

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

As Engrossed: S1/27/99 S2/9/99 H3/5/99

A Bill

SENATE BILL 99

4
5 By: Senator Walters
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For An Act To Be Entitled

9 "AN ACT TO SUBJECT PERSONS PROVIDING PREHOSPITAL CARE
10 IN THE ARKANSAS EMERGENCY MEDICAL SERVICES SYSTEM TO A
11 CRIMINAL RECORDS CHECK; AND FOR OTHER PURPOSES."

Subtitle

14 "AN ACT TO SUBJECT PERSONS PROVIDING
15 PREHOSPITAL CARE IN THE ARKANSAS
16 EMERGENCY MEDICAL SERVICES SYSTEM TO A
17 CRIMINAL RECORDS CHECK. "
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

SECTION 1. Definitions.

As used in this act:

24 (1) 'Applicant' means any individual seeking Arkansas State EMT
25 certification or recertification;

26 (2) 'Bureau' means the Identification Bureau of the Department of the
27 Arkansas State Police;

28 (3) 'Care' means treatment, services, assistance, education, training,
29 instruction, or supervision in the prehospital (EMS) environment;

30 (4) 'Certification' means the official acknowledgment by the Department
31 that an individual has demonstrated competence to perform the emergency
32 medical services required for certification as provided by the Arkansas EMS

Rules and Regulations;

34 (5) 'Certifying agency' means the government agency charged with
35 certifying the qualified individual to provide prehospital care;

36 (6) 'Department' means the Arkansas Department of Health;

1 (7) 'Division of EMS and Trauma Systems (Division)' means the
2 organization within the Department responsible for the enforcement of EMS
3 legislation within the State of Arkansas;

4 (8) 'Emergency Medical Services System (EMS)' means the transportation
5 and medical care provided the ill or injured prior to arrival at a medical
6 facility by a certified emergency medical technician or other health care
7 provider and continuation of the initial emergency care within a medical
8 facility subject to the approval of the medical staff and governing board of
9 that facility;

10 (9) 'Emergency Medical Technician (EMT)' means the individual who has
11 been certified as an EMT, EMT-Ambulance, EMT-Intermediate or EMT-Paramedic and
12 who may perform those services equivalent to level of certification;

13 (10) 'Index' means the database, maintained by the Bureau, of criminal
14 records checks that have been conducted on applicants for Arkansas EMT
15 certification and recertification;

16 (11) 'National criminal history check' means a review of national
17 criminal records maintained by the Federal Bureau of Investigation based on
18 fingerprint identification or other positive identification methods;

19 (12) 'Recertification' means the official acknowledgment by the
20 Department that an individual has demonstrated competence to perform the
21 emergency medical services required for recertification as provided by the
22 Arkansas EMS Rules and Regulations;

23 (13) 'Report' means a statement of the criminal history of an applicant
24 issued by the Bureau; and

25 (14) 'State criminal history check' means a review of state criminal
26 records conducted by the Bureau using the Arkansas Crime Information Center
27 (ACIC).

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29 SECTION 2. Mandatory criminal records checks for EMTs.

30 (a) Any applicant applying for initial certification after July 1, 1999
31 shall complete a criminal history check form and shall request the Bureau to
32 conduct a state and/or national criminal history check on the applicant. The
33 applicant shall pay all appropriate fees for the state and/or national
34 criminal history check as set forth by the Bureau. The applicant shall attach
35 the criminal history check form to the Arkansas EMT certification application.
36 The Division shall forward the history check form and the appropriate fees to

1 the Bureau. The Bureau shall conduct a state and/or national criminal history
2 check on the applicant, and upon completion of the criminal history check, the
3 Bureau shall issue a report to the Division. The Division shall determine
4 whether the applicant is disqualified from certification based on the report
5 of the applicant's criminal history and forward its determination to the
6 applicant directly.

7 (b) Any applicant applying for recertification who holds a current
8 Arkansas EMT certification before July 1, 1999 shall complete a criminal
9 history check form no later than their current expiration date or July 1,
10 2001, whichever ever comes first, and shall request the Bureau to conduct a state
11 and/or national criminal history check on the applicant. The applicant shall
12 pay all appropriate fees for the state and/or national criminal history check
13 as set forth by the Bureau. The applicant shall attach the criminal history
14 check form to the Arkansas EMT certification application. The Division shall
15 forward the history check form and the appropriate fees to the Bureau. The
16 Bureau shall conduct a state and/or criminal history check on the applicant,
17 and upon completion of the criminal history check, the Bureau shall issue a
18 report to the Division. The Division shall determine whether the applicant is
19 disqualified from certification based on the report of the applicant's
20 criminal history and forward its determination to the applicant directly.

21 (c) If the applicant can provide proof of continuous residency in the
22 State of Arkansas for the past five (5) years or has been certified
23 continuously for the past five (5) years as an Arkansas EMT, then the
24 applicant shall only be required to have a state criminal history check
25 completed.

26 (d) If an applicant is requesting initial Arkansas EMT certification and
27 is from another state or the applicant can not provide proof of continuous
28 residency in the State of Arkansas for the past five (5) years, the applicant
29 shall be required to have both a state and national criminal history check
30 completed.

31 (e) Applicants for initial certification or recertification shall
32 complete a criminal history check form as provided by the Division and
33 accepted by the Bureau when requested by the Division, but shall only be
34 required to pay all appropriate fees one time only and not at each
35 recertification.

36 (f) The Division shall process all applications that have the criminal

1 history checks form attached to the Arkansas EMT application, but reserves the
2 right to suspend or revoke the applicants certification or recertification if
3 the applicant is found in the Bureau's index.

4 (g) Any currently certified Arkansas EMT who has, prior to this law
5 being enacted, submitted criminal background information specific to offenses
6 listed by the applicant on the Arkansas EMT certification application to the
7 Division, and has been allowed to become certified based upon the information
8 provided by the applicant, that certification shall not be suspended during
9 the request for waiver.

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11 SECTION 3.

12 (a) The Division shall maintain on file, subject to inspection by the
13 Arkansas Crime Information Center, or the Bureau, a copy of each criminal
14 records checks completed by all applicants requesting State certification or
15 recertification.

16 (b) The Division maintains the right to conduct additional state or
17 national criminal background checks, at the cost of the Division, on
18 applicants or Arkansas certified EMTs under investigation for violation of
19 current EMS laws or Rules and Regulations.

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21 SECTION 4.

22 (a) The Division shall issue a determination that a person is
23 disqualified from certification or recertification if the person has been
24 found guilty of or plead guilty or nolo contendere to any of the offenses
25 listed in subsection (b). However, the Division will forward a request for
26 waiver to the Arkansas Department of Health Director on all applicants who
27 have been convicted of the crimes listed below if five (5) years have passed
28 since the conviction or five (5) years have passed since release from
29 custodial confinement, or are currently certified EMTs, prior to making final
30 determination on certification or recertification. These individuals will not
31 be suspended prior to the Director making the final determination.

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

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

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

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

- 1 (5) Kidnapping, as prohibited in A.C.A. § 5-11-102;
- 2 (6) False imprisonment in the first degree, as prohibited in
- 3 A.C.A. §5-11-103;
- 4 (7) Permanent detention or restraint, as prohibited in A.C.A. § 5-
- 5 11-106;
- 6 (8) Robbery, as prohibited in A.C.A. § 5-12-102;
- 7 (9) Aggravated robbery, as prohibited in A.C.A. § 5-12-103;
- 8 (10) Battery in the first degree, as prohibited in A.C.A. § 5-13-
- 9 201;
- 10 (11) Aggravated assault, as prohibited in A.C.A. § 5-13-204;
- 11 (12) Introduction of controlled substance into body of another
- 12 person, as prohibited in A.C.A. § 5-13-210;
- 13 (13) Terroristic threatening in the first degree, as prohibited in
- 14 A.C.A. §5-13-301;
- 15 (14) Rape and carnal abuse in the first degree, second degree, and
- 16 third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;
- 17 (15) Sexual abuse in the first degree and second degree, as
- 18 prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
- 19 (16) Sexual solicitation of a child, as prohibited in A.C.A. § 5-
- 20 14-110;
- 21 (17) Violation of a minor in the first degree and second degree,
- 22 as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;
- 23 (18) Incest, as prohibited in A.C.A § 5-26-202;
- 24 (19) Offenses against the family, as prohibited in A.C.A. §§ 5-26-
- 25 303 - 5-26-306;
- 26 (20) Endangering the welfare of an incompetent person in the first
- 27 degree, as prohibited in A.C.A. § 5-27-201;
- 28 (21) Endangering the welfare of a minor in the first degree, as
- 29 prohibited in A.C.A. § 5-27-203;
- 30 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)
- 31 and (a)(3) of A.C.A. § 5-27-221;
- 32 (23) Engaging children in sexually explicit conduct for use in
- 33 visual or print media, transportation of minors for prohibited sexual conduct,
- 34 or pandering or possessing visual or print medium depicting sexually explicit
- 35 conduct involving a child, or use of a child or consent to use of a child in a
- 36 sexual performance by producing, directing, or promoting a sexual performance

1 by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402,
2 and 5-27-403;

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

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

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

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

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

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

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

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

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

16 (33) Fourth or subsequent DWI violations which constitute felony
17 offenses under A.C.A. § 5-65-111(b)(3).

18 (c) The provisions of this section may be waived by the Department upon
19 written request by the person who is the subject of the criminal history
20 check. The written request for waiver must be mailed to the Arkansas
21 Department of Health Director within fifteen (15) calendar days after receipt
22 of the determination by the Division. Factors to be considered before granting
23 a waiver shall include, but not be limited to:

24 (1) The age at which the crime was committed;

25 (2) The circumstances surrounding the crime;

26 (3) The length of time since the adjudication of guilt;

27 (4) The person's subsequent work history;

28 (5) The person's employment references;

29 (6) The person's character references; and

30 (7) Any other evidence demonstrating that the person does not pose
31 a threat to the health or safety of persons to be cared for.

32 (d) An applicant shall not be disqualified from certification or
33 recertification when the applicant has been found guilty of or has pled guilty
34 or nolo contendere to a misdemeanor if the offense did not involve
35 exploitation of an adult, abuse of a person, neglect of a person, or sexual
36 contact.

1 (e) If an applicant fails or refuses to cooperate in obtaining criminal
2 records checks, such circumstances shall be grounds to deny or revoke the
3 applicant's certification.

4 (f) An Arkansas certified EMT shall notify the Division of any
5 convictions or guilty plea or nolo contendere to any offenses listed in
6 Section 4.b. within ten (10) calendar days after the convictions or guilty
7 plea or nolo contendere.

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9 SECTION 5. A request for a state and/or national criminal history
10 records check on a person shall include a completed form provided by the
11 Division and as required by the Bureau.

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13 SECTION 6.

14 (a) After receipt of a request for a criminal history check, the Bureau
15 shall make reasonable efforts to respond to requests for state and/or national
16 criminal history checks within twenty (20) calendar days.

17 (b) The Bureau shall maintain an index of the results of each
18 applicant's criminal history check.

19 (c) The Bureau shall furnish a report to the Division upon completion of
20 each criminal history check.

21 (d) The Division shall develop forms, which are approved by the Bureau,
22 to be used for criminal history checks conducted under this act.

23 (e) The Division shall develop and maintain a database of determinations
24 regarding applicants.

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26 SECTION 7. (a) The Arkansas Crime Information Center, the Bureau, and
27 the Division shall cooperate to prepare forms and promulgate consistent
28 regulations as necessary to implement this act.

29 (b) Any applicant failing to comply with this act shall be denied
30 certification or recertification until such time compliance is made with this
31 act.

32 (c) The Division shall follow the established procedures for applicants
33 to challenge determinations in accordance with the Administrative Procedures
34 Act as stated in the current EMS Rules and Regulations.

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

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2 SECTION 8. Confidentiality.

3 All reports obtained under this act are confidential and are restricted
4 to the exclusive use of the Arkansas Crime Information Center, the Bureau, the
5 Division, and the person who is the subject of the report. The information
6 contained in reports shall not be released or otherwise disclosed to any other
7 person or agency except by court order and are specifically exempt from
8 disclosure under the Arkansas Freedom of Information Act, beginning at
9 A.C.A. § 25-19-101, except that the Division is authorized and directed to
10 furnish determinations to qualified entities.

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12 SECTION 9. Immunity.

13 Individuals are immune from suit or liability for damages for acts or
14 omissions, other than malicious acts or omissions, occurring in the
15 performance of duties imposed by this act.

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17 SECTION 10. This act shall not apply to persons who render care subject
18 to professional licenses obtained pursuant to:

19 (1) A.C.A. Title 17, Chapter 27, regarding licensed professional
20 counselors;

21 (2) A.C.A. Title 17, Chapter 46, regarding social workers;

22 (3) A.C.A. Title 17, Chapter 82, regarding dentists;

23 (4) A.C.A. Title 17, Chapter 87, regarding nurses;

24 (5) A.C.A. Title 17, Chapter 88, regarding occupational therapists;

25 (6) A.C.A. Title 17, Chapter 92, regarding pharmacists;

26 (7) A.C.A. Title 17, Chapter 93, regarding physical therapists;

27 (8) A.C.A. Title 17, Chapter 95, regarding physicians and surgeons;

28 (9) A.C.A. Title 17, Chapter 96, regarding podiatrists;

29 (10) A.C.A. Title 17, Chapter 97, regarding psychologists and
30 psychological examiners;

31 (11) A.C.A. Title 17, Chapter 100, regarding speech-language
32 pathologists and audiologists; or

33 (12) A.C.A. Title 20, Chapter 10, Subchapter 4, regarding nursing home
34 administrators.

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36 SECTION 11. All provisions of this Act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

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4 SECTION 12. If any provision of this Act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the Act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 Act are declared to be severable.

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10 SECTION 13. All laws and parts of laws in conflict with this Act are
11 hereby repealed.

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13 SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined by the
14 Eighty-second General Assembly, that sometimes persons providing care in the
15 prehospital environment have criminal histories that impair their ability to
16 provide adequate care; that injuries inflicted by these caretakers in
17 positions of trust are devastating to the sense of well-being in our
18 communities; and that it is crucial to the health, safety, and welfare of the
19 citizens of the State of Arkansas that a criminal history check be conducted
20 on all persons providing care in the prehospital environment so that those
21 persons who are a danger can be identified. Therefore, an emergency is
22 declared to exist and this Act being immediately necessary for the
23 preservation of the public peace, health and safety shall become effective on
24 the date of its approval by the Governor. If the bill is neither approved nor
25 vetoed by the Governor, it shall become effective on the expiration of the
26 period of time during which the Governor may veto the bill. If the bill is
27 vetoed by the Governor and the veto is overridden, it shall become effective
28 on the date the last house overrides the veto.

29 /s/ Walters
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