

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

A Bill

HOUSE BILL 2051

4
5 By: Representatives Flanagin and Goodwin

For An Act To Be Entitled

9 "AN ACT TO SUBJECT PERSONS CARING FOR THE ELDERLY OR
10 INDIVIDUALS WITH DISABILITIES TO RANDOM STATEWIDE AND
11 NATIONWIDE CRIMINAL RECORDS CHECKS; AND FOR OTHER
12 PURPOSES."

Subtitle

15 "TO SUBJECT PERSONS CARING FOR THE
16 ELDERLY OR INDIVIDUALS WITH DISABILITIES
17 TO RANDOM STATEWIDE AND NATIONWIDE
18 CRIMINAL RECORDS CHECKS"

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

21
22 SECTION 1. 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 sixty-five (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, volunteer or works in

1 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) "Licensing agency" means the government agency charged with
 6 licensing the operator or qualified entity to provide care to the elderly or
 7 to individuals with disabilities or both.

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

10 (9) "Qualified entity" means a long-term care facility as defined by
 11 A.C.A. §§ 20-10-101 or A.C.A. 20-10-702, any facility defined by A.C.A.
 12 § 20-9-201, a home health care service as defined by A.C.A. § 20-10-801, and a
 13 hospice service as defined by A.C.A. § 20-7-117 whether or not the entity has
 14 applied for or possesses any license necessary for operation.

15 (10) "Report" means a statement of the criminal history of an
 16 applicant, employee, or operator issued by the Bureau.

17

18 SECTION 2. (a) When a person applies for a position as an employee of
 19 a qualified entity, the qualified entity shall require the applicant to
 20 complete a statement that:

21 (1) contains the name, address, and date of birth appearing on a
 22 valid identification document issued by a government entity to the person who
 23 is applying for the position;

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

27 (3) notifies the person that qualified entities may request an
 28 applicant or employee to submit to a criminal history check;

29 (4) informs the person how to object to the content of a report
 30 of the persons criminal history;

31 (5) contains the notarized signature of the applicant; and

32 (6) contains the following warning, "IF YOU PROVIDE FALSE
 33 INFORMATION ON THIS STATEMENT YOU MAY BE GUILTY OF A CLASS D FELONY AND
 34 SUBJECT TO A FINE OF UP TO \$10,000 OR IMPRISONMENT FOR UP TO 10 YEARS."

35 (b) Any person who knowingly provides false information on the
 36 statement required under subsection (a) of this section shall be guilty of a

1 Class D felony.

2

3 SECTION 3. (a)(1) When a person applies for a position as an employee
4 of a qualified entity and if the qualified entity intends to make an offer of
5 employment to the applicant, the qualified entity may require the applicant to
6 submit to a criminal history check by completing a form obtained from the
7 Bureau.

8 (2) A qualified entity, at any time, may require an employee to
9 submit to a criminal history check by completing a form obtained from the
10 Bureau.

11 (b) If a qualified entity requires an applicant or an employee to
12 submit a criminal history check, the qualified entity shall, within five (5)
13 days of receipt of the criminal history check form from the applicant or
14 employee, forward the criminal history check form to the Bureau and request
15 the Bureau to conduct a state and national criminal history check on the
16 applicant or employee. A criminal history check shall conform to the
17 applicable federal standards and shall include the taking of a complete set of
18 fingerprints. The qualified entity shall pay any fee associated with the
19 criminal history check of any applicant or employee.

20 (c)(1) A qualified entity shall randomly request applicants for
21 employment and employees to submit to a criminal history check, and shall
22 maintain on file, subject to inspection by the Arkansas Crime Information
23 Center, the Bureau, or the licensing agency, evidence that criminal history
24 checks have been randomly conducted on applicants and employees.

25 (2) Licensing agencies shall conduct random checks of qualified
26 entities to ensure that the qualified entities are requesting applicants for
27 employment and employees to submit to criminal history checks in accordance
28 with this act.

29 (d) Upon completion of a criminal history check on an applicant or
30 employee, the Bureau shall issue a report to the licensing agency of the
31 qualified entity. The licensing agency shall determine whether the applicant
32 or employee is disqualified from employment with the qualified entity and
33 forward its determination to the qualified entity. If the licensing agency
34 determines that an applicant or employee is disqualified from employment, then
35 the qualified entity shall deny employment to the applicant or immediately
36 terminate the employment of the employee.

1 (e) A qualified entity shall inform applicants, prior to making an
 2 offer of employment, and employees, immediately after the effective date of
 3 this act, that:

4 (1) they may be subject to a random criminal history check;

5 (2) continued employment is contingent upon the results of such a
 6 criminal history check; and

7 (3) the applicant or employee has the right to obtain a copy of
 8 the report of the persons criminal history from the Bureau.

9

10 SECTION 4. (a) Except as provided in subsection (c):

11 (1) A licensing agency shall issue a determination that a person
 12 is disqualified from employment with a qualified entity if the person has been
 13 found guilty of or pled guilty or nolo contendere to any of the offenses
 14 listed in subsection (b); and

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

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

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

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

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

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

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

26 (7) Permanent detention or restraint, as prohibited in A.C.A.
 27 § 5-11-106;

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

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

30 (10) Battery in the first degree, as prohibited in A.C.A.
 31 § 5-13-201;

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

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

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

- 1 (14) Rape and carnal abuse in the first degree, second degree,
2 and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;
- 3 (15) Sexual abuse in the first degree and second degree, as
4 prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
- 5 (16) Sexual solicitation of a child, as prohibited in A.C.A.
6 § 5-14-110;
- 7 (17) Violation of a minor in the first degree and second degree,
8 as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;
- 9 (18) Incest, as prohibited in A.C.A. § 5-26-202;
- 10 (19) Offenses against the family, as prohibited in A.C.A.
11 §§ 5-26-303 - 5-26-306
- 12 (20) Endangering the welfare of incompetent person in the first
13 degree, as prohibited in A.C.A. § 5-27-201;
- 14 (21) Endangering the welfare of a minor in the first degree, as
15 prohibited in A.C.A. § 5-27-203;
- 16 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)
17 and (a)(3) of A.C.A. § 5-27-221;
- 18 (23) Engaging children in sexually explicit conduct for use in
19 visual or print media, transportation of minors for prohibited sexual conduct,
20 or pandering or possessing visual or print medium depicting sexually explicit
21 conduct involving a child, or use of a child or consent to use of a child in a
22 sexual performance by producing, directing, or promoting a sexual performance
23 by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402,
24 and 5-27-403;
- 25 (24) Felony adult abuse, as prohibited in A.C.A. § 5-28-103;
- 26 (25) Theft of property, as prohibited in A.C.A. § 5-36-103;
- 27 (26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;
- 28 (27) Arson, as prohibited in A.C.A. § 5-38-301;
- 29 (28) Burglary, as prohibited in A.C.A. § 5-39-201;
- 30 (29) Felony violation of the Uniform Controlled Substances Act,
31 as prohibited in A.C.A. § 5-64-401;
- 32 (30) Promotion of prostitution in the first degree, as prohibited
33 in A.C.A. § 5-70-104;
- 34 (31) Stalking, as prohibited in A.C.A. § 5-71-229; and
- 35 (32) Criminal attempt, criminal complicity, criminal
36 solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201,

1 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this
 2 subsection.

3 (c) The provisions of this section may be waived by the licensing
 4 agency upon request by the qualified entity or by the person who is the
 5 subject of the criminal history check. Factors to be considered before
 6 granting a waiver shall include, but not be limited to:

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

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

18

19 SECTION 5. (a) After receipt of a request for a criminal history
 20 check, the Bureau shall make reasonable efforts to respond to requests for
 21 state criminal history checks within twenty (20) calendar days and to respond
 22 to requests for national criminal history checks within ten (10) calendar days
 23 after the receipt of a national criminal history check from the Federal Bureau
 24 of Investigation.

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

28

29 SECTION 6. (a) The Arkansas Crime Information Center, the Bureau, and
 30 each licensing agency shall cooperate to prepare forms and promulgate
 31 consistent regulations as necessary to implement this act.

32 (b)(1) Each licensing agency shall establish by regulation remedies to
 33 be imposed on the qualified entities licensed by the respective agencies for
 34 failure to comply with this act.

35 (2) Each licensing agency shall establish by regulation a
 36 procedure for applicants, employees, and qualified entities to challenge

1 determinations.

2

3 SECTION 7. Immunity.

4 (a) Individuals and qualified entities are immune from suit or
 5 liability for damages for acts or omissions, other than malicious acts or
 6 omissions, occurring in the performance of duties imposed by this act.

7 (b) A qualified entity acting in good faith shall not be liable for
 8 injuries proximately caused by hiring an employee during a conditional period
 9 of employment if the employee is found guilty of false swearing pursuant to
 10 A.C.A. 5-53-103 and if the qualified entity can establish the employee would
 11 not have been hired but for the false swearing.

12

13 SECTION 8. All reports obtained under this act are confidential and are
 14 restricted to the exclusive use of the Arkansas Crime Information Center, the
 15 Bureau, the licensing agency, and the person who is the subject of the report.
 16 The information contained in reports shall not be released or otherwise
 17 disclosed to any other person or agency except by court order and are
 18 specifically exempt from disclosure under the Arkansas Freedom of Information
 19 Act, A.C.A. § 25-19-101, et seq., except that the licensing agency is
 20 authorized and directed to furnish determinations to qualified entities.

21

22 SECTION 9. This act shall become effective on October 1, 1997.

23

24 SECTION 10. All provisions of this act of a general and permanent
 25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 26 Code Revision Commission shall incorporate the same in the Code.

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28 SECTION 11. If any provision of this act or the application thereof to
 29 any person or circumstance is held invalid, such invalidity shall not affect
 30 other provisions or applications of the act which can be given effect without
 31 the invalid provision or application, and to this end the provisions of this
 32 act are declared to be severable.

33

34 SECTION 12. All laws and parts of laws in conflict with this act are
 35 hereby repealed.