

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

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

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35