

House Bill 1110 (AS PASSED HOUSE AND SENATE)

By: Representatives Cooper of the 41<sup>st</sup>, Benton of the 31<sup>st</sup>, Yates of the 73<sup>rd</sup>, Howard of the 121<sup>st</sup>, Lindsey of the 54<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 30, Title 31, and Title 35 of the Official Code of Georgia Annotated, relating  
2 to handicapped persons, health, and law enforcement officers and agencies, respectively, so  
3 as to strengthen provisions relating to the protection of elder adults; to clarify provisions  
4 relating to the neglect of elder persons and disabled adults; to revise provisions relating to  
5 penalties relative to the owning or operating of unlicensed personal care homes; to authorize  
6 the Department of Community Health to provide for additional criminal offenses for  
7 background checks for owners, directors, and employees of personal care homes and other  
8 facilities; to authorize the Georgia Bureau of Investigation to investigate reports of elder  
9 abuse; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 30 of the Official Code of Georgia Annotated, relating to handicapped persons, is  
13 amended by revising subsection (a) of Code Section 30-5-8, relating to criminal offenses and  
14 penalties for the protection of disabled adults and elder persons, as follows:

15 "(a)(1)(A) In addition to any other provision of law, the abuse, ~~neglect~~, or exploitation  
16 of any disabled adult or elder person shall be unlawful.

17 (B) In addition to any other provision of law, the neglect of any disabled adult or elder  
18 person by a guardian, caretaker, or other person supervising the welfare of or having  
19 immediate charge or custody of such disabled adult or elder person shall be unlawful."

20 **SECTION 2.**

21 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code  
22 Section 31-2-9, relating to records check requirement for certain facilities, definitions, use  
23 of information gathered in investigation, penalties for unauthorized release or disclosure, and  
24 rules and regulations, by striking "or" at the end of subparagraph (M), by replacing the period

25 at the end of subparagraph (N) with "; or", and by adding a new subparagraph to paragraph  
 26 (2) of subsection (a) to read as follows:

27 "(O) Any other criminal offense as determined by the department and established by  
 28 rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure  
 29 Act,' that would indicate the unfitness of an individual to provide care to or be in  
 30 contact with persons residing in a facility."

31 **SECTION 3.**

32 Said title is further amended by revising Code Section 31-7-12.1, relating to unlicensed  
 33 personal care homes, as follows:

34 "31-7-12.1.

35 (a) A facility shall be deemed to be an 'unlicensed personal care home' if it is unlicensed  
 36 and not exempt from licensure and:

37 (1) The facility is providing personal services and is operating as a personal care home  
 38 as those terms are defined in Code Section 31-7-12;

39 (2) The facility is held out as or represented as providing personal services and operating  
 40 as a personal care home as those terms are defined in Code Section 31-7-12; or

41 (3) The facility represents itself as a licensed personal care home.

42 ~~(b) Personal care homes in existence on July 1, 1994, which obtain licenses from the~~  
 43 ~~department no later than October 1, 1994, shall not be subject to the penalties set out in this~~  
 44 ~~Code section.~~

45 ~~(c) Except as provided in subsection (b) of this Code section, any~~ Any unlicensed personal  
 46 care home shall be assessed by the department, after opportunity for hearing in accordance  
 47 with the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'  
 48 a civil penalty in the amount of \$100.00 per bed per day for each day of violation of  
 49 subsection (b) of Code Section 31-7-12. The department shall send a notice by certified  
 50 mail or statutory overnight delivery stating that licensure is required and ~~including a period~~  
 51 ~~for obtaining licensure with an expiration date~~ the department's intent to impose a civil  
 52 penalty. Such notice shall be deemed to be constructively received on the date of the first  
 53 attempt to deliver such notice by the United States Postal Service. ~~For unlicensed personal~~  
 54 ~~care homes which were not in existence on July 1, 1994, the civil penalty provided by this~~  
 55 ~~subsection shall be calculated as beginning on the expiration date of the notice. For~~  
 56 ~~unlicensed personal care homes which were in existence on July 1, 1994, the civil penalty~~  
 57 ~~provided by this subsection shall be calculated as beginning on the expiration date of the~~  
 58 ~~notice or on October 1, 1994, whichever is later.~~ The department shall take no action to  
 59 collect such civil penalty until after opportunity for a hearing.

60 ~~(d)~~(c) In addition to other remedies available to the department, the The civil penalty  
61 authorized by subsection ~~(e)~~(b) of this Code section shall be doubled if:

62 (1) ~~The operator of an unlicensed personal care home refuses to seek licensure; or~~

63 (2) ~~The operator seeks licensure, the licensure application is denied, and the~~ the owner  
64 or operator continues to operate the unlicensed personal care home, after receipt of notice  
65 pursuant to subsection (b) of this Code section.

66 ~~(e)~~(d) The owner or operator of a personal care home who is assessed a civil penalty in  
67 accordance with this Code section may have review of such civil penalty by appeal to the  
68 superior court in the county in which the action arose or to the Superior Court of Fulton  
69 County in accordance with the provisions of Code Section 31-5-3.

70 ~~(f)~~(e) In addition to the sanctions authorized herein, an unlicensed personal care home  
71 shall be deemed to be negligent per se in the event of any claim for personal injury or  
72 wrongful death of a resident.

73 (f) It is declared that the owning or operating of an unlicensed personal care home in this  
74 state constitutes a nuisance dangerous to the public health, safety, and welfare. Any person  
75 who owns or operates a personal care home in violation of subsection (b) of Code Section  
76 31-7-12 shall be guilty of a misdemeanor. Upon a second such violation, such person shall  
77 be guilty of a felony."

#### 78 SECTION 4.

79 Said title is further amended in Code Section 31-7-250, relating to definitions relative to  
80 facility licensing and employee records checks for personal care homes, by striking "or" at  
81 the end of subparagraph (O), by replacing the period at the end of subparagraph (P) with  
82 "; or", and by adding a new subparagraph to paragraph (2) to read as follows:

83 "(Q) Any other criminal offense as determined by the department and established by  
84 rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure  
85 Act,' that would indicate the unfitness of an individual to provide care to or be in  
86 contact with persons residing in a facility."

#### 87 SECTION 5.

88 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and  
89 agencies, is amended by revising subsection (a) of Code Section 35-3-4, relating to powers  
90 and duties of the Georgia Bureau of Investigation generally, as follows:

91 "(a) It shall be the duty of the bureau to:

92 (1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements  
93 of persons in cooperation with the bureaus and departments of other states and of the  
94 United States;

- 95 (2) Exchange information relating to crime and criminals;
- 96 (3) Keep permanent files and records of such information procured or received;
- 97 (4) Provide for the scientific investigation of articles used in committing crimes or  
98 articles, fingerprints, or bloodstains found at the scene of a crime;
- 99 (5) Provide for the testing and identification of weapons and projectiles fired therefrom;
- 100 (6) Acquire, collect, classify, and preserve any information which would assist in the  
101 identification of any deceased individual who has not been identified after the discovery  
102 of such deceased individual;
- 103 (7) Acquire, collect, classify, and preserve immediately any information which would  
104 assist in the location of any missing person, including any minor, and provide  
105 confirmation as to any entry for such a person to the parent, legal guardian, or next of kin  
106 of that person and the bureau shall acquire, collect, classify, and preserve such  
107 information from such parent, guardian, or next of kin;
- 108 (8) Exchange such records and information as provided in paragraphs (6) and (7) of this  
109 subsection with, and for the official use of, authorized officials of the federal government,  
110 the states, cities, counties, and penal and other institutions. With respect to missing  
111 minors, such information shall be transmitted immediately to other law enforcement  
112 agencies;
- 113 (9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;
- 114 (10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16,  
115 relating to offenses related to minors;
- 116 (11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;
- 117 (12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16; ~~or~~
- 118 (13) Identify and investigate violations of Code Section 16-5-46; and
- 119 (14) Identify and investigate violations of Code Section 30-5-8 or 16-5-100."

120 **SECTION 6.**

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