

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/16/07

A Bill

HOUSE BILL 2295

5 By: Representative Garner
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE CRIMINAL BACKGROUND CHECK
10 LAW; AND FOR OTHER PURPOSES.
11

Subtitle

12 TO AMEND THE CRIMINAL BACKGROUND CHECK
13 LAW.
14
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 21-15-101(5) regarding the definition of
20 "designated position" is amended to read as follows:

21 (5) "Designated position" means a position in which a person is
22 employed by a state agency to provide care, supervision, treatment, or any
23 other services to the elderly, to mentally ill or developmentally disabled
24 persons, to persons with mental illnesses, or to children who reside in any
25 state-operated facility or a position in which the applicant or employee will
26 have direct contact with a child; a person who is elderly, mentally ill or
27 developmentally disabled;
28

29 SECTION 2. Arkansas Code § 21-15-102(a) and (b) are amended to read as
30 follows:

31 (a)(1)(A) When a person applies for employment with a state agency in
32 a designated position and if the state agency intends to make an offer of
33 employment to the applicant, the applicant shall complete a criminal history
34 check form and a central registry check form obtained from the state agency
35 and shall submit the form to the state agency as part of the application
36 process.



1 (B) If the state agency intends to make an offer of
2 employment to the applicant, the state agency within five (5) days of the
3 decision shall ~~forward~~:

4 (i)(a) Use the Online Criminal Background Check
5 System to obtain the criminal history or forward the ~~The~~ criminal history
6 check form to the Identification Bureau of the Department of Arkansas State
7 Police and request the bureau to review the bureau's database of criminal
8 history.

9 (b) Within three (3) days of the receipt of a
10 request to review the database, the bureau shall notify the state agency if
11 the database contains any criminal history records on the applicant; and

12 (ii)(a) Forward the ~~The~~ central registry check form
13 to the Child Maltreatment Central Registry, and the Adult and Long-Term Care
14 Facility Resident Maltreatment Central Registry, ~~and the Certified Nursing~~
15 ~~Assistant/Employment Clearance Registry~~ for a central registry check.

16 (b) The state agency shall pay any fee
17 associated with the central registry check on behalf of the applicant.

18 (c) Within three (3) days of the receipt of a
19 request for a central registry check, the central registry shall notify the
20 state agency if the database contains any information naming the applicant as
21 an offender or perpetrator of child or adult abuse.

22 (2) If no criminal history or central registry records regarding
23 the applicant are found in the database, then the state agency may make an
24 offer of temporary employment to the applicant while the bureau completes a
25 criminal history check and the state agency determines whether the applicant
26 is disqualified from employment under subsection (f) of this section.

27 (3)(A) If a criminal history record regarding the applicant is
28 found in the bureau's database, then the applicant is temporarily
29 disqualified from employment until the state agency determines whether the
30 applicant is disqualified from employment under subsection (f) of this
31 section.

32 (B) If the state agency determines that the applicant is
33 not disqualified, then the state agency may continue to temporarily employ
34 the applicant while the bureau completes a criminal history check.

35 (4) If an applicant has been named as an offender or perpetrator
36 in a true, substantiated, or founded report from the Child Maltreatment

1 Central Registry, or the Adult and Long-Term Care Facility Resident
2 Maltreatment Central Registry, ~~or the Certified Nursing Assistant/Employment~~
3 ~~Clearance Registry~~, the applicant shall be immediately disqualified.

4 (b)(1) Except as provided in subdivision (b)(2) of this section, the
5 bureau shall conduct a state criminal history check and a national criminal
6 history check on an applicant upon receiving a criminal history check request
7 from a state agency.

8 (2)(A) If the state agency can verify that the applicant ~~has~~
9 ~~been employed by a state agency in a designated position within sixty (60)~~
10 ~~days before the application~~ or has lived continuously in the State of
11 Arkansas for the past five (5) years, the bureau shall conduct only a state
12 criminal history check on the applicant.

13 (B) If the state agency can verify that the selected
14 applicant currently works for a state agency in a designated position or a
15 designated financial or information technology position and the state agency
16 can provide verification that a criminal history check for that position has
17 been completed in the last five (5) years, the state agency does not need to
18 conduct another criminal history check on the employee until the criminal
19 history check is five (5) years old.

20
21 *SECTION 3. Arkansas Code § 21-15-103(a) is amended to read as follows:*

22 (a)(1)~~(A)~~ ~~State agencies shall ensure that all employees in designated~~
23 ~~positions will have applied for criminal history checks by October 1, 2000,~~
24 ~~and shall adopt a rule that prescribes how criminal background checks on~~
25 ~~incumbent employees will be phased in over the period of time prior to July~~
26 ~~1, 2000.~~

27 ~~(B)~~ An incumbent employee in a designated position shall
28 have a subsequent criminal background check completed within five (5) years
29 of the initial criminal background check and every five (5) years thereafter.

30 (2)~~(A)~~ ~~State agencies shall ensure that all employees in~~
31 ~~designated positions will have applied for central registry checks by October~~
32 ~~1, 2002, and shall adopt a rule that prescribes how central registry checks~~
33 ~~on incumbent employees will be phased in over the period of time prior to~~
34 ~~July 1, 2002.~~

35 ~~(B)~~ An incumbent employee in a designated position shall
36 have subsequent central registry ~~checks~~ check completed within five (5) years

1 of the initial central registry check and every five (5) years thereafter.

2 (3) In accordance with subdivisions (a)(1) and (2) of this
3 section, each employee of a state agency in a designated position shall
4 complete a criminal history check form and a central registry check form
5 obtained from the state agency and shall submit the form to the state agency.
6 The state agency shall ~~forward~~:

7 (A)(i) Use the Online Criminal Background Check System to
8 obtain a criminal history check or forward the ~~The~~ criminal history check
9 form to the Identification Bureau of the Department of Arkansas State Police.

10 (ii) The state agency shall pay any fee associated
11 with the criminal history check on behalf of the employee; and

12 (B)(i) Forward the ~~The~~ central registry check to the Child
13 Maltreatment Central Registry, and the Adult and Long-Term Care Facility
14 Resident Maltreatment Central Registry, ~~and the Certified Nurses Assistants~~
15 ~~Central Registry~~ for a review of the registry databases.

16 (ii) The state agency shall pay any fee associated
17 with the central registry checks.

18
19 SECTION 4. Arkansas Code § 21-15-104 9(a)(2) regarding a central
20 registry check for an application for ~~wavier~~ waiver of exclusion or discharge
21 requirement for a person in designated position is amended to read as
22 follows:

23 (a)(1) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-
24 103(e), 21-15-103(g), and 21-15-110(b) may be waived by the director of a
25 state agency upon the request of:

26 (A) A supervisor or other managerial employee in the state
27 agency;

28 (B) An affected applicant for employment; or

29 (C) The person in a designated position who is subject to
30 discharge.

31 (2) Application for a waiver must be made within five (5) days
32 of receipt of the criminal background check or central registry check.

33 (3) If the crime is a misdemeanor and more than five (5) years
34 have ~~lapsed~~ elapsed since the conviction, the state agency is not required to
35 discharge an incumbent employee if a request for a waiver is timely made and
36 if the waiver is ultimately granted.

1 (4) If the waiver is not granted and the waiver applicant is an
2 incumbent employee who was not immediately discharged, the state agency shall
3 immediately discharge the employee.

4 (5) If the waiver is not granted and the waiver applicant is an
5 applicant for employment, the state agency is prohibited from hiring the
6 applicant.

7 (6) If an incumbent employee was immediately discharged but was
8 subsequently granted a waiver, the employee shall be immediately reinstated
9 but shall not be entitled to retroactive relief, including back pay.

10
11 SECTION 5. Arkansas Code § 21-15-106(b) regarding the Certified
12 Nursing Assistant/Employment Clearance Registry and records maintained by
13 agencies on applicants and employees is amended to read as follows:

14 (b) Each state agency shall maintain on file, subject to inspection by
15 the Arkansas Crime Information Center, the Identification Bureau of the
16 Department of Arkansas State Police, ~~or~~ the Child Maltreatment Central
17 Registry, and the Adult and Long-Term Care Facility Resident Maltreatment
18 Central Registry ~~or the Certified Nursing Assistant/Employment Clearance~~
19 ~~Registry~~ evidence that criminal history and central registry checks required
20 by this subchapter have been initiated on all applicants and employees.

21
22 SECTION 6. Arkansas Code § 21-15-107(d)(2) regarding the Certified
23 Nursing Assistant/Employment Clearance Registry is amended to read as
24 follows:

25 (d)(1) The Identification Bureau of the Department of Arkansas State
26 Police shall develop a form to be used for criminal history checks conducted
27 under this subchapter. The form shall require the notarized signature of the
28 person who is the subject of the check.

29 (2) The Child Maltreatment Central Registry, and the Adult and
30 Long-Term Care Facility Resident Maltreatment Central Registry, ~~and the~~
31 ~~Certified Nursing Assistant/Employment Clearance Registry~~ shall work together
32 to develop a form to be used for central registry checks conducted under this
33 subchapter. The form shall require the notarized signature of the person who
34 is the subject of the check.

35
36 SECTION 7. Arkansas Code § 21-15-111(a) and (b) are amended to read as

1 follows:

2 (a)(1)(A) When a person applies for employment with a state agency in
3 a designated financial or information technology position and if the state
4 agency intends to make an offer of employment to the applicant, the applicant
5 shall complete a criminal history check form and shall submit the form to the
6 state agency as part of the application process.

7 (B) Within five (5) days of the state agency's decision to
8 make an offer of employment to the applicant, the state agency shall use the
9 Online Criminal Background Check System to obtain the criminal history or
10 forward the criminal history check form to the Identification Bureau of the
11 Department of Arkansas State Police and request the bureau to review the
12 database of criminal history.

13 (C) Within three (3) days of the receipt of a request to
14 review the database, the bureau shall notify the state agency if the database
15 contains any criminal history record on the applicant.

16 (2) If no criminal history record regarding the applicant is
17 found in the database, then the state agency may make an offer of temporary
18 employment to the applicant while the bureau completes a criminal history
19 check and the state agency determines whether the applicant is disqualified
20 from employment under subsection (f) of this section.

21 (3)(A) If a criminal history record regarding the applicant is
22 found in the database, then the applicant is temporarily disqualified from
23 employment until the state agency determines whether the applicant is
24 disqualified from employment under subsection (f) of this section.

25 (B) If the state agency determines that the applicant is
26 not disqualified, then the state agency may continue to temporarily employ
27 the applicant while the bureau completes a criminal history check.

28 (b)(1) Except as provided in subdivision (b)(2) of this section, the
29 bureau shall conduct a state criminal history check and a national criminal
30 history check on an applicant upon receiving a criminal history check request
31 from a state agency.

32 (2)(A) If the state agency can verify that the applicant has been
33 employed by a state agency in a designated financial or information
34 technology position within sixty (60) days before the application or has
35 lived continuously in the State of Arkansas for the past five (5) years, the
36 bureau shall conduct only a state criminal history check on the applicant.

1 (B) If the state agency can verify that the selected
 2 applicant currently works for a state agency in a designated position or a
 3 designated financial or information technology position and the state agency
 4 can provide verification that a criminal history check for that position has
 5 been completed in the last five (5) years, the state agency does not need to
 6 conduct another criminal history check on the employee until the criminal
 7 history check is five (5) years old.

8
 9 *SECTION 8. Arkansas Code § 21-15-112(a) is amended to read as follows:*

10 (a)(1) State agencies shall ensure that all employees in designated
 11 financial or information technology positions apply for criminal history
 12 checks by December 1, 2005.

13 (2) An incumbent employee in a designated financial or
 14 information technology position shall have a subsequent criminal background
 15 check within five (5) years of the initial criminal background check and
 16 every five (5) years thereafter.

17 (3)(A) In accordance with subdivisions (a)(1) and (2) of this
 18 section, each employee of a state agency in a designated financial or
 19 information technology position shall complete a criminal history check form
 20 and shall submit the form to the state agency.

21 (B) The state agency shall:

22 (i) ~~Forward~~ Use the Online Criminal Background Check
 23 System to obtain the criminal history or forward the Identification Bureau of
 24 the Department of Arkansas State Police; and

25 (ii) Pay any fee associated with the criminal
 26 history check on behalf of the employee.

27
 28 */s/ Garner*