

House Bill 1097 (AS PASSED HOUSE AND SENATE)

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

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:

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 or 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.