a separate director for each facility.

8 (b) An applicant for a new license shall apply for a separate license for each new facility
9 in this state owned or operated by that applicant and shall have a separate director for each
10 such facility.

11 20-1A-32.

12 Accompanying any application for a new license for a facility, the applicant shall furnish
13 to the department a records check application for the director and ~~a satisfactory preliminary~~
14 ~~records check~~ for each employee of such facility. In lieu of such records check
15 applications, the applicant may submit evidence, satisfactory to the department, that within
16 the immediately preceding 12 months, the director or any employee received a satisfactory
17 state fingerprint records check determination and national fingerprint records check
18 ~~determinations~~ and each employee received ~~a satisfactory preliminary records check~~
19 determination, or that any employee other than the director whose ~~preliminary records~~
20 check application revealed a criminal record of any kind has either subsequently received
21 a satisfactory state fingerprint records check determination and national fingerprint records
22 check ~~determinations~~ determination or has had the unsatisfactory determination reversed
23 in accordance with Code Section 20-1A-43. The department may either perform
24 ~~preliminary records~~ criminal background checks under agreement with GCIC or contract
25 with GCIC and appropriate law enforcement agencies which have access to NCIC
26 information and GCIC information to have those agencies perform for the department a
27 ~~preliminary records~~ criminal background check for each ~~preliminary records check~~
28 ~~application~~ director, employee, or adult living in a family day-care center submitted ~~thereto~~
29 by the department. Either the department or the appropriate law enforcement agencies may
30 charge reasonable fees for performing ~~preliminary records~~ criminal background checks.

31 20-1A-33.

32 After being furnished the required records check application under Code Section 20-1A-32,
33 the department shall notify ~~in writing~~ the license applicant in writing as to each person for
34 whom ~~an~~ a records check application was received regarding whether the department's

1 determination as to that person's state fingerprint records check determination was
2 satisfactory or unsatisfactory. If the ~~preliminary records check determination~~ was
3 ~~satisfactory as to each employee of an applicant's facility and the state fingerprint records~~
4 check determination was satisfactory as to the director and each employee, that applicant
5 may be issued a license for that facility if ~~the~~ such applicant otherwise qualifies for a
6 license under Article 1 of this chapter. If the state ~~or~~ fingerprint records check
7 determination and national fingerprint records check determination was unsatisfactory as
8 to the director of an applicant's facility, ~~the~~ that applicant shall designate another director
9 for that facility after receiving notification of the such unsatisfactory determination and
10 proceed under Code Section 20-1A-32 and this Code section to obtain a state fingerprint
11 records check determination and national fingerprint records ~~checks~~ check determination
12 for that newly designated director. If the ~~preliminary records check state fingerprint~~
13 records check determination and national fingerprint records check determination for any
14 employee other than the director ~~revealed a criminal record of any kind~~ was unsatisfactory,
15 such employee shall not be allowed to work in the center until he or she either has obtained
16 a satisfactory state fingerprint records check determination and national fingerprint records
17 check ~~determinations~~ determination or has had the unsatisfactory determination reversed
18 in accordance with Code Section 20-1A-43. If the determination was unsatisfactory as to
19 any employee of an applicant's facility, ~~the~~ that applicant shall, after receiving notification
20 of that unsatisfactory determination, take such steps as are necessary so that such person
21 is no longer an employee. ~~Any employee other than the director who receives a~~
22 ~~satisfactory preliminary records check shall not be required to obtain a fingerprint records~~
23 ~~check unless such an employee has been designated as a director or as permitted by the~~
24 ~~provisions of subsection (c) of Code Section 20-1A-39.~~

25 20-1A-34.

26 The department shall transmit to GCIC both sets of fingerprints and the records search fee
27 from each fingerprint records check application. Upon receipt thereof, GCIC shall
28 promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search
29 of bureau records and an appropriate report and shall retain the other set and promptly
30 conduct a search of its records and records to which it has access. Within ten days after
31 receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the
32 department in writing of any derogatory finding, including, but not limited to, any criminal
33 record, of the state fingerprint records check determination or if there is no such finding.
34 After a search of Federal Bureau of Investigation records and fingerprints and upon receipt
35 of the bureau's report, the department shall make a national fingerprint records
36 determination within ten days of receiving such report.

1 20-1A-35.

2 (a) After receiving a Federal Bureau of Investigation report regarding a national fingerprint
 3 records check ~~under Code Section 20-1A-34~~ determination, the department shall make a
 4 determination based thereon and notify ~~in writing~~ the license applicant in writing as to
 5 whether ~~that~~ the national fingerprint records check determination was satisfactory or
 6 unsatisfactory. If the national fingerprint records check determination was unsatisfactory
 7 as to the director of an applicant's facility, after receiving notification of that unsatisfactory
 8 determination, that applicant shall designate another director for such facility for which
 9 director the applicant has not received or made an unsatisfactory preliminary records check
 10 determination or state fingerprint records check determination and national fingerprint
 11 records check determination and proceed under the requirements of Code Sections
 12 20-1A-32 through 20-1A-34 and this Code section to obtain a state fingerprint records
 13 check determination and national fingerprint records check ~~determinations~~ determination
 14 for ~~the~~ such newly designated director. The director and any employee may begin working
 15 upon the receipt of a satisfactory state fingerprint records check determination pending the
 16 receipt of the national fingerprint records check determination from the department.

17 (b) The department ~~may~~ shall revoke the license of ~~that~~ any facility if ~~the facility~~ it fails
 18 to comply with the requirements of this Code section and Code Section 20-1A-33 to
 19 receive a satisfactory state fingerprint records check determination and national fingerprint
 20 ~~determinations~~ records check determination on the director ~~or to comply with Code Section~~
 21 ~~20-1A-33 regarding~~ and all employees ~~other than the director~~.

22 20-1A-36.

23 No facility operated as an early care and education program or similar facility or any
 24 operator of such a facility shall employ any person who has been convicted of or who has
 25 entered a plea of guilty or nolo contendere to any offense specified in Code Section
 26 16-12-1.1 or allow any such person to reside at or be domiciled at such facility in violation
 27 of Code Section 16-12-1.1. The department shall either deny the issuance of or revoke the
 28 license, commission, or registration of any such facility violating the provisions of this
 29 Code section. The powers and duties set forth in this Code section are cumulative and not
 30 intended to limit the powers and duties set forth throughout this article.

31 20-1A-37.

32 ~~(a) Notwithstanding any other provision of this article, an~~ Any individual who is 18 years
 33 of age or older who resides in a family day-care home, ~~as defined by Code Section~~
 34 ~~20-1A-2,~~ shall not be required to provide fingerprints for routine fingerprints records
 35 checks if the operator of the family day-care home provides the department with an

1 ~~affidavit stating that such individual is not present in the home at the same time as the~~
 2 ~~children who are received for pay for supervision and care. However, all persons residing~~
 3 ~~in a family day-care home are required to obtain satisfactory preliminary records checks~~
 4 ~~and submit them to the department a records check application. Such individual's~~
 5 ~~fingerprints shall be submitted for a state fingerprint records check determination and~~
 6 ~~national fingerprint records check determination. Such individual may reside at the family~~
 7 ~~day-care home upon receipt of a satisfactory state fingerprint records check determination~~
 8 ~~pending the receipt of the national fingerprint records check determination from the~~
 9 ~~department. If the state fingerprint records check determination is unsatisfactory, the~~
 10 ~~department shall notify the operator of the family day-care home, and such individual shall~~
 11 ~~not be allowed to reside at the family day-care home until such individual has obtained a~~
 12 ~~satisfactory state fingerprint records check determination and national fingerprint records~~
 13 ~~check determination or has had the unsatisfactory determination reversed in accordance~~
 14 ~~with Code Section 20-1A-43. The department shall revoke the license of a family day-care~~
 15 ~~home if such home fails to comply with the requirements of this Code section.~~

16 20-1A-37.1.

17 ~~(b)~~(a) As an alternative to the requirements set out in this article pertaining to obtaining
 18 ~~state fingerprint records check determinations, national fingerprint records check~~
 19 ~~determinations, and preliminary criminal records check determinations through the~~
 20 ~~department for employees of centers and adults residing in a family day-care home, but not~~
 21 ~~including directors of centers, centers may obtain NCIC information and GCIC information~~
 22 ~~through local law enforcement agencies. The center shall be responsible for reviewing the~~
 23 ~~NCIC information and GCIC information obtained for the potential employee or adult~~
 24 ~~residing in the family day-care home and making a written determination that the~~
 25 ~~individual does not have a criminal record ~~as defined in this article.~~ This written~~
 26 ~~determination, together with all supporting documentation received from any law~~
 27 ~~enforcement agency, ~~must~~ shall be maintained in the center's file and shall be available for~~
 28 ~~inspection by the department. ~~This~~ A satisfactory determination ~~must~~ shall be made before~~
 29 ~~the employee begins any duties for the center or before an adult may reside in a family~~
 30 ~~day-care home.~~

31 ~~(b) Where~~ However, where there is an urgent need for an emergency temporary employee
 32 ~~to work at a center's facility in order to avoid immediate noncompliance with staffing~~
 33 ~~requirements, such center may utilize the employee applicant as an emergency temporary~~
 34 ~~employee after applying for the preliminary records check determination through the local~~
 35 ~~law enforcement agency ~~and completing the affidavit.~~ In such emergency situations, the~~
 36 ~~director of the center ~~must~~ shall complete an affidavit, with all supporting documentation~~

1 attached thereto, stating that the GCIC information has been requested through an
 2 identified local law enforcement agency and that the results were not immediately available
 3 to the center prior to assigning the employee to work with children at the center's facility
 4 in order to avoid immediate noncompliance with staffing ratios. The affidavit with
 5 supporting documentation ~~must~~ shall be maintained in the center's file on the individual
 6 and shall be available to the department for inspection. The director shall review the GCIC
 7 information upon receipt, but in no case shall an emergency temporary employee be
 8 permitted to continue working for more than three days without having a satisfactory state
 9 fingerprint records check determination and national fingerprint records check
 10 determination made by the director and entered into the center's file on the employee with
 11 all supporting documentation. The department shall promulgate rules and regulations
 12 limiting the extent to which centers are authorized to use emergency temporary employees
 13 in accordance with this subsection.

14 (c) Employees, emergency temporary employees, and other adults required to have records
 15 ~~checks~~ check applications who are utilized by centers ~~are~~ shall be subject to all other
 16 requirements set forth in this article. Where the department has reason to question the
 17 validity of the NCIC information or GCIC information or the satisfactory determination
 18 made by the center, the department may require the employee, emergency temporary
 19 employee, or other adult to submit a ~~preliminary criminal~~ records check application
 20 through the department together with appropriate fees.

21 20-1A-38.

22 (a) If the director of a facility which has been issued a license ceases to be the director of
 23 that facility, the licensee shall thereupon designate a new director. After such change, the
 24 licensee of that facility shall notify the department of such change and of any additional
 25 information the department may require regarding the newly designated director of that
 26 facility. Such information shall include, but not be limited to, any information the licensee
 27 may have regarding preliminary records check determinations or any state fingerprint
 28 records check determinations and national fingerprint records check determinations
 29 regarding that director. After receiving a change of director notification, the department
 30 shall make a written determination from the information furnished with such notification
 31 and the department's own records as to whether satisfactory or unsatisfactory preliminary
 32 records check determinations or state fingerprint records check determinations and national
 33 fingerprint records check determinations have ever been made for the newly designated
 34 director. If the department determines that such director within 12 months prior thereto has
 35 had satisfactory state fingerprint records check determinations and national fingerprint
 36 records check determinations, such determinations shall be deemed to be satisfactory state

1 fingerprint records check determinations and national fingerprint records check
2 determinations as to that director. The license of that facility shall not be adversely
3 affected by that change in director, and the licensee shall be so notified.

4 (b) If the department determines under subsection (a) of this Code section that there has
5 ever been an unsatisfactory preliminary records check determination or state fingerprint
6 records check determination or national fingerprint records check determination of the
7 newly designated director which has not been legally reversed, the center and that director
8 shall be so notified. The license for that director's facility shall be indefinitely suspended
9 or revoked unless the center designates another director for whom it has not received or
10 made an unsatisfactory preliminary records check determination or state fingerprint records
11 check determination or national fingerprint records check determination and proceeds
12 pursuant to the provisions of this Code section relating to a change of director.

13 (c) If the department determines under subsection (a) of this Code section that there have
14 been no state fingerprint records check determinations and national fingerprint records
15 check determinations regarding the newly designated director within the immediately
16 preceding 12 months, the department shall so notify the center. The center shall furnish
17 to the department the fingerprint records check application of the newly designated director
18 after the date the notification is sent by the department, or the license of that facility shall
19 be indefinitely suspended or revoked. If that fingerprint records check application is so
20 received, unless the department has within the immediately preceding 12 months made a
21 satisfactory state fingerprint records check determination regarding the newly designated
22 director, the department shall perform a state fingerprint records check determination of
23 the newly designated director, and the applicant and that director shall be so notified. If
24 that determination is unsatisfactory, the provisions of subsection (b) of this Code section
25 regarding procedures after notification shall apply. If that determination is satisfactory, the
26 department shall perform a national fingerprint records check determination for that
27 director as provided in Code Sections Section 20-1A-34 and subsection (a) of Code Section
28 20-1A-35. The director may begin working upon the receipt of a satisfactory state
29 fingerprint records check determination pending the receipt of the national fingerprint
30 records check determination from the department. If that determination is satisfactory, the
31 center and director for whom the determination was made shall be so notified after the
32 department makes its determination, and the license for the facility at which that person is
33 the newly designated director shall not be adversely affected by that change of director.
34 If that determination is unsatisfactory, the provisions of subsection (b) of this Code section
35 shall apply.

1 20-1A-39.

2 (a) Before a person may become an employee other than a director of any center after that
 3 center has received a license, that center shall require that person to obtain a satisfactory
 4 ~~preliminary records check~~ state fingerprint records check determination pending the receipt
 5 of the national fingerprint records check determination. The center shall maintain
 6 documentation in the employee's personnel file, ~~which is~~ available to the department upon
 7 request, which reflects that a satisfactory ~~preliminary criminal~~ state fingerprint records
 8 check determination was received before the employee ~~began~~ begins working with
 9 children. If the ~~preliminary~~ state fingerprint records check determination for any potential
 10 employee other than the director ~~reveals a criminal record of any kind is unsatisfactory~~,
 11 such potential employee shall not be allowed to begin working until either such potential
 12 employee has obtained a satisfactory state fingerprint records check determination and
 13 national fingerprint records check ~~determinations~~ determination or has had the
 14 unsatisfactory ~~preliminary or~~ state fingerprint records check determination or national
 15 fingerprint records check determination reversed in accordance with Code Section
 16 20-1A-43. If ~~either the preliminary or the~~ state fingerprint records check determination or
 17 national fingerprint records determination is unsatisfactory, the center shall, after receiving
 18 notification of ~~the~~ such unsatisfactory determination, take such steps as are necessary so
 19 that such person is no longer an employee. ~~Any potential employee other than the director~~
 20 ~~who receives a satisfactory preliminary records check determination shall not be required~~
 21 ~~to obtain a fingerprint records check determination except as permitted in accordance with~~
 22 ~~subsection (c) of this Code section.~~

23 (b) A license is shall be subject to suspension or revocation, and the department ~~may~~ shall
 24 refuse to issue a license if a director or employee does not undergo the records ~~and~~
 25 ~~fingerprint checks~~ check application applicable to that director or employee and receive
 26 satisfactory determinations.

27 (c) After the issuance of a license, the department may require a state fingerprint records
 28 check determination and a national fingerprint records determination on any director or
 29 employee to confirm identification for records search purposes; when the department has
 30 reason to believe the director or employee has a criminal record that renders the director
 31 or employee ineligible to have contact with children in the center; or during the course of
 32 a child abuse investigation involving the director or employee.

33 (d) No center ~~may~~ shall hire any person as an employee unless there is on file in the center
 34 an employment history and a satisfactory ~~preliminary~~ state fingerprint records check
 35 determination or, if the ~~preliminary~~ state fingerprint records check determination ~~revealed~~
 36 ~~a criminal record of any kind was unsatisfactory~~ as to such person, either a satisfactory
 37 state fingerprint records check determination and satisfactory national fingerprint records

1 check ~~determinations~~ determination have been obtained for that person or proof that an
 2 such unsatisfactory determination has been reversed in accordance with Code Section
 3 20-1A-43.

4 (e) A director of a facility having an employee whom that director knows or should
 5 reasonably know to have a criminal record that renders the employee ineligible to have
 6 contact with children in the center shall be guilty of a misdemeanor. If a director is
 7 convicted pursuant to this subsection, such director shall not be eligible to remain as or
 8 become a director subsequent to such conviction.

9 20-1A-40.

10 (a) GCIC and law enforcement agencies which have access to NCIC information or GCIC
 11 information shall cooperate with the department in performing preliminary records check
 12 determinations and state fingerprint records ~~checks~~ check determinations and national
 13 fingerprint records check determinations required under this article and shall provide such
 14 information so required for such records checks notwithstanding any other law to the
 15 contrary and may charge reasonable fees therefor.

16 (b) Any person who knowingly and under false pretenses requests, obtains, or attempts to
 17 obtain NCIC information or GCIC information otherwise authorized to be obtained
 18 pursuant to this article, or who knowingly communicates or attempts to communicate such
 19 information obtained pursuant to this article to any person or entity except in accordance
 20 with this article, or who knowingly uses or attempts to use such information obtained
 21 pursuant to this article for any purpose other than as authorized by this article shall be fined
 22 not more than \$5,000.00, imprisoned for not more than two years, or both.

23 20-1A-41.

24 (a) Neither GCIC, NCIC, 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 article.

29 (b) A center, its director, and its employees shall have no liability for defamation, invasion
 30 of privacy, or any other claim based upon good faith action thereby pursuant to the
 31 requirements of this article.

32 20-1A-42.

33 The requirements of this article are supplemental to any requirements for a license imposed
 34 by Article 1 of this chapter.

1 20-1A-43.

2 A determination by the department regarding preliminary fingerprint records check
3 determinations or state fingerprint records check determinations or national fingerprint
4 records checks check determinations under this article, or any action by the department
5 revoking, suspending, or refusing to grant or renew a license based upon such
6 determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the
7 'Georgia Administrative Procedure Act,' except that any hearing required to be held
8 pursuant thereto may be held reasonably expeditiously after such determination or action
9 by the department. It is expressly provided that upon motion from any party, the hearing
10 officer may, in his or her discretion, consider matters in mitigation of any conviction,
11 provided that the hearing officer examines the circumstances of the case and makes an
12 independent finding that no physical harm was done to a victim and also examines the
13 character and employment history since the conviction and determines that there is no
14 propensity for cruel behavior or behavior involving moral turpitude on the part of the
15 person making a motion for an exception to sanctions normally imposed. If the hearing
16 officer deems a hearing to be appropriate, he or she will also notify at least 30 days prior
17 to such hearing the office of the prosecuting attorney who initiated the prosecution of the
18 case in question in order to allow ~~the~~ such prosecutor to object to a possible determination
19 that ~~the~~ such conviction would not be a bar for the grant or continuation of a license or
20 employment as contemplated within this chapter. If objections are made, the hearing
21 officer ~~will~~ shall take such objections into consideration in considering the case.

22 20-1A-44.

23 The board is authorized to provide by regulation for the administration of this article."

24 **SECTION 2.**

25 This Act shall become effective on July 1, 2008, and shall apply to any director or employee
26 hired on or after such date and to any applicable adult residing in a family day-care home on
27 or after such date.

28 **SECTION 3.**

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