

House Bill 1097 (COMMITTEE SUBSTITUTE)

By: Representatives Petrea of the 166th, Dempsey of the 13th, Hilton of the 48th, Cameron of the 1st, and Sainz of the 180th

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 35 and 37 of the Official Code of Georgia Annotated, relating to law
2 enforcement officers and agencies and mental health, respectively, so as to provide for
3 covered individuals to submit certain information for national criminal history background
4 checks; to provide for procedures for authorized agencies to make fitness determinations;
5 provide for criminal background, license status, and registry checks for owners, applicants,
6 and employees of certain mental health facilities; to provide for the Department of
7 Behavioral Health and Developmental Disabilities to submit fingerprints to the Federal
8 Bureau of Investigation and Georgia Crime Information Center for the purpose of
9 background checks to find disqualifying criminal history records; to provide for maintenance
10 of personnel files; to provide for procedures relating to applicants or employees with
11 ineligible determinations; to provide for civil penalties for failure to terminate employees
12 with ineligible determinations; to provide for notice for applicants; to provide for revocation
13 of licenses; to provide for administrative review; to provide for appeals of administrative
14 decisions; to provide for civil immunity; to provide for rules and regulations; to provide for
15 definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1097 (SUB)

- 1 -

17 **SECTION 1.**

18 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 19 agencies, is amended in Chapter 3, relating to the Georgia Bureau of Investigation, by
 20 revising Code Section 35-3-34.2, relating to exchange of national criminal history
 21 background checks on providers of care to children, the elderly, and persons with disabilities,
 22 as follows:

23 "35-3-34.2.

24 (a) It is the purpose of this Code section to authorize and facilitate, but not require, the
 25 exchange of national criminal history background checks with authorized agencies ~~on~~
 26 ~~behalf of qualified entities and qualified entities~~ as authorized under federal law the NCPA.

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

28 (1) 'Authorized agency' means any ~~local~~ government agency designated to report,
 29 receive, or disseminate information under the NCPA ~~and the VCA.~~

30 (2) 'Care' means the provision of care, treatment, education, training, instruction,
 31 supervision, or recreation to children, the elderly, or individuals with disabilities.

32 (3) 'Child' or 'children' means any person under 18 years of age.

33 (4) 'Covered individual' means:

34 (A) A person who:

35 (i) Is employed by, contracts with, or volunteers with an authorized agency or
 36 qualified entity;

37 (ii) Owens or operates a qualified entity; or

38 (iii) Has or may have supervised or unsupervised access to a person to whom the
 39 authorized agency or qualified entity provides care; or

40 (B) A person who:

41 (i) Seeks to be employed by, contract with, or volunteer with an authorized agency
 42 or qualified entity;

43 (ii) Seeks to own or operate a qualified entity; or

44 (iii) Seeks to have or may have supervised or unsupervised access to a person to
 45 whom the authorized agency qualified entity provides care.

46 ~~(5)~~ 'FBI' means the Federal Bureau of Investigation.

47 (6) 'Individuals with disabilities' means persons with a mental or physical impairment
 48 who require assistance to perform one or more daily living tasks.

49 ~~(4)(7)~~ 'National criminal history background check' means a fingerprint based check of
 50 state and national criminal history files based on submission of a set of classifiable
 51 fingerprints and records fee.

52 ~~(5)(8)~~ 'NCPA' means the National Child Protection Act of 1993, ~~42 U.S.C. Sections~~
 53 ~~3759, 5101 note, 5119, and 5119a through 5119c~~ amended by the Volunteers for Children
 54 Act of 1998, 34 U.S.C. Section 4101, et seq.

55 ~~(6)(9)~~ 'ORI' means an originating agency identifier.

56 ~~(7)~~ 'Provider' means:

57 ~~(A) A person who:~~

58 ~~(i) Is employed by or volunteers with a qualified entity;~~

59 ~~(ii) Owns or operates a qualified entity; or~~

60 ~~(iii) Has or may have unsupervised access to a person to whom the qualified entity~~
 61 ~~provides care; and~~

62 ~~(B) A person who:~~

63 ~~(i) Seeks to be employed by or volunteer with a qualified entity;~~

64 ~~(ii) Seeks to own or operate a qualified entity; or~~

65 ~~(iii) Seeks to have or may have unsupervised access to a person to whom the~~
 66 ~~qualified entity provides care.~~

67 ~~(8)(10)~~ 'Qualified entity' means a business or organization, whether public, private, for
 68 profit, not for profit, or voluntary, that provides care or care placement services, including
 69 a business or organization that licenses or certifies others to provide care or care
 70 placement services.

71 (9) ~~'VCA' means the Volunteers for Children Act, 42 U.S.C. Sections 5101 note, 5119a,~~
72 ~~and 5119b.~~

73 (c) ~~An authorized agency~~ The center is responsible for the designation of authorized
74 agencies and qualified entities ~~within its local jurisdiction and~~ for the submission of
75 national criminal history background checks ~~as authorized under the NCPA and the VCA~~
76 pursuant to this Code section.

77 (d) An authorized agency, other than a criminal justice agency as defined in Code Section
78 35-3-30, must request an ORI from the FBI for the express purpose of submitting national
79 criminal history background checks under this Code section. Requests shall be made in
80 writing to the FBI through the center.

81 (e) National criminal history background checks shall be submitted directly to the center
82 for a state records check; fingerprint ~~cards~~ identification information shall then be
83 forwarded to the FBI for a national check. The responses from both the state and national
84 criminal history background checks shall be returned to the authorized agency.

85 (f) The authorized agency may provide directly to the qualified entity the state criminal
86 history record provided as part of the national criminal history background check.

87 (g) An authorized agency shall be responsible for review ~~of the national criminal history~~
88 ~~record provided as part of the national criminal history background check to determine~~
89 ~~whether the provider has been convicted of or is under indictment for a crime that bears~~
90 ~~upon the provider's~~ the covered individual's fitness to have responsibility for the safety and
91 well-being of children, the elderly, or individuals with disabilities and to convey that
92 determination to the qualified entity. The authorized agency shall make reasonable efforts
93 to communicate the fitness determination to the qualified entity within 15 business days
94 of receipt of the results of the national criminal history background check.

95 (h) The authorized agency or qualified entity must obtain the fingerprints of the ~~provider~~
96 covered individual, communicate the fitness determination of the authorized agency to the
97 ~~provider~~ covered individual, and notify the ~~provider~~ covered individual of his or her right

98 to challenge the accuracy and completeness of any information contained in the national
99 criminal history background check.

100 (i) Fees charged for a national criminal history background check shall be determined
101 based on ~~reasonable costs as allowed under federal law~~ of the background check.

102 (j) The provisions of this Code section shall be supplementary to and not in place of any
103 other law of this state which authorizes or requires background checks.

104 (k) Any person, authorized agency, or qualified entity, or any person who is an employee
105 of an authorized agency or qualified entity, shall not disseminate any criminal history
106 record information or any information concerning any criminal history record information
107 ~~except the determination of fitness which such person obtains pursuant to~~ for the purpose
108 of determining a covered individual's fitness as authorized in this Code section."

109 **SECTION 2.**

110 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in
111 Chapter 1, relating to governing and regulation of mental health, by revising subsections (a)
112 through (d) of Code Section 37-1-28, relating to conviction data, as follows:

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

114 (1) 'Client' means any person who receives developmental disability, mental health or
115 substance use treatment support, or prevention services authorized or funded by the
116 department.

117 (2) 'Contractor' means any person, entity, or agency that enters into a contract with the
118 department to provide goods or services.

119 (3) 'Conviction ~~'conviction data'~~ means a record of a finding or verdict of guilty or a plea
120 of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an
121 appeal of the conviction has been sought.

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

124 (b) The department may receive from any law enforcement agency conviction data that is
125 relevant to a person whom the department or its contractors is considering as a final
126 selectee for employment, or is employing, in a position the duties of which involve direct
127 care, treatment, custodial responsibilities, or any combination thereof for its clients.

128 (c) The department may receive from any law enforcement agency conviction data which
129 is relevant to a person whom the department or its contractors is considering as a final
130 selectee for employment, or is employing, in any position the duties of which give that
131 person access to another person's financial information, protected health information as
132 defined in the federal Health Insurance Portability and Accountability Act, criminal history
133 information or criminal records, or other information the privacy of which is protected by
134 law in a position if, in the judgment of the employer, a final employment decision
135 regarding the selectee can only be made by a review of conviction data in relation to the
136 particular duties of the position and the security and safety of clients, the general public,
137 or other employees.

138 (d) The department is authorized to conduct national background checks by the submission
139 of fingerprints to the Federal Bureau of Investigation through the GCIC. In order to
140 determine the suitability of a license candidate, owner, applicant, or employee, the
141 department shall require such person to furnish the department with a full set of
142 fingerprints to enable a criminal background investigation to be conducted. The
143 department shall establish a uniform method of obtaining conviction data under
144 ~~subsection (a) subsections (b) and (c)~~ of this Code section which shall be applicable to the
145 department and its contractors. Such uniform method shall require the ~~submission to the~~
146 ~~Georgia Crime Information Center of fingerprints and the records search fee in accordance~~
147 ~~with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center~~
148 ~~shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of~~
149 ~~bureau records and an appropriate report and shall promptly conduct a search of its own~~
150 ~~records and records to which it has access. After receiving the fingerprints and fee, the~~

151 Georgia Crime Information Center shall notify the department in writing of any derogatory
 152 finding, including, but not limited to, any conviction data regarding the fingerprint records
 153 check or if there is no such finding department to submit fingerprints to GCIC, along with
 154 the records research fee in accordance with Code Section 35-3-35. If no disqualifying
 155 record is identified at the state level, GCIC is authorized to submit the fingerprints to the
 156 Federal Bureau of Investigation for a national criminal history record check. If a criminal
 157 record is identified at the state level, GCIC shall request a national criminal history record
 158 check from the Federal Bureau of Investigation through a national identifier number system
 159 used for identifying fingerprints. After receiving acceptable fingerprints and such fee from
 160 the department, GCIC shall notify the department in writing of any criminal record found
 161 in the records of GCIC and the Federal Bureau of Investigation or if there is no such
 162 finding. Upon receipt of GCIC's report, the department shall make a determination about
 163 an owner's, applicant's, or employee's criminal record."

164 **SECTION 3.**

165 Said title is further amended in said chapter by adding a new article to read as follows:

166 "ARTICLE 8

167 37-1-140.

168 As used in this article, the term:

169 (1) 'Applicant' means a person applying to be a direct access employee at a facility.

170 (2) 'Conviction' means a finding or verdict of guilty or a plea of guilty, including a plea
 171 of guilty pursuant to Code Section 42-8-60, regardless of whether an appeal of the
 172 conviction has been sought.

173 (3) 'Crime' means commission of:

174 (A) Any of the following offenses:

- 175 (i) A violation of Code Section 16-5-3;
 176 (ii) A violation of Code Section 16-5-70;
 177 (iii) A violation of Code Section 16-5-101;
 178 (iv) A violation of Code Section 16-5-102;
 179 (v) A violation of Code Section 16-6-3;
 180 (vi) A violation of Code Section 16-6-4;
 181 (vii) A violation of Code Section 16-6-5;
 182 (viii) A violation of Code Section 16-6-5.1;
 183 (ix) A violation of Code Sections 16-7-60, 16-7-60.1, 16-7-61, or 16-7-62;
 184 (x) A violation of Chapter 8 of Title 16;
 185 (xi) A violation of Code Section 16-10-31; or
 186 (xii) A violation of Code Section 30-5-8;
- 187 (B) A felony violation of:
- 188 (i) Chapters 5, 6, 9 or 13 of Title 16;
 189 (ii) Code Section 16-4-1;
 190 (iii) Code Section 16-7-2; or
 191 (iv) Subsection (f) of Code Section 31-7-12.1; or
- 192 (C) Any other offense committed in another jurisdiction which, if committed in this
 193 state, would be deemed to constitute an offense identified in this paragraph without
 194 regard to its designation elsewhere.
- 195 (4) 'Criminal background check' means a search of the criminal records maintained by
 196 GCIC and the Federal Bureau of Investigation to determine whether an owner, applicant,
 197 or employee has a criminal record.
- 198 (5) 'Criminal record' means any of the following:
- 199 (A) Conviction of a crime;
 200 (B) Arrest, charge, and sentencing for a crime when:
 201 (i) A plea of nolo contendere was entered to the crime;

202 (ii) First offender treatment without adjudication of guilt was granted to the crime;

203 or

204 (iii) An adjudication or sentence was otherwise withheld or not entered for the crime;

205 or

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

208 (6) 'Direct access' means having, or expecting to have, duties that involve routine
209 personal contact with a patient, resident, or client, including, but not limited to,
210 face-to-face contact, hands-on physical assistance, verbal cuing, reminding, standing by
211 or monitoring or activities that require the person to be routinely alone with the patient's,
212 resident's, or client's property or access to such property or financial information,
213 including, but not limited to, the patient's, resident's, or client's checkbook, debit and
214 credit cards, resident trust funds, banking records, stock accounts, or brokerage accounts.

215 (7) 'Eligible determination' means a written determination that a person for whom a
216 criminal background check was performed and was found to have no criminal record.

217 (8) 'Employee' means any individual who has direct access to, and who is hired by, a
218 facility through employment, or through a contract with such facility, including, but not
219 limited to, housekeepers, maintenance personnel, dieticians, and any volunteer who has
220 duties that are equivalent to the duties of an employee providing such services. Such
221 term shall not include a person who contracts with the facility, whether personally or
222 through a company, to provide utility, construction, communications, accounting, quality
223 assurance, human resource management, information technology, legal, or other services
224 if the contracted services are not directly related to providing services to a patient,
225 resident, or client of the facility.

226 (9) 'Facility' means:

227 (A) A community living arrangement to be licenced under Article 1 of Chapter 13 of
228 this title;

229 (B) A drug abuse treatment and education program required to be licensed under
230 Article 1 of Chapter 5 of Title 26; or

231 (C) An adult residential mental health program required to be licensed pursuant to
232 Article 7 of Chapter 3 of Title 37.

233 (10) 'Fingerprint records check determination' means an eligible or ineligible
234 determination by the department based upon fingerprint based national criminal history
235 information.

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

238 (12) 'Indirect ownership interest' means an ownership interest in a corporation,
239 partnership, legal entity, or association which owns an ownership interest in another
240 corporation, partnership, legal entity, or association. This term includes an ownership
241 interest in any corporation, partnership, legal entity, or association that has an indirect
242 ownership interest in a facility or in a license candidate.

243 (13) 'Ineligible determination' means a written determination that a person for whom a
244 criminal background check was performed was found to have a criminal record.

245 (14) 'License' means the document issued by the department to authorize a facility to
246 operate.

247 (15) 'License candidate' means a person, corporation, partnership, legal entity, or
248 association applying for a license to operate a facility.

249 (16) 'Owner' means a person with an ownership interest in a facility or license candidate
250 or with an ownership interest in a corporation, partnership, legal entity, or association
251 which has any ownership interest in a facility or license candidate, including an indirect
252 ownership interest.

253 (17) 'Ownership interest' means the possession of equity in the capital, stock, or profits
254 of either a:

255 (A) Facility or license candidate; or

256 (B) Corporation, partnership, legal entity, or association that holds a license for a
257 facility.

258 (18) 'Records check application' means fingerprints in such form and of such quality as
259 prescribed by GCIC under standards adopted by the Federal Bureau of Investigation and
260 a records search fee to be established by the department by rule and regulation, payable
261 in such form as the department may direct to cover the cost of obtaining a criminal
262 background check.

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

268 37-1-141.

269 (a)(1) A registry check of an owner, applicant, or employee shall be required prior to a
270 criminal background check and shall be initiated by the applicable facility or license
271 candidate.

272 (2) A registry check shall be performed by such facility or license candidate and may
273 include reviewing registries of any other states in which the applicant previously resided.

274 (3) If an applicant has not resided in this state for at least two years, the facility or license
275 candidate shall conduct registry checks of each state in which the applicant resided for
276 the previous two years as represented by such applicant or as otherwise determined by
277 the applicable facility or license candidate.

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

282 (c) Except as provided in subsection (c) of Code Section 37-1-148, nothing in this Code
283 section shall be construed to limit the responsibility or ability of a facility or license
284 candidate to screen owners, applicants, or employers through additional methods.

285 37-1-142.

286 (a) Accompanying any application for a new license, the license candidate, each owner
287 and applicant, and each employee of the license candidate shall complete a records check
288 in accordance with rules set by the department. The department is authorized to conduct
289 national background checks by the submission of fingerprints to the Federal Bureau of
290 Investigation through GCIC. In order to determine the suitability of a license candidate,
291 owner, applicant, or employee, the department shall require such person to furnish the
292 department with a full set of fingerprints to enable a criminal background investigation to
293 be conducted. The department may receive from any law enforcement agency conviction
294 data that is relevant to a person who is a license candidate, owner, applicant, or employee.

295 (b)(1) The department shall submit fingerprints to GCIC. If no disqualifying record is
296 identified at the state level, GCIC is authorized to submit the fingerprints to the Federal
297 Bureau of Investigation for a national criminal history record check.

298 (2) If a criminal record is identified at the state level, GCIC shall request a national
299 criminal history record check from the Federal Bureau of Investigation through a national
300 identifier number system used for identifying fingerprints.

301 (3) Within ten days after receiving acceptable fingerprints from the department, GCIC
302 shall notify the department in writing of any criminal record found in the records of
303 GCIC and the Federal Bureau of Investigation, or if there is no such finding. Upon
304 receipt of GCIC's report, the department shall make a determination about an owner's,
305 applicant's, or employee's criminal record.

306 (c) Neither GCIC, the department, any law enforcement agency, nor the employees of any
307 such entities shall be responsible for the accuracy of the information nor have liability for

308 defamation, invasion of privacy, negligence, or any other claim in connection with any
309 dissemination of information or determination based thereon pursuant to this Code section.
310 (d) All information received from GCIC or the Federal Bureau of Investigation shall be
311 used exclusively for employment or licensure purposes and shall not be released or
312 otherwise disclosed to any other person or agency. All such information collected by the
313 department shall be maintained by the department pursuant to the rules and regulations of
314 GCIC and the Federal Bureau of Investigation as are applicable. Penalties for unauthorized
315 release or disclosure of any such information shall be prescribed pursuant to state law or
316 rules or regulations of GCIC and the Federal Bureau of Investigation as are applicable.
317 (e) If the department is participating in the program described in subparagraph (a)(1)(F)
318 of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of
319 Investigation shall be authorized to retain fingerprints obtained pursuant to this Code
320 section for such program, and the department shall notify the individual whose fingerprints
321 were taken of the parameters of such retention.

322 37-1-143.

323 (a) An applicant seeking employment with a facility or a current employee at a facility
324 shall consent to a national and state background check that includes a registry check, a
325 check of information maintained by a professional licensing board, if applicable, and a
326 criminal background check in accordance with rules set by the department. The
327 department is authorized to conduct national background checks by the submission of
328 fingerprints to the Federal Bureau of Investigation through GCIC. In order to determine
329 an applicant's suitability as an employee of a facility, the department shall require such
330 applicant to furnish the department with a full set of fingerprints to enable a criminal
331 background investigation to be conducted. Such criminal background investigations shall
332 be conducted in the manner set forth in subsections (b), (c), (d), and (e) of Code

333 Section 37-1-142. The department may receive from any law enforcement agency
334 conviction data that is relevant to such an applicant or to any employee of the facility.

335 (b)(1) A person required to submit to a registry check and criminal background check
336 shall not be employed by, contracted with, or allowed to work as an employee at a facility
337 if:

338 (A) The person appears on a registry check;

339 (B) There is a substantiated finding of neglect, abuse, or misappropriation of property
340 by a state or federal agency pursuant to an investigation conducted in accordance with
341 42 U.S.C. Section 1395-i or 1396r as it existed on February 1, 2018;

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

343 (D) The facility receives notice from the department that the person has been found to
344 have an ineligible determination.

345 (2) A person whose professional license is not in good standing may be employed by a
346 facility in a position where his or her duties do not require professional licensure,
347 provided that he or she provides a fingerprint record check determination in the same
348 manner as an applicant.

349 (c) An applicant or employee may:

350 (1) Obtain information concerning the accuracy of his or her criminal record, and the
351 department shall refer the person to the appropriate state or federal law enforcement
352 agency that was involved in the arrest or conviction;

353 (2) Challenge the finding that he or she is the true subject of the results from a registry
354 check, and the department shall refer the person to the agency responsible for maintaining
355 the registry; and

356 (3) Appeal his or her disqualifying determination pursuant to Code Section 37-1-147.

357 37-1-144.

358 (a) A personnel file for each employee shall be maintained by each facility. Such files
359 shall be available for inspection by the department and other appropriate enforcement
360 authorities but shall otherwise be maintained to protect the confidentiality of the
361 information contained within. The information shall include, but not be limited to,
362 evidence of each employee's eligible determination, registry check, and licensure check,
363 if applicable.

364 (b)(1)(A) The department may require a criminal background check on any owner or
365 employee of a facility during the course of an investigation involving such owner or
366 employee or if the department receives information the owner or employee was arrested
367 for a crime.

368 (B) The criminal background check provided in subparagraph (A) of this paragraph
369 may be fingerprint based and shall be conducted in the manner set forth in subsections
370 (b), (c), (d), and (e) of Code Section 37-1-142. The department may receive from any
371 law enforcement agency conviction data that is relevant to any owner or employee of
372 the facility.

373 (C) GCIC shall notify the department in writing of any ineligible determination,
374 including, but not limited to, any criminal record obtained through the fingerprints
375 records check determination or if there is no finding of a criminal record.

376 (D) If the department is participating in the program described in
377 subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation
378 and the Federal Bureau of Investigation shall be authorized to retain fingerprints
379 obtained pursuant to this Code section for such program, and the department shall
380 notify the person whose fingerprints were taken of the parameters of fingerprint
381 retention.

382 (2) When the department determines that an applicant or employee has an ineligible
383 determination, the department shall notify the facility that the applicant or employee is

384 ineligible to hire or employ and shall take the necessary steps so that the employee is no
385 longer employed at the facility; provided, however, that a facility may retain a current
386 employee during the period of any administrative review or appeal provided for in
387 paragraph (4) of this subsection.

388 (3) When the department determines that an owner has an ineligible determination, the
389 department shall notify the owner of the ineligible status for ownership and shall take the
390 necessary steps to revoke the facility's license.

391 (4) An owner, applicant, or employee may appeal his or her disqualifying ineligible
392 status determination pursuant to Code Section 37-1-147.

393 37-1-145.

394 A facility that does not terminate an employee who has been found to have an ineligible
395 determination or failed a registry check shall be liable for a civil monetary penalty in the
396 amount of \$500.00 for each day that a violation occurs, not to exceed a total of \$10,000.00.

397 The daily civil monetary penalty shall be imposed only from the time the facility knew or
398 should have known that it employed a person with a criminal record and until the date such
399 individual's employment is terminated; provided, however, that the penalty shall not be
400 imposed for any period of time during which the facility may retain the employee under
401 the provisions of paragraph (2) of subsection (b) of Code Section 37-1-144.

402 37-1-146.

403 Each employment application form provided by a facility to an applicant shall
404 conspicuously state the following: 'FOR THIS TYPE OF EMPLOYMENT, STATE LAW
405 REQUIRES A NATIONAL AND STATE BACKGROUND CHECK AS A CONDITION
406 OF EMPLOYMENT.'

407 37-1-147.

408 (a)(1) An owner of a facility with an ineligible determination or whose name appears on
409 a registry check shall not operate or hold a license, and the department shall revoke the
410 license of, or refuse to issue a license to, any facility with an owner with an ineligible
411 determination or whose name appears on a registry check.

412 (2) Prior to approving any license for a facility and periodically as established by the
413 department by rule, the department shall require each owner, applicant, and employee to
414 submit to a registry check and criminal background check pursuant to Code
415 Sections 37-1-141 and 37-1-142.

416 (3) The department may provide by rule for a process where an owner, applicant, or
417 employee can request an administrative review of an ineligible determination or of a
418 determination that the owner's, applicant's, or employee's name appears on a registry
419 check. If such administrative review is provided for in the rules of the department, it
420 shall be timely requested by the owner, applicant, or employee and completed before any
421 appeal provided for in paragraph (4) of this subsection may be filed or requested.

422 (4)(A) An owner, employee, or applicant who received an ineligible determination or
423 a determination that his or her name appears on a registry check and who has exhausted
424 any administrative review rights provided for in this Code section shall be eligible to
425 appeal such determination pursuant to Chapter 13 of Title 50, the 'Georgia
426 Administrative Procedure Act.'

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

431 (5)(A) Any action by the department revoking or refusing to grant a license based on
432 any owner's ineligible determination or determination that the owner's name appears on
433 a registry check shall constitute a contested case for purposes of Chapter 13 of Title 50,

434 the 'Georgia Administrative Procedure Act,' except that any hearing required to be held
435 pursuant to such Act may be held reasonably expeditiously after such determination or
436 action by the department.

437 (B)(i) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing
438 officer shall consider in mitigation the:

439 (I) Length of time since the crime was committed;

440 (II) Absence of additional criminal charges;

441 (III) Circumstances surrounding the commission of the crime;

442 (IV) Other indicia of rehabilitation;

443 (V) Facility's history of compliance with the regulations; and

444 (VI) Owner's involvement with the licensed facility in arriving at a decision as to
445 whether the criminal record requires the denial or revocation of the license to
446 operate the facility.

447 (ii) When a hearing is required, the hearing officer shall notify the office of the
448 prosecuting attorney who initiated the prosecution of the crime in question at least 30
449 days prior to the hearing to allow the prosecuting attorney to object to a possible
450 determination that the conviction would not be a bar for the grant or continuation of
451 a license as contemplated by this Code section. If objections are made, the hearing
452 officer shall take such objections into consideration.

453 (b) The requirements of this Code section are supplemental to any requirements for a
454 license imposed by other applicable Code sections.

455 37-1-148.

456 (a) No person, including the department, a facility, or a person acting on behalf of such
457 entities, shall be liable for civil damages or be subject to any claim, demand, cause of
458 action, or proceeding of any nature as a result of actions taken in good faith to comply with

459 this article, including the disqualification of an applicant from employment on the basis of
460 a disqualifying crime or ineligible determination.

461 (b)(1) A facility that has obtained an eligible determination on an owner, applicant, or
462 employee in accordance with this article or confirmation that such owner, applicant, or
463 employee has obtained a favorable final administrative review or appeal decision
464 pursuant to Code Section 37-1-147, shall be immune from liability for claims of negligent
465 hiring when such claims are based on the criminal record of such owner, applicant, or
466 employee, even when the information contained in the criminal background check used
467 by the department is later determined to have been incomplete or inaccurate; provided,
468 however, that such immunity shall not preclude the liability of a facility concerning
469 claims based on information beyond the scope of the criminal record and eligible
470 determination about the owner, applicant, or employee of which the facility knew or
471 should have known.

472 (2) When a facility has obtained an eligible determination on an owner, applicant, or
473 employee, there shall be a rebuttable presumption of due care for claims of negligent
474 hiring, negligent retention, or other similar claims to the extent the claims are based on
475 an owner's, applicant's, or employee's criminal record.

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

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

482 37-1-149.

483 The department shall promulgate written rules and regulations related to the requirements
484 and implementation of this article, including, but not limited to, establishing percentages

485 of ownership interest relevant for the enforcement of this article. In establishing such
486 percentages of ownership, the department may regard any percentage of ownership greater
487 than zero as constituting an ownership interest as defined in this article, or the department
488 may by rule or regulation deem that a higher percentage of ownership is necessary to
489 constitute such ownership."

490 **SECTION 4.**

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