

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: H1/16/97 H2/18/97 H2/25/97 H3/4/97 H3/11/97

# A Bill

ACT 990 OF 1997  
HOUSE BILL 1108

5 By: Representatives Young, Lancaster, and Malone  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO SUBJECT PERSONS CARING FOR THE ELDERLY OR  
10 INDIVIDUALS WITH DISABILITIES TO A CRIMINAL RECORDS CHECK;  
11 AND FOR OTHER PURPOSES."

### Subtitle

14 "AN ACT TO SUBJECT PERSONS CARING FOR  
15 THE ELDERLY OR INDIVIDUALS WITH  
16 DISABILITIES TO A CRIMINAL RECORDS  
17 CHECK; AND FOR OTHER PURPOSES."  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

#### SECTION 1. Definitions.

##### As used in this act:

23 (1) "Bureau" means the Identification Bureau of the Department of the  
24 Arkansas State Police.

25 (2) "Care" means treatment, services, assistance, education, training,  
26 instruction, or supervision for which the care-giving person or entity is  
27 reimbursed either directly to or by arrangement with a qualified entity.

28 (3) "Determination" means a licensing agency's determination that an  
29 applicant or employee is or is not disqualified from employment or that a  
30 qualified entity is disqualified from licensure based on the criminal history  
31 of the operator.

32 (4) "Elderly" means persons aged 65 or older.

33 (5) "Employee" means any person who provides care to the elderly or to  
34 individuals with disabilities or both on behalf of, under the supervision of,  
35 or by arrangement with a qualified entity or any person employed by a  
36 qualified entity, unless the person is a family member, a volunteer or works

1 in an administrative capacity.

2 (6) "Individuals with disabilities" means persons with a mental or  
3 physical impairment who require assistance to perform one or more of the  
4 following tasks of daily living: feeding, mobility, toileting, or medication.

5 (7) "Index" means the database, maintained by the Bureau, of criminal  
6 records checks that have been conducted on applicants for employment with and  
7 employees of qualified entities.

8 (8) "Licensing agency" means the government agency charged with  
9 licensing the operator or qualified entity to provide care to the elderly or  
10 to individuals with disabilities or both.

11 (9) "National criminal history check" means a review of national  
12 criminal records maintained by the Federal Bureau of Investigation based on  
13 fingerprint identification or other positive identification methods.

14 (10) "Operator" means a person responsible for signing an application  
15 for an initial or renewal license to operate a qualified entity.

16 (11) "Qualified entity" means a long-term care facility as defined by  
17 A.C.A. §§ 20-10-101 or A.C.A. 20-10-702, a home health care service as defined  
18 by A.C.A. § 20-10-801, and a hospice service as defined by A.C.A. § 20-7-117  
19 whether or not the entity has applied for or possesses any license necessary  
20 for operation.

21 (12) "Report" means a statement of the criminal history of an  
22 applicant, employee, or operator issued by the Bureau.

23 (13) "State criminal history check" means a review of state criminal  
24 records conducted by the Bureau.

25

26 SECTION 2. Mandatory criminal records checks for operators.

27 (a) When an operator applies for a license to operate a qualified  
28 entity, the operator shall complete a criminal history check form and shall  
29 request the Bureau to conduct a state criminal history check criminal history  
30 check and a national criminal history check on the operator. The operator  
31 shall attach evidence of the request for a criminal history check to the  
32 application for licensure of the qualified entity. The Bureau shall conduct a  
33 state criminal history check and a national criminal history check on the  
34 operator, and upon completion of the criminal history check, the Bureau shall  
35 issue a report to the licensing agency of the qualified entity. The licensing  
36 agency shall determine whether the qualified entity is disqualified from

1 licensure based on the report of the operator's criminal history and forward  
2 its determination to the qualified entity seeking licensure.

3 (b) This section shall only apply to the first application signed by an  
4 operator provided that the operator has served continuously in a position as  
5 an operator with not more than a sixty (60) day interruption in such service.

6  
7 SECTION 3. Mandatory criminal records checks for applicants and  
8 employees.

9 (a) When a person applies for a position as an employee of a qualified  
10 entity and if the qualified entity intends to make an offer of employment to  
11 the applicant, the applicant shall complete a criminal history check form  
12 obtained from the qualified entity and shall submit the form to the qualified  
13 entity as part of the application process. If the qualified entity intends to  
14 make an offer of employment to the applicant, the qualified entity shall,  
15 within five (5) days of such decision, forward the criminal history check form  
16 to the Bureau accompanied by appropriate payment and request the Bureau to  
17 review the Bureau's index of criminal history checks on persons caring for the  
18 elderly or individuals with disabilities. Within three (3) days of the  
19 receipt of a request to review the index, the Bureau shall notify the  
20 qualified entity, if the index contains any criminal history records on the  
21 applicant. A qualified entity may make an offer of temporary employment to an  
22 applicant pending receipt of notification from the Bureau after checking the  
23 database of the licensing agency.

24 (1) If no criminal history records regarding the applicant are  
25 found in the index, then the qualified entity may continue to temporarily  
26 employ the applicant while the Bureau completes a criminal history check and  
27 the licensing agency determines whether the applicant is disqualified from  
28 employment with the qualified entity.

29 (2) If a criminal history record regarding the applicant is found  
30 in the Bureau's index, then the applicant is temporarily disqualified from  
31 employment until the licensing agency issues a determination. If the  
32 licensing agency issues a determination that the applicant is not  
33 disqualified, then the qualified entity may temporarily employ the applicant  
34 while the Bureau completes a criminal history check.

35 (b)(1) Except as provided in subsection (b)(2), the Bureau shall  
36 conduct a state criminal history check and a national criminal history check

1 on an applicant or an employee upon receiving a criminal history check request  
2 from a qualified entity.

3           (2) If the qualified entity can verify that the applicant has  
4 been employed within the State of Arkansas to provide care to the elderly or  
5 individuals with disabilities or both within sixty (60) days before the  
6 application or has lived continuously in the State of Arkansas for the past  
7 five (5) years, the Bureau shall conduct only a state criminal history check  
8 on the applicant.

9           (c) Upon completion of a criminal history check on an applicant or  
10 employee, the Bureau shall issue a report to the licensing agency of the  
11 qualified entity. The licensing agency shall determine whether the applicant  
12 or employee is disqualified from employment with the qualified entity and  
13 forward its determination to the qualified entity. If the licensing agency  
14 determines that an applicant or employee is disqualified from employment then  
15 the qualified entity shall terminate the employment of the employee or shall  
16 deny employment to the applicant subject to the waiver provisions of Section  
17 5(d).

18           (d) Before making a temporary or permanent offer of employment, a  
19 qualified entity shall inform applicants and employees that continued  
20 employment is contingent upon the results of periodic criminal records check  
21 and that the applicant or employee has the right to obtain a copy of the  
22 report from the Bureau.

23  
24           SECTION 4. Each qualified entity shall maintain on file, subject to  
25 inspection by the Arkansas Crime Information Center, the Bureau, or the  
26 licensing agency, evidence that criminal records checks have been initiated on  
27 all operators and employees and a copy of each determination received from the  
28 licensing agency.

29  
30           SECTION 5. (a) Except as provided in subsection (c):

31           (1) A licensing agency shall issue a forty-five (45) day  
32 provisional license to a qualified entity whose operator has been found guilty  
33 or has pled guilty or nolo contendere to any of the offenses listed in  
34 subsection (b);

35           (2) A licensing agency shall issue a determination that a person  
36 is disqualified from employment with a qualified entity if the person has been

1 found guilty or plead guilty or nolo contendere to any of the offenses listed  
2 in subsection (b); and

3 (3) A qualified entity shall not knowingly employ a person who  
4 has been found guilty or has pled guilty or nolo contendere to any of the  
5 offenses listed in subsection (b).

6 (b)(1) Capital murder, as prohibited in A.C.A. § 5-10-101;

7 (2) Murder in the first degree and second degree, as prohibited  
8 in A.C.A. §§ 5-10-102 and 5-10-103;

9 (3) Manslaughter, as prohibited in A.C.A. § 5-10-104;

10 (4) Negligent homicide, as prohibited in A.C.A. § 5-10-105;

11 (5) Kidnapping, as prohibited in A.C.A. § 5-11-102;

12 (6) False imprisonment in the first degree, as prohibited in  
13 A.C.A. § 5-11-103;

14 (7) Permanent detention or restraint, as prohibited in A.C.A.  
15 § 5-11-106;

16 (8) Robbery, as prohibited in A.C.A. § 5-12-102;

17 (9) Aggravated robbery, as prohibited in A.C.A. § 5-12-103;

18 (10) Battery in the first degree, as prohibited in A.C.A.  
19 § 5-13-201;

20 (11) Aggravated assault, as prohibited in A.C.A. § 5-13-204;

21 (12) Introduction of controlled substance into body of another  
22 person, as prohibited in A.C.A. § 5-13-210;

23 (13) Terroristic threatening in the first degree, as prohibited  
24 in A.C.A. § 5-13-301;

25 (14) Rape and carnal abuse in the first degree, second degree,  
26 and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;

27 (15) Sexual abuse in the first degree and second degree, as  
28 prohibited in A.C.A. §§ 5-14-108 and 5-14-109;

29 (16) Sexual solicitation of a child, as prohibited in A.C.A.  
30 § 5-14-110;

31 (17) Violation of a minor in the first degree and second degree,  
32 as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;

33 (18) Incest, as prohibited in A.C.A. § 5-26-202;

34 (19) Offenses against the family, as prohibited in A.C.A.  
35 §§ 5-26-303 - 5-26-306

36 (20) Endangering the welfare of incompetent person in the first

1 degree, as prohibited in A.C.A. § 5-27-201;

2 (21) Endangering the welfare of a minor in the first degree, as  
3 prohibited in A.C.A. § 5-27-203;

4 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)  
5 and (a)(3) of A.C.A. § 5-27-221;

6 (23) Engaging children in sexually explicit conduct for use in  
7 visual or print media, transportation of minors for prohibited sexual conduct,  
8 or pandering or possessing visual or print medium depicting sexually explicit  
9 conduct involving a child, or use of a child or consent to use of a child in a  
10 sexual performance by producing, directing, or promoting a sexual performance  
11 by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402,  
12 and 5-27-403;

13 (24) Felony adult abuse, as prohibited by A.C.A. § 5-28-103;

14 (25) Theft of property, as prohibited in A.C.A. § 5-36-103;

15 (26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;

16 (27) Arson, as prohibited in A.C.A. § 5-38-301;

17 (28) Burglary, as prohibited in A.C.A. § 5-39-201;

18 (29) Felony violation of the Uniform Controlled Substances Act,  
19 as prohibited in A.C.A. § 5-64-401;

20 (30) Promotion of prostitution in the first degree, as prohibited  
21 in A.C.A. § 5-70-104;

22 (31) Stalking, as prohibited in A.C.A. § 5-71-229; and

23 (32) Criminal attempt, criminal complicity, criminal  
24 solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201,  
25 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
26 subsection.

27 (c) A qualified entity that is issued a provisional license based on  
28 the criminal history of the operator may resubmit the application for  
29 licensure with a new operator. If the qualified entity does not resubmit the  
30 application within fifteen (15) days of the issuance of the provisional  
31 license, then the qualified entitys license shall be immediately denied or  
32 revoked.

33 (d) The provisions of this section may be waived by the licensing  
34 agency upon request by the person who is the subject of the criminal history  
35 check. Factors to be considered before granting a waiver shall include, but  
36 not be limited to:

- 1           (1) the age at which the crime was committed;
- 2           (2) the circumstances surrounding the crime;
- 3           (3) the length of time since the adjudication of guilt;
- 4           (4) the person's subsequent work history;
- 5           (5) the person's employment references;
- 6           (6) the person's character references;
- 7           (7) the nurse aide registry records; and
- 8           (8) any other evidence demonstrating that the person does not  
9 pose a threat to the health or safety of persons to be cared for.

10           (e)(1) A qualified entity shall not be disqualified from licensure when  
11 the operator has been found guilty of or has pled guilty or nolo contendere to  
12 a misdemeanor if the offense did not involve exploitation of an adult, abuse  
13 of a person, neglect of a person, theft, or sexual contact.

14           (2) An applicant or employee shall not be disqualified from  
15 permanent employment when the applicant or employee has been found guilty of  
16 or has pled guilty or nolo contendere to a misdemeanor if the offense did not  
17 involve exploitation of an adult, abuse of a person, neglect of a person,  
18 theft, or sexual contact.

19           (f) If an operator or qualified entity fails or refuses to cooperate in  
20 obtaining criminal records checks, such circumstances shall be grounds to deny  
21 or revoke the qualified entity's license or other operating authority,  
22 provided that the process of obtaining criminal records checks shall not delay  
23 the process of the application for a license or other operational authority.

24           (g) Any unlicensed qualified entity violating this act shall be guilty  
25 of a Class A misdemeanor for each violation.

26

27           SECTION 6. (a) A request for a state criminal history records check on  
28 a person shall include a completed statement that:

29           (1) contains the name, address, and date of birth appearing on a  
30 valid identification document issued by a government entity to the person who  
31 is the subject of the check;

32           (2) indicates whether the person has been found guilty of or pled  
33 guilty or nolo contendere to a crime, and if so, includes description of the  
34 crime and the particulars of the finding of guilt or the plea;

35           (3) notifies the person that qualified entities may request  
36 reports of state criminal history checks;

1                   (4) consents to disclosure of reports and determinations as  
2 provided by this act;

3                   (5) notifies the person that prior to the completion of a state  
4 criminal history check, the qualified entity may choose to deny the employee  
5 unsupervised access to a person to whom the qualified entity provides care;

6                   (6) informs the person how to object the content of reports; and

7                   (7) contains the notarized signature of the person who is the  
8 subject of the check.

9                   (b) Each request for a national criminal history check shall conform to  
10 the requirements for a state criminal history check and shall include a  
11 complete set of fingerprints.

12  
13                   SECTION 7. (a) After receipt of a request for a criminal history  
14 check, the Bureau shall make reasonable efforts to respond to requests for  
15 state criminal history checks within twenty (20) calendar days and to respond  
16 to requests for national criminal history checks within ten (10) calendar days  
17 after the receipt of a national criminal history check from the Federal Bureau  
18 of Investigation.

19                   (b) Upon completion of a criminal records check, the Bureau shall  
20 forward all information obtained concerning the applicant or employee to the  
21 Arkansas Crime Information Center.

22                   (c) The Bureau shall maintain an index of the results of each  
23 operator's, employee's or applicant's criminal history check. The Bureau  
24 shall furnish a report to the licensing agency upon completion of each  
25 criminal history check and upon request of the licensing agency.

26                   (d) The Bureau shall develop forms to be used for criminal history  
27 checks conducted under this act.

28                   (e) Each licensing agency shall develop and maintain a database of  
29 determinations regarding applicants for employment with and employees of  
30 qualified entities that are within the purview of the licensing agency. The  
31 database may be accessed by telephone.

32  
33                   SECTION 8. (a) The Arkansas Crime Information Center, the Bureau, and  
34 each licensing agency shall cooperate to prepare forms and promulgate  
35 consistent regulations as necessary to implement this act.

36                   (b) Each licensing agency shall establish remedies to be imposed on the



1 qualified entities licensed by the respective agencies for failure to comply  
2 with this act.

3 (c) Each licensing agency shall establish a procedure for operator,  
4 applicants, employees, and qualified entities to challenge determinations.

5 (d) A person may challenge the completeness or accuracy of criminal  
6 history information pursuant to A.C.A. 12-12-1013.

7

8 SECTION 9. Confidentiality.

9 All reports obtained under this act are confidential and are restricted  
10 to the exclusive use of the Arkansas Crime Information Center, the Bureau, the  
11 licensing agency, and the person who is the subject of the report. The  
12 information contained in reports shall not be released or otherwise disclosed  
13 to any other person or agency except by court order and are specifically  
14 exempt from disclosure under the Arkansas Freedom of Information Act, A.C.A.  
15 § 25-19-101, et seq. , except that the licensing agency is authorized and  
16 directed to furnish determinations to qualified entities.

17

18 SECTION 10. Immunity.

19 Individuals and qualified entities are immune from suit or liability for  
20 damages for acts or omissions, other than malicious acts or omissions,  
21 occurring in the performance of duties imposed by this act.

22

23 SECTION 11. (a) This act shall not apply to persons who render care  
24 subject to professional licenses obtained pursuant to:

25 (1) A.C.A. § 17-27-101, et seq., regarding licensed professional  
26 counselors;

27 (2) A.C.A. § 17-46-101, et seq., regarding social workers;

28 (3) A.C.A. § 17-82-101, et seq., regarding dentists;

29 (4) A.C.A. § 17-87-101, et seq., regarding nurses;

30 (5) A.C.A. § 17-88-101, et seq., regarding occupational  
31 therapists;

32 (6) A.C.A. § 17-92-101, et seq., regarding pharmacists;

33 (7) A.C.A. § 17-93-301, et seq. regarding physical therapists;

34 (8) A.C.A. § 17-95-201, et seq., regarding physicians and  
35 surgeons;

36 (9) A.C.A. § 17-96-101, et seq., regarding podiatrists;

1                   (10) A.C.A. § 17-97-101, et seq., regarding psychologists and  
2 psychological examiners;

3                   (11) A.C.A. § 17-100-101, et seq., regarding speech-language  
4 pathologists and audiologists; or

5                   (12) A.C.A. § 20-10-401, et seq., regarding nursing home  
6 administrators.

7           (b) The term professional license shall not include certification.  
8 Certified persons include, but are not limited to, certified nursing  
9 assistants and certified home health aides. (c) Any person who submits  
10 evidence of having maintained employment in the state of Arkansas for the past  
11 twelve (12) months and of successfully completing a criminal history check  
12 within the last twelve (12) months or in accordance with that persons  
13 professional license shall not be required to apply for a criminal history  
14 check under this act.

15  
16           SECTION 12. (a) Operators licensed and employees hired on and after  
17 the effective date of this act shall apply for criminal records checks.

18                   (b) Criminal history checks shall be obtained for all operators  
19 and employees by October 1, 2000 and each licensing agency shall promulgate a  
20 rule that prescribes how criminal history checks for incumbent operators and  
21 employees will be phased-in during the period prior to October 1, 2000. The  
22 rule shall require:

23                   (1) Operators to apply for criminal history checks in conjunction  
24 with the deadline for the operator to seek renewal of the qualified entitys  
25 license from the licensing agency; and

26                   (2) Incumbent employees to apply for criminal history checks in  
27 the same manner as applicants for employment in conjunction with the  
28 employees anniversary of employment or any time before that date.

29  
30           SECTION 13. All provisions of this act of a general and permanent  
31 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
32 Code Revision Commission shall incorporate the same in the Code.

33  
34           SECTION 14. If any provision of this act or the application thereof to  
35 any person or circumstance is held invalid, such invalidity shall not affect  
36 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this  
2 act are declared to be severable.

3

4 SECTION 15. All laws and parts of laws in conflict with this act are  
5 hereby repealed.

6

7 SECTION 16. It is hereby found and determined by the Eighty-First  
8 General Assembly, that sometimes persons providing care to the elderly or  
9 individuals with disabilities have criminal histories that impair their  
10 ability to provide adequate care; that injuries inflicted on the elderly or  
11 individuals with disabilities by caretakers in positions of trust are  
12 devastating to the sense of well-being in our communities; that it is crucial  
13 to the health, safety, and welfare of the citizens of the State of Arkansas  
14 that a criminal history check be conducted on all persons caring for the  
15 elderly or individuals with disabilities so that those persons who are a  
16 danger can be identified; that this act so provides. Therefore an emergency is  
17 declared to exist and this act being immediately necessary for the  
18 preservation of the public peace, health and safety shall become effective on  
19 October 1, 1997.

20

/s/Rep. Young

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APPROVED:4-01-97

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