

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Young

A Bill

HOUSE BILL 2008

For An Act To Be Entitled

"AN ACT TO SUBJECT APPLICANTS FOR A LICENSE TO OWN OR
OPERATE A LONG-TERM CARE FACILITY TO A NATIONWIDE CRIMINAL
RECORDS CHECK; AND FOR OTHER PURPOSES."

Subtitle

"TO SUBJECT APPLICANTS FOR A LICENSE TO
OWN OR OPERATE A LONG-TERM CARE FACILITY
TO A NATIONWIDE CRIMINAL RECORDS CHECK."

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

SECTION 1. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) *"Criminal History Check" means a nationwide criminal records check to be conducted by the Federal Bureau of Investigation in conformity to the applicable federal standards and the Violent Crime Control and Law Enforcement Act of 1994.*

(2) *"Employer" means any operator of a long-term care facility or any provider of home health care services licensed pursuant to Arkansas Code § 20-10-807.*

(3) *"Long-term care facility" means a nursing home, residential care facility, post-acute head injury retraining and residential care facility, adult day-care facility or any other facility which provides long-term medical or personal care.*

(4) *"Nonlicensed person" means any person who is not a licensed health care provider and who submits application to an employer for a compensated position providing nursing care or health related services.*

(5) *"Office" means the Office of Long-Term Care.*

1 (6) "Owner" means the owner of controlling interest in, the officers
2 or directors of the entity owning controlling interest in, or the partners
3 owning a long-term care facility or home health care service.

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5 SECTION 2. Mandatory criminal history checks.

6 (a) Each new owner shall be required to pay a fee and furnish to the
7 office all information necessary, including a consent to release of
8 information, for the office to apply to the Identification Bureau of the
9 Arkansas State Police for a criminal history check. This act shall not apply
10 to current owners.

11 (b) Prior to making an offer of permanent employment to a nonlicensed
12 person, the employer must pay a fee and furnish the office all the necessary,
13 including a consent to release of information, for the Office to apply to the
14 Identification Bureau of the Arkansas State Police for a nationwide criminal
15 history check of the nonlicensed person who shall be responsible for
16 furnishing all necessary information to the employer. This act shall not
17 apply to current employees.

18 (c) The fee paid to the office shall be the same amount paid by the
19 office to the Arkansas State Police, and shall be the actual costs incurred
20 by the Arkansas State Police for conducting or obtaining the criminal history
21 check.

22 (d) The Arkansas State Police shall report the results to the office
23 for forwarding to the owner or employer as soon as possible. The Arkansas
24 State Police shall provide only such portions of the requested criminal
25 history record as relate to the offenses listed in Section 3 of this act.

26 (e) The office shall provide a copy of the report of the criminal
27 history check to the owner or employer and shall maintain a data base or
28 record of each person checked to enable the office to reference potential
29 employees prior to the submission of a request for employee check.

30 (f) If a new owner fails or refuses to cooperate in obtaining his
31 criminal history check, or if the owner has a criminal history record of any
32 of the offenses listed in Section 3 of this act, such circumstances shall be
33 grounds to deny the license or other operating authority of the owner_s
34 facility, provided that the process of obtaining the criminal history check
35 shall not delay the process of the application or granting of license or

1 operational authority.

2 (g) No employer shall knowingly permanently employ a person with a
3 criminal history record of offenses listed in Section 3 of this act. An
4 employer may permanently employ persons convicted of or pleading guilty or
5 nolo contendere to an offense classified as a misdemeanor if the crime is not
6 related to abuse, neglect, or exploitation of an adult, sale or use of
7 illegal drugs, or a sexual crime. The employer may temporarily employ an
8 applicant pending receipt of the criminal history check, after checking with
9 the office to determine whether the employee_s record is maintained in the
10 database or record file of criminal checks. The employer shall make the
11 request for a criminal history check within ten (10) days after the
12 nonlicensed person accepts temporary employment.

13 (h) Before making a temporary or permanent offer of employment, the
14 employer shall inform each nonlicensed applicant for employment that the
15 employer is required to obtain a criminal history record and that the
16 nonlicensed person has a right to obtain a copy of the results of the
17 criminal history check report.

18 (i) The owner or operator of a long-term care facility shall maintain
19 on file, subject to inspection by the office, evidence that criminal records
20 checks have been initiated on all employees seeking employment after October
21 1, 1995, and the results of the checks. Failure to maintain that evidence on
22 file will be prima facia grounds to impose a civil penalty pursuant to
23 regulations.

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25 **SECTION 3. Disqualification.**

26 (a) A conviction, plea of guilty or nolo contendere to any of the
27 following offenses shall disqualify persons from being an owner and prevent
28 an employer from making an offer of permanent employment providing health
29 related services:

30 (1) Homicide, as defined at Arkansas Code §§ 5-10-101 through 5-
31 10-105;

32 (2) Kidnapping and related offenses, as defined at Arkansas Code
33 §§ 5-11-102 through 5-11-106;

34 (3) Robbery, as defined at Arkansas Code § 5-12-102;

35 (4) Assault and battery, as defined at Arkansas Code §§ 5-13-201

1 through 5-13-207;

2 (5) Sexual offenses, as defined at Arkansas Code §§ 5-14-103
3 through 5-14-121;

4 (6) Offenses involving the family, as defined at Arkansas Code
5 § 5-26-202 and §§ 5-26-301 through 5-26-307;

6 (7) Offenses against children and incompetents, as defined at
7 Arkansas Code §§ 5-27-201 through 5-27-204, § 5-27-303 and § 5-27-402;

8 (8) Abuse of adults, as defined at Arkansas Code § 5-28-103;

9 (9) Burglary, as defined at Arkansas Code § 5-39-201;

10 (10) Arson, as defined at Arkansas Code § 5-38-301; and

11 (11) Violation of the Uniform Controlled Substances Act, as
12 defined at Arkansas Code § 5-64-401.

13 (b) The provisions of this section may be waived by the office upon
14 request by the employer or prospective employee. Circumstances for which a
15 waiver may be granted shall include, but not be limited to:

16 (1) Age at which the crime was committed;

17 (2) Circumstances surrounding the crime;

18 (3) Length of time since conviction;

19 (4) Subsequent work history;

20 (5) Employment references;

21 (6) Character references;

22 (7) Nurse aide registry records; and

23 (8) Other evidence demonstrating that the person does not pose a
24 threat to the health or safety of those to be cared for.

25 (c) If the criminal history check reveals that a nonlicensed person
26 hired on a temporary basis pursuant to Arkansas Code § 20-10-1202(d) or any
27 other nonlicensed person who is an employee has been convicted of any of the
28 offenses listed in subsection (a), the employer shall immediately terminate
29 the person's employment.

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31 **SECTION 4. Objection to Disqualification.**

32 The owner may obtain a copy of the criminal history check report from
33 the office. The nonlicensed person may obtain a copy of the criminal history
34 check report from the employer. If the owner or nonlicensed person
35 challenges the accuracy of the report, the owner or nonlicensed person shall

1 have thirty (30) days to obtain an amended report from the reporting law
2 enforcement agency before a final decision is made concerning ownership or
3 employment.

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5 SECTION 5. Confidentiality.

6 All criminal history records obtained under this act shall be
7 confidential and shall be restricted to the exclusive use of the office, the
8 requesting employer or the person checked. The records or information
9 contained therein shall not be released or otherwise disclosed to any other
10 person or agency except by court order and are specifically exempt from
11 disclosure under the Arkansas Freedom of Information Act, Arkansas Code 25-
12 19-101, et seq.

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14 SECTION 6. The office may promulgate regulations to implement this
15 act.

16 SECTION 7. All provisions of this act of a general and permanent
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
18 Code Revision Commission shall incorporate the same in the Code.

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20 SECTION 8. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

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26 SECTION 9. All laws and parts of laws in conflict with this act are
27 hereby repealed.

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/s/Rep. Young

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