

Senate Bill 406

By: Senators Strickland of the 17th, Walker III of the 20th, Stone of the 23rd, Miller of the 49th, Martin of the 9th and others

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to  
 2 enact the "Georgia Long-term Care Background Check Program" and to promote public  
 3 safety and provide for comprehensive criminal background checks for owners, applicants for  
 4 employment, and employees providing care or owning a personal care home, assisted living  
 5 community, private home care provider, home health agency, hospice care, nursing home,  
 6 skilled nursing facility, or an adult day care as recommended by the Georgia Council on  
 7 Criminal Justice Reform; to repeal conflicting provisions relating to criminal background  
 8 checks of such individuals and facilities; to provide for definitions; to require facilities to  
 9 conduct a search of applicable registries for owners, applicants, and employees prior to a  
 10 criminal background check; to provide the Department of Community Health the authority  
 11 to conduct national fingerprint based criminal background checks; to provide for an appeal  
 12 process when an owner, applicant, or employee has been disqualified from licensure or  
 13 employment; to provide for civil penalties for not terminating an employee with an  
 14 unsatisfactory criminal background check; to provide for application form notice; to provide  
 15 for immunity from liability; to provide for rules and regulations; to provide the Department  
 16 of Community Health with authority over matters relating to facility licensing and employee  
 17 records checks; to establish a caregiver's registry to allow certain employers access to  
 18 criminal background checks conducted by the department; to provide for procedure; to  
 19 provide for an appeal process; to provide for immunity from liability; to provide a purpose  
 20 and intent statement; to amend Article 1 of Chapter 2 of Title 49 of the Official Code of  
 21 Georgia Annotated, relating to general provisions for the Department of Human Services, so  
 22 as to provide for conforming cross-references; to provide for related matters; to provide an  
 23 effective date; to repeal conflicting laws; and for other purposes.

24 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

25

**PART I**

26

**SECTION 1-1.**

27 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by  
 28 repealing Code Section 31-2-9, relating to records check requirement for certain facilities,  
 29 definitions, use of information gathered in investigation, penalties for unauthorized release  
 30 or disclosure, and rules and regulations, and designating said Code section as reserved.

31

**SECTION 1-2.**

32 Said title is further amended by revising Code Section 31-7-12.3, relating to adoption of rules  
 33 and regulations, as follows:

34 "31-7-12.3.

35 The department shall adopt rules and regulations to implement Code Sections 31-7-12 and  
 36 31-7-12.2. Such rules and regulations shall establish meaningful distinctions between the  
 37 levels of care provided by personal care homes, assisted living communities, and nursing  
 38 homes but shall not curtail the scope or levels of services provided by personal care homes  
 39 or nursing homes as of June 30, 2011; provided, however, that nothing in this chapter shall  
 40 preclude the department from issuing waivers or variances to personal care homes of the  
 41 rules and regulations established pursuant to this Code section. Notwithstanding Code  
 42 Section ~~31-2-9~~ or 31-7-12.2, the department shall not grant a waiver or variance unless:

- 43 (1) There are adequate standards affording protection for the health and safety of  
 44 residents of the personal care home;
- 45 (2) The resident of the personal care home provides a medical assessment conducted by  
 46 a licensed health care professional who is unaffiliated with the personal care home which  
 47 identifies the needs of the resident; and
- 48 (3) The department finds that the personal care home can provide or arrange for the  
 49 appropriate level of care for the resident."

50

**SECTION 1-3.**

51 Said title is further amended by repealing in its entirety Article 11 of Chapter 7, relating to  
 52 facility licensing and employee records checks, and designating said article as reserved.

53

**SECTION 1-4.**

54 Said title is further amended by revising Article 14 of Chapter 7, relating to nursing homes  
 55 employee records checks, as follows:

## 56 "ARTICLE 14

57 31-7-350.

58 (a) This article shall be known and may be cited as the 'Georgia Long-term Care  
59 Background Check Program.'60 (b) The purpose of this article is to establish the minimum standards for the Georgia  
61 Long-term Care Background Check Program for conducting criminal background checks  
62 of owners, applicants for employment, and direct access employees at certain facilities.63 31-7-351.

64 As used in this article, the term:

65 (1) 'Applicant' means an individual applying to be a direct access employee at a facility.66 ~~(1)~~(2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of  
67 whether an appeal of the conviction has been sought.68 ~~(2)~~(3) 'Crime' means commission of an offense which constitutes a felony with respect  
69 to the following:70 (A) Any of the following offenses:71 ~~(A) A violation of Code Section 16-5-21;~~72 ~~(B) A violation of Code Section 16-5-24;~~73 ~~(C) A violation of Code Section 16-6-1;~~74 ~~(D) A violation of Code Section 16-8-2;~~75 ~~(E) A violation of Code Section 16-8-3;~~76 ~~(F) A violation of Code Section 16-8-4;~~77 ~~(G) A violation of Code Section 16-5-1;~~78 ~~(H) A violation of Code Section 16-4-1;~~79 ~~(I) A violation of Code Section 16-8-40;~~80 ~~(J) A violation of Code Section 16-8-41;~~81 ~~(K) A felony violation of Code Section 16-9-1;~~82 ~~(L) A violation of Article 8 of Chapter 5 of Title 16;~~83 ~~(M) A violation of Chapter 13 of Title 16; or~~84 (i) A violation of Code Section 16-5-70;85 (ii) A violation of Code Section 16-5-101;86 (iii) A violation of Code Section 16-5-102;87 (iv) A violation of Code Section 16-6-4;88 (v) A violation of Code Section 16-6-5;89 (vi) A violation of Code Section 16-6-5.1; or90 (vii) A violation of Code Section 30-5-8;

91 (B) A felony violation of:

92 (i) Chapter 5, 6, 8, 9, or 13 of Title 16;

93 (ii) Code Section 16-4-1;

94 (iii) Code Section 16-7-2; or

95 (iv) Subsection (f) of Code Section 31-7-12.1; or

96 ~~(N)~~(C) Any other offense committed in another jurisdiction which, if committed in this  
 97 state, would be deemed to be such a crime constitute an offense identified in this  
 98 paragraph without regard to its designation elsewhere.

99 (4) 'Criminal background check' means a search of the criminal records maintained by  
 100 GCIC and the Federal Bureau of Investigation to determine whether an owner, applicant,  
 101 or employee has a criminal record.

102 ~~(3)~~(5)(A) 'Criminal record' means any of the following which have reached final  
 103 disposition within ten years of the date the criminal record check is conducted:

104 ~~(A)~~(i) Conviction of a crime;

105 ~~(B)~~(ii) Arrest, charge, and sentencing for a crime where when:

106 ~~(i)~~(I) A plea of nolo contendere was entered to the charge crime;

107 ~~(ii)~~(II) First offender treatment without adjudication of guilt pursuant to the charge  
 108 was granted to the crime; or

109 ~~(iii)~~(III) Adjudication or sentence was otherwise withheld or not entered on for the  
 110 charge crime; or

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

113 (B) Such term shall not include an owner, applicant, or employee for which at least ten  
 114 years have elapsed from the date of his or her criminal background check since the  
 115 completion of all of the terms of his or her sentence; provided, however, that such  
 116 ten-year period or exemption shall never apply to any offense identified in subsection  
 117 (j) of Code Section 42-8-60.

118 (6) 'Direct access' means having, or expecting to have, duties that involve routine  
 119 personal contact with a patient, resident, or client, including face-to-face contact,  
 120 hands-on physical assistance, verbal cuing, reminding, standing by or monitoring or  
 121 activities that require the person to be routinely alone with the patient's, resident's, or  
 122 client's property or access to such property or financial information such as the patient's,  
 123 resident's, or client's checkbook, debit and credit cards, resident trust funds, banking  
 124 records, stock accounts, or brokerage accounts.

125 (4) 'Employment applicant' means any person seeking employment by a nursing home.  
 126 This term shall not include persons employed by the nursing home prior to July 1, 1995.

127 (7) 'Employee' means any individual who has direct access and who is hired by a facility  
 128 through employment, or through a contract with such facility, including, but not limited  
 129 to, housekeepers, maintenance personnel, dieticians, and any volunteer who has duties  
 130 that are equivalent to the duties of an employee providing such services. Such term shall  
 131 not include an individual who contracts with the facility, whether personally or through  
 132 a company, to provide utility, construction, communications, accounting, quality  
 133 assurance, human resource management, information technology, legal, or other services  
 134 if the contracted services are not directly related to providing services to a patient,  
 135 resident, or client of the facility. Such term shall not include any health care provider,  
 136 including, but not limited to, physicians, dentists, nurses, and pharmacists who are  
 137 licensed by the Georgia Composite Medical Board, the Georgia Board of Dentistry, the  
 138 Georgia Board of Nursing, or the State Board of Pharmacy.

139 (8) 'Facility' means:

140 (A) A personal care home required to be licensed or permitted under Code Section  
 141 31-7-12;

142 (B) An assisted living community required to be licensed under Code Section  
 143 31-7-12.2;

144 (C) A private home care provider required to be licensed under Article 13 of this  
 145 chapter;

146 (D) A home health agency as licensed pursuant to Code Section 31-7-151;

147 (E) A provider of hospice care as licensed pursuant to Code Section 31-7-173;

148 (F) A nursing home, skilled nursing facility, or intermediate care home licensed  
 149 pursuant to rules of the department; or

150 (G) An adult day care facility licensed pursuant to rules of the department.

151 (9) 'Fingerprint records check determination' means a satisfactory or unsatisfactory  
 152 determination by the department based upon fingerprint based national criminal history  
 153 information.

154 ~~(5)~~(10) 'GCIC' means the Georgia Crime Information Center established under Article  
 155 2 of Chapter 3 of Title 35.

156 (11) 'License' means the document issued by the department to authorize a facility to  
 157 operate.

158 ~~(6) 'Nursing home' or 'home' means a home required to be licensed or permitted as a~~  
 159 ~~nursing home under the provisions of this chapter.~~

160 (12) 'Owner' in the context of a nursing home or intermediate care home means an  
 161 individual who is not an 'excluded party' as such term is defined in Code  
 162 Section 31-7-3.3, otherwise such term means an individual or any person affiliated with

163 a corporation, partnership, or association with 10 percent or greater ownership interest  
 164 in a facility who performs one or more of the following:

165 (A) Purports to or exercises authority of a facility;

166 (B) Applies to operate or operates a facility;

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

168 (D) Resides at a facility;

169 (E) Has direct access at a facility;

170 (F) Provides direct personal supervision of facility personnel by being immediately  
 171 available to provide assistance and direction when such facility services are being  
 172 provided; or

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

174 (13) 'Records check application' means fingerprints in such form and of such quality as  
 175 prescribed by GCIC under standards adopted by the Federal Bureau of Investigation and  
 176 a records search fee to be established by the department by rule and regulation, payable  
 177 in such form as the department may direct to cover the cost of obtaining a criminal  
 178 background check.

179 (14) 'Registry check' means a review of the nurse aide registry provided for in Code  
 180 Section 31-2-14, the state sexual offender registry, and the List of Excluded Individuals  
 181 and Entities as authorized in Sections 1128 and 1156 of the federal Social Security Act,  
 182 as it existed on February 1, 2018, or any other registry useful for the administration of  
 183 this article as specified by rules of the department.

184 ~~(7)~~(15) 'Satisfactory determination' means a written determination by a nursing home  
 185 that a person that an individual for whom a ~~record~~ criminal background check was  
 186 performed was found to have no criminal record.

187 ~~(8)~~(16) 'Unsatisfactory determination' means a written determination by a nursing home  
 188 that a person that an individual for whom a ~~record~~ criminal background check was  
 189 performed was found to have a criminal record.

190 ~~31-7-351.~~

191 ~~(a) Prior to hiring an employment applicant, each nursing home shall request a criminal~~  
 192 ~~record check from GCIC to determine whether the applicant has a criminal record. A~~  
 193 ~~nursing home shall make a written determination for each applicant for whom a criminal~~  
 194 ~~record check is performed. A nursing home shall not employ a person with an~~  
 195 ~~unsatisfactory determination.~~

196 ~~(b) Any request for a criminal record check under this Code section shall be on a form~~  
 197 ~~approved by GCIC and submitted in person, by mail, or by facsimile request to any county~~  
 198 ~~sheriff or municipal law enforcement agency having access to GCIC information. The fee~~

199 shall be no greater than the actual cost of processing the request. The law enforcement  
 200 agency receiving the request shall perform a criminal record check for a nursing home  
 201 within a reasonable time but in any event within a period not to exceed three days of  
 202 receiving the request.

203 (c) Each application form provided by the employer to the employment applicant shall  
 204 conspicuously state the following: 'FOR THIS TYPE OF EMPLOYMENT, STATE LAW  
 205 REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT.'

206 31-7-352.

207 (a) Neither GCIC nor any law enforcement agency providing GCIC information pursuant  
 208 to this article shall be responsible for the accuracy of information or have any liability for  
 209 defamation, invasion of privacy, negligence, or any other claim in connection with any  
 210 dissemination of information or determination based thereon pursuant to this article.

211 (b) A nursing home, its administrator, and its employees shall have no liability for  
 212 wrongful discharge, unemployment security benefits, or any other claim based upon:

213 (1) Refusal to employ any person with a criminal record;

214 (2) Termination of employment of persons with a criminal record already employed by  
 215 the home; or

216 (3) Other action taken in good faith reliance upon GCIC information received pursuant  
 217 to this article.

218 (a) A registry check of an owner, applicant, or employee shall be required prior to a  
 219 criminal background check and shall be initiated by the applicable facility. A registry  
 220 check shall be performed by such facility and may include reviewing registries of any other  
 221 states in which the applicant previously resided. If an applicant has not resided in this state  
 222 for at least two years, the facility shall conduct registry checks of each state in which the  
 223 applicant resided for the previous two years, as represented by such applicant or as  
 224 otherwise determined by the applicable facility.

225 (b) If applicable to an owner, applicant, or employee, a query of available information  
 226 maintained by the Georgia Composite Medical Board, the Secretary of State, or other  
 227 applicable licensing boards shall be conducted prior to a criminal background check to  
 228 validate that such individual's professional license is in good standing.

229 (c) Except as provided in subsection (c) of Code Section 31-7-359, nothing in this Code  
 230 section shall be construed to limit the responsibility or ability of a facility to screen owners,  
 231 applicants, or employees through additional methods.

232 31-7-353.

233 ~~A nursing home that hires an applicant for employment with a criminal record shall be~~  
234 ~~liable for a civil monetary penalty in the amount of the lesser of \$2,500.00 or \$500.00 for~~  
235 ~~each day that a violation of subsection (a) of Code Section 31-7-351 occurs. The daily civil~~  
236 ~~monetary penalty shall be imposed only from the time the nursing home administrator~~  
237 ~~knew or should have known that the nursing home has in its employ an individual with a~~  
238 ~~criminal record and until the date such individual is terminated.~~

239 (a) Accompanying any application for a new license, the candidate facility shall furnish  
240 to the department a records check application for each owner and each applicant and  
241 employee. In lieu of such records check application, such facility may submit evidence,  
242 satisfactory to the department, that within the immediately preceding 12 months each  
243 owner, applicant, or employee received a satisfactory determination that includes a records  
244 check clearance date that is no more than 12 months old, or that any owner, applicant, or  
245 employee whose fingerprint records check determination revealed a criminal record of any  
246 kind has subsequently received a satisfactory determination.

247 (b) On or before January 1, 2021, each owner and employee of a currently licensed facility  
248 shall furnish to the department a records check application. In lieu of such records check  
249 application, a facility may submit evidence, satisfactory to the department, that within the  
250 immediately preceding 12 months each owner and employee received a satisfactory  
251 determination.

252 (c) Upon receipt of fingerprints submitted pursuant to a record check application, GCIC  
253 shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search  
254 of bureau records and shall promptly conduct a search of its own records and records to  
255 which it has access. Within ten days after receiving fingerprints acceptable to GCIC, it  
256 shall notify the department in writing of any criminal record or if there is no such finding.  
257 After a search of Federal Bureau of Investigation records and fingerprints and upon receipt  
258 of the bureau's report, the department shall make a determination about an owner's,  
259 applicant's, or employee's criminal record.

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

264 (e) All information received from the Federal Bureau of Investigation or GCIC shall be  
265 used exclusively for employment or licensure purposes and shall not be released or  
266 otherwise disclosed to any other person or agency. All such information collected by the  
267 department shall be maintained by the department pursuant to laws regarding and rules or  
268 regulations of the Federal Bureau of Investigation and GCIC, as is applicable. Penalties

269 for the unauthorized release or disclosure of any such information shall be as prescribed  
270 pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation  
271 and GCIC, as is applicable.

272 31-7-354.

273 (a) An applicant seeking employment with a facility or a current employee at such facility  
274 shall consent to a national and state background check that includes a registry check, a  
275 check of information maintained by a professional licensing board, if applicable, and a  
276 criminal background check.

277 (b)(1) An individual required to submit to a registry check and criminal background  
278 check shall not be employed by, contracted with, or allowed to work as an employee at  
279 a facility if:

280 (A) The individual appears on a registry check;

281 (B) There is a substantiated finding of neglect, abuse, or misappropriation of property  
282 by a state or federal agency pursuant to an investigation conducted in accordance with  
283 42 U.S.C. Section 1395i-3 or 1396r as it existed on February 1, 2018;

284 (C) The individual's professional license, if applicable, is not in good standing; or

285 (D) The facility receives notice from the department that the individual has been found  
286 to have an unsatisfactory determination.

287 (2) An individual whose professional license is not in good standing may be employed  
288 by a facility in a position wherein his or her duties do not require professional licensure,  
289 provided that he or she provides a fingerprint record check determination in the same  
290 manner as an applicant.

291 (c) An owner, applicant, or employee may:

292 (1) Obtain information concerning the accuracy of his or her criminal record, and the  
293 department shall refer such individual to the appropriate state or federal law enforcement  
294 agency that was involved in the arrest or conviction;

295 (2) Challenge the finding that he or she is the true subject of the results from a registry  
296 check, and the department shall refer such individual to the agency responsible for  
297 maintaining such registry; and

298 (3) Appeal his or her disqualifying unsatisfactory determination pursuant to Code  
299 Section 31-7-358.

300 31-7-355.

301 (a) A personnel file for each employee shall be maintained by the applicable facility. Such  
302 files shall be available for inspection by the appropriate enforcement authorities but shall  
303 otherwise be maintained to protect the confidentiality of the information contained therein

304 and shall include, but not be limited to, evidence of each employee's satisfactory  
305 determination, registry check, and licensure check, if applicable.

306 (b)(1) As used in this paragraph, the term:

307 (A) 'Abuse' means the willful infliction of injury, unreasonable confinement,  
308 intimidation, or punishment with resulting physical harm, pain, or mental anguish.

309 Such term includes the deprivation by an individual of goods or services that are  
310 necessary to attain or maintain physical, mental, and psychosocial well-being. Such  
311 term includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including  
312 abuse, facilitated or enabled through the use of technology.

313 (B) 'Willful' means acting deliberately, not that there is an intention to inflict injury or  
314 harm.

315 (2) The department may require a criminal background check on any owner of or  
316 employee at a facility during the course of an abuse investigation involving such owner  
317 or employee or if the department receives information that such owner or employee was  
318 arrested for a crime. In such instances, the department shall require the owner or  
319 employee to furnish two full sets of fingerprints which the department shall submit to  
320 GCIC together with appropriate fees collected from the owner or employee. Upon receipt  
321 thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of  
322 Investigation for a search of bureau records and an appropriate report and shall retain the  
323 other set and promptly conduct a search of its own records and records to which it has  
324 access. GCIC shall notify the department in writing of any unsatisfactory finding,  
325 including but not limited to any criminal record obtained through the fingerprint records  
326 check determination or if there is no such finding.

327 (3) When the department determines that an applicant or employee has an unsatisfactory  
328 determination, the department shall notify the facility that such applicant or employee is  
329 ineligible to hire or employ and the facility shall take the necessary steps so that such  
330 employee is no longer employed at the facility; provided, however, that a facility may  
331 retain a current employee during the period of his or her administrative appeal.

332 (4) When the department determines that an owner has an unsatisfactory determination,  
333 the department shall notify such owner of the ineligible status for ownership and shall  
334 take the necessary steps to revoke the facility's license.

335 (5) An owner, applicant, or employee may appeal their disqualifying unsatisfactory  
336 determination pursuant to Code Section 31-7-358.

337 31-7-356.

338 A facility that does not terminate an employee who has been found to have an  
339 unsatisfactory determination or failed a registry check shall be liable for a civil monetary

340 penalty in the amount of the lesser of \$10,000.00 or \$500.00 for each day that a violation  
341 occurs. The daily civil monetary penalty shall be imposed only from the time the facility  
342 knew or should have known that it employed an individual with a criminal record and until  
343 the date such individual's employment is terminated.

344 31-7-357.

345 Each application form provided by a facility to an applicant shall conspicuously state the  
346 following: 'FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A  
347 NATIONAL AND STATE BACKGROUND CHECK AS A CONDITION OF  
348 EMPLOYMENT.'

349 31-7-358.

350 (a)(1) An owner of a facility with an unsatisfactory determination or whose name  
351 appears on a registry check shall not operate or hold a license, and the department shall  
352 revoke the license of any owner operating such facility or refuse to issue a license to any  
353 owner operating such facility if such owner has an unsatisfactory determination or is on  
354 a registry check.

355 (2) Prior to approving any license for a facility and periodically as established by the  
356 department by rule, the department shall require each owner and employee to submit to  
357 a registry check and criminal background check pursuant to Code Sections 31-7-352 and  
358 31-7-353.

359 (3)(A) An employee or applicant who received an unsatisfactory determination or  
360 whose name appears on a registry check shall be eligible to appeal such determination  
361 pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

362 (B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing  
363 officer shall consider in mitigation the length of time since the crime was committed,  
364 the absence of additional criminal charges, the circumstances surrounding the  
365 commission of the crime, and other indicia of rehabilitation.

366 (4)(A) The department's determination regarding an owner's unsatisfactory criminal  
367 background check, or any action by the department revoking or refusing to grant a  
368 license based on such determination, shall constitute a contested case for purposes of  
369 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that any  
370 hearing required to be held pursuant thereto may be held reasonably expeditiously after  
371 such determination or action by the department.

372 (B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing  
373 officer shall consider in mitigation the length of time since the crime was committed,  
374 the absence of additional criminal charges, the circumstances surrounding the

375 commission of the crime, other indicia of rehabilitation, the facility's history of  
 376 compliance with the regulations, and the owner's involvement with the licensed facility  
 377 in arriving at a decision as to whether the criminal record requires the denial or  
 378 revocation of the license to operate the facility. When a hearing is required, at least 30  
 379 days prior to such hearing, the hearing officer shall notify the office of the prosecuting  
 380 attorney who initiated the prosecution of the crime in question in order to allow the  
 381 prosecuting attorney to object to a possible determination that the conviction would not  
 382 be a bar for the grant or continuation of a license as contemplated within this Code  
 383 section. If objections are made, the hearing officer shall take such objections into  
 384 consideration.

385 (b) The requirements of this Code section are supplemental to any requirements for a  
 386 license imposed by Article 1 of Chapter 7 of Title 31.

387 31-7-359.

388 (a) No person, including the department, a facility, or an individual acting on behalf of  
 389 such entities, shall be liable for civil damages or be subject to any claim, demand, cause  
 390 of action, or proceeding of any nature as a result of actions taken in good faith to comply  
 391 with this article, including the disqualification of an applicant from employment on the  
 392 basis of a disqualifying crime.

393 (b)(1) A facility that has obtained a satisfactory determination on an owner, applicant,  
 394 or employee in accordance with this article, or confirmation that such owner, applicant,  
 395 or employee has obtained a favorable final appeal decision under Code Section 31-7-358,  
 396 shall be immune from liability for claims of negligent hiring when such claims are based  
 397 upon the criminal record of such owner, applicant, or employee, even when the  
 398 information contained in the criminal background check used by the department is later  
 399 determined to have been incomplete or inaccurate; provided, however, that such  
 400 immunity shall not preclude the liability of a facility concerning claims based on  
 401 information beyond the scope of the criminal record and satisfactory determination about  
 402 the owner, applicant, or employee which the facility knew or should have known.

403 (2) When a facility has obtained a satisfactory determination on an owner, applicant, or  
 404 employee, there shall be a rebuttable presumption of due care for claims related to  
 405 negligent hiring, negligent retention, or other similar claims as they relate to an owner's  
 406 applicant's, or employee's criminal record.

407 (c) Nothing in this article shall require a facility to conduct any other type of criminal  
 408 history check of an owner, applicant, or employee, and a facility shall not be held liable for  
 409 claims of negligent hiring, negligent retention, or other similar claims based solely or in  
 410 part on its failure to conduct other types of criminal history checks.

411 (d) Nothing in this article shall be construed to waive the sovereign immunity of the state,  
412 the department, or any other entity of the state.

413 31-7-360.

414 ~~The Department of Community Health shall be authorized to enforce this article and to~~  
415 department shall promulgate written rules and regulations related to the requirements and  
416 implementation of this article.

417 31-7-361.

418 (a) Effective July 1, 2009, all matters relating to facility licensing and employee criminal  
419 background checks for personal care homes pursuant to Article 11 of this chapter as it  
420 existed on June 30, 2009, shall be transferred from the Department of Human Services to  
421 the department.

422 (b) The rights, privileges, entitlements, and duties of parties to contracts, leases,  
423 agreements, and other transactions entered into before July 1, 2009, by the Department of  
424 Human Resources which relate to the functions transferred to the department pursuant to  
425 this Code section shall continue to exist; and none of these rights, privileges, entitlements,  
426 and duties are impaired or diminished by reason of the transfer of the functions to the  
427 department. In all such instances, the department shall be substituted for the Department  
428 of Human Resources, and the department shall succeed to the rights and duties under such  
429 contracts, leases, agreements, and other transactions.

430 (c) All persons employed by the Department of Human Resources in capacities which  
431 relate to the functions transferred to the department pursuant to this Code section on  
432 June 30, 2009, shall, on July 1, 2009, become employees of the department in similar  
433 capacities, as determined by the commissioner of community health. Such employees shall  
434 be subject to the employment practices and policies of the department on and after July 1,  
435 2009, but the compensation and benefits of such transferred employees shall not be reduced  
436 as a result of such transfer. Employees who are subject to the rules of the State Personnel  
437 Board and who are transferred to the department shall retain all existing rights under such  
438 rules. Retirement rights of such transferred employees existing under the Employees'  
439 Retirement System of Georgia or other public retirement systems on June 30, 2009, shall  
440 not be impaired or interrupted by the transfer of such employees and membership in any  
441 such retirement system shall continue in the same status possessed by the transferred  
442 employees on June 30, 2009. Accrued annual and sick leave possessed by said employees  
443 on June 30, 2009, shall be retained by said employees as employees of the department."

444 **SECTION 1-5.**

445 Said title is further amended by adding a new article to read as follows:

446 "ARTICLE 14A447 31-7-380.

448 The purpose of this article is to enable employers who are family members or guardians  
 449 of elderly persons to obtain an employment eligibility determination from the department  
 450 for applicants who are seeking to provide and employees who are providing personal care  
 451 services to their family members or wards. It is the intent of the General Assembly to  
 452 allow the department to establish and maintain a caregiver registry so as to provide such  
 453 employers with access to employment eligibility determinations conducted by the  
 454 department in a similar manner as licensed facilities receive employment determinations  
 455 as provided in Article 14 of this chapter.

456 31-7-381.457 As used in this article, the term:

458 (1) 'Applicant' means an individual applying to provide personal care services to an  
 459 elderly person in a residence or location not licensed by the department.

460 (2) 'Criminal background check' means a search of the criminal records maintained by  
 461 Georgia Crime Information Center and the Federal Bureau of Investigation to determine  
 462 whether an applicant or employee has a criminal record.

463 (3) 'Elderly person' means an individual who is 65 years of age or older.

464 (4) 'Employee' means any individual who is providing personal care services to an  
 465 elderly person in a residence or location not licensed by the department.

466 (5) 'Employer' means an individual who is considering an applicant or has hired an  
 467 employee for a family member or ward.

468 (6) 'Family member' means an individual with a close familial relationship, including,  
 469 but not limited to, a spouse, parent, sibling, or grandparent.

470 (7) 'Personal care services' means home care, health care, companionship, or  
 471 transportation and includes, but is not limited to, providing assistance with bathing,  
 472 eating, dressing, walking, shopping, fixing meals, and housework.

473 (8) 'Registry check' means a review of the nurse aide registry provided for in Code  
 474 Section 31-2-14, the state sexual offender registry, and the List of Excluded Individuals  
 475 and Entities as authorized in Sections 1128 and 1156 of the federal Social Security Act,  
 476 as it existed on February 1, 2018, or any other registry useful for the administration of  
 477 this article as specified by rules of the department.

478 (9) 'Ward' means an elder person for whom a guardian has been appointed pursuant to  
479 Title 29.

480 31-7-382.

481 The department may establish and maintain a central caregiver registry which shall be  
482 accessible to employers as a data base operated by the department that contains information  
483 on eligible and ineligible applicants and employees as determined by the department from  
484 criminal background checks and registry checks conducted on behalf of facilities as  
485 provided in Article 14 of this chapter and criminal background checks and registry checks  
486 conducted on behalf of employers as provided in this article.

487 31-7-383.

488 (a) The department shall allow an employer to inquire with the department about the  
489 eligibility or ineligibility for employment as if the applicant or employee were applying to  
490 work or working in one of the facilities licensed under Article 14 of this chapter so long  
491 as the applicant or employee agrees to such request, provides his or her fingerprints as set  
492 forth in Article 14 of this chapter, and consents to the inclusion of the results in the  
493 caregiver registry. Any fees associated with such check shall be paid by the employer,  
494 applicant, or employee.

495 (b) An employer shall be responsible for all employment decisions made based on the  
496 eligible or ineligible employment determination provided to the employer from the  
497 department.

498 31-7-384.

499 An applicant or employee who receives a determination of ineligibility for employment  
500 from the department shall be eligible to appeal such determination by requesting, in  
501 writing, an administrative review by the department. The department shall promulgate  
502 rules and regulations in order to implement this Code section. The department shall  
503 maintain the specifics of the employment determination in the same manner as required by  
504 subsection (e) of Code Section 31-7-353.

505 31-7-385.

506 No person, including the department, an employer, or an individual acting on behalf of  
507 such entities, shall be liable for civil damages or be subject to any claim, demand, cause  
508 of action, or proceeding of any nature as a result of actions taken in good faith to comply  
509 with this article, including the disqualification of an applicant or employee from  
510 employment on the basis of the results of a criminal background check or registry check.

511 31-7-386.

512 Except as provided in Code Section 31-7-384, the department shall promulgate rules and  
513 regulations related to the requirements and implementation of this article."

514 **PART II**

515 **SECTION 2-1.**

516 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to  
517 general provisions for the Department of Human Services, is amended by revising subsection  
518 (e) of Code Section 49-2-14, relating to record search for conviction data on prospective  
519 employees, as follows:

520 "(e) Notwithstanding ~~the provisions of~~ subsection (c) of this Code section, when a  
521 contractor to this department is a personal care home, ~~the provisions of Code Sections~~  
522 ~~31-7-250 through 31-7-264~~ Article 14 of Chapter 7 of Title 31 shall apply."

523 **SECTION 2-2.**

524 Said article is further amended by revising subsection (e) of Code Section 49-2-14.1, relating  
525 to definitions and records check requirement for licensing certain facilities, as follows:

526 "(e) The requirements of this Code section are supplemental to any requirements for a  
527 license imposed by Article 3 of Chapter 5 of this title or Article ~~11~~ 14 of Chapter 7 of  
528 Title 31."

529 **PART III**

530 **SECTION 3-1.**

531 This Act shall become effective on October 1, 2019.

532 **SECTION 3-2.**

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