

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.

State of Arkansas

As Engrossed: H3/20/01

83rd General Assembly

A Bill

Regular Session, 2001

HOUSE BILL 1805

By: Representative Carson

For An Act To Be Entitled

AN ACT TO AMEND VARIOUS SECTIONS OF THE CRIMINAL RECORDS CHECK FOR PERSONS CARING FOR THE ELDERLY AND INDIVIDUALS WITH DISABILITIES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND VARIOUS SECTIONS OF THE CRIMINAL RECORDS CHECK FOR PERSONS CARING FOR THE ELDERLY AND INDIVIDUALS WITH DISABILITIES.

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

SECTION 1. Arkansas Code 20-33-203(c) is amended to read as follows:

(c)(1) Upon completion of a criminal history check on an applicant, ElderChoices provider, or employee, the bureau shall issue a report to the licensing or requesting agency.

(2) The licensing agency shall determine whether the applicant or employee is disqualified from employment with the qualified entity and shall forward its determination to the qualified entity.

(3)(A) If the licensing agency determines that an applicant or employee is disqualified from employment, then the qualified entity shall terminate the employment of the employee or shall deny employment to the applicant ~~subject to the waiver provisions of § 20-33-205(d).~~

(B) If the requesting agency determines that the ElderChoices provider is disqualified from providing care, the requesting agency shall forward its determination to the provider, and the provider shall

1 be prohibited from providing care to the elderly or to individuals with
2 disabilities ~~subject to the waiver provisions of § 20-33-205(d).~~

3
4 SECTION 2. Arkansas Code 20-33-205 is amended to read as follows:

5 20-33-205. Provisional licenses - Disqualification from employment -
6 Resubmission of applications ~~—Waiver and exceptions~~ - Denial or revocation -
7 Penalties.

8 (a) Except as provided in subsection (c) of this section:

9 (1) A licensing agency shall issue a forty-five-day provisional
10 license to a qualified entity whose operator has been found guilty or has pled
11 guilty or nolo contendere to any of the offenses listed in subsection (b) of
12 this section;

13 (2) A licensing agency shall issue a determination that a person
14 is disqualified from employment with a qualified entity if the person has been
15 found guilty or plead guilty or nolo contendere to any of the offenses listed
16 in subsection (b) of this section; and

17 (3)(A) A qualified entity shall not knowingly employ a person who
18 has pleaded guilty or nolo contendere to or has been found guilty of any of
19 the offenses listed in subsection (b) of this section by any court in the
20 State of Arkansas or of any similar offense by a court in another state or of
21 any similar offense by a federal court.

22 (B) Except as provided in subsection (c) of this section:

23 ~~(1)(i)~~ A licensing agency shall issue a forty-five-
24 day provisional license to a qualified entity whose operator has been found
25 guilty or pleaded guilty or nolo contendere to any of the offenses listed in
26 subsection (b) of this section;

27 ~~(2)(ii)~~ A licensing agency shall issue a
28 determination that a person is disqualified from employment with a qualified
29 entity if the person has been found guilty or pleaded guilty or nolo
30 contendere to any of the offenses listed in subsection (b) of this section,
31 and a requesting agency shall issue a determination that a person or
32 ElderChoices provider is disqualified from providing care to the elderly or to
33 an individual with a disability or both if the person or provider has been
34 found guilty or pleaded guilty or nolo contendere to any of the offenses
35 listed in subsection (b) of this section.

36 (b)(1) Capital murder, as prohibited in § 5-10-101;

- (2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter, as prohibited in § 5-10-104;
- (4) Negligent homicide, as prohibited in § 5-10-105;
- (5) Kidnapping, as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree, as prohibited in § 5-11-103;
- (7) Permanent detention or restraint, as prohibited in § 5-11-106;
- (8) Robbery, as prohibited in § 5-12-102;
- (9) Aggravated robbery, as prohibited in § 5-12-103;
- (10) Battery ~~in the first degree~~, as prohibited in §§ 5-13-201, 5-13-202, and 5-13-203;
- (11) Aggravated assault, as prohibited in § 5-13-204;
- (12) Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree, as prohibited in § 5-13-301;
- (14) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
- (15) Sexual abuse in the first degree and second degree, as prohibited in §§ 5-14-108 and 5-14-109;
- (16) Sexual solicitation of a child, as prohibited in § 5-14-110;
- (17) Violation of a minor in the first degree and second degree, as prohibited in §§ 5-14-120 and 5-14-121;
- (18) Incest, as prohibited in § 5-26-202;
- (19) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
- (20) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201;
- (21) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (22) Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (a)(3);
- (23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct,

1 pandering or possessing visual or print medium depicting sexually explicit
2 conduct involving a child, or use of a child or consent to use of a child in a
3 sexual performance by producing, directing, or promoting a sexual performance
4 by a child, as prohibited in § 5-27-303, § 5-27-304, § 5-27-305, § 5-27-402,
5 and § 5-27-403;

6 (24) Felony adult abuse, as prohibited by § 5-28-103;

7 (25) Theft of property, as prohibited in § 5-36-103;

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

9 (27) Arson, as prohibited in § 5-38-301;

10 (28) Burglary, as prohibited in § 5-39-201;

11 (29) Felony violation of the Uniform Controlled Substances Act,
12 as prohibited in § 5-64-401;

13 (30) Promotion of prostitution in the first degree, as prohibited
14 in § 5-70-104;

15 (31) Stalking, as prohibited in § 5-71-229; ~~and~~

16 (32) Criminal attempt, criminal complicity, criminal
17 solicitation, or criminal conspiracy, as prohibited in § 5-3-201, § 5-3-202, §
18 5-3-301, and § 5-3-401, to commit any of the offenses listed in this
19 subsection;

20 (33) Forgery, as prohibited in § 5-37-201;

21 (34) Breaking or entering, as prohibited in § 5-39-202; and

22 (35) Obtaining a controlled substance by fraud, as prohibited in
23 § 5-64-403.

24 (c) A qualified entity that is issued a provisional license based on
25 the criminal history of the operator may resubmit the application for
26 licensure with a new operator. If the qualified entity does not resubmit the
27 application within fifteen (15) days of the issuance of the provisional
28 license, then the qualified entity's license shall be immediately denied or
29 revoked.

30 (d)(1) The provisions of this section ~~may~~ shall not be waived by the
31 licensing or requesting agency ~~upon request by the person who is the subject~~
32 ~~of the criminal history check. Factors to be considered before granting a~~
33 ~~waiver shall include, but not be limited to:~~

34 ~~(A) The age at which the crime was committed;~~

35 ~~(B) The circumstances surrounding the crime;~~

36 ~~(C) The length of time since the adjudication of guilt;~~

~~(D) The person's subsequent work history;~~
~~(E) The person's employment references;~~
~~(F) The person's character references;~~
~~(G) The nurses' aide registry records; and~~
~~(H) Any other evidence demonstrating that the person does not pose a threat to the health or safety of persons to be cared for.~~

(2)(A) Except as provided in subdivision (B) of this subdivision (2), a conviction for an offense listed in subsection (b) of this section shall not disqualify an applicant for employment if the date of conviction of the offense is at least ten (10) years from the date of the application, and the individual has no criminal convictions of any type or nature during the ten-year period. To the extent there is any conflict with § 17-1-103, this section shall be deemed to supersede § 17-1-103.

(B) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following offenses may not be waived by the licensing agency shall result in permanent disqualification of employment:

- ~~(A) (i)~~ Capital murder, as prohibited in § 5-10-101;
- ~~(B) (ii)~~ Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- ~~(C) (iii)~~ Kidnapping, as prohibited in § 5-11-102;
- ~~(D) (iv)~~ Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
- ~~(E) (v)~~ Sexual abuse in the first and second degree, as prohibited in §§ 5-14-108 and 5-14-109;
- ~~(F) (vi)~~ Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- ~~(G) (vii)~~ Felony adult abuse, as prohibited by § 5-28-103; and
- ~~(H) (viii)~~ Arson, as prohibited in § 5-38-301.

(e)(1) A qualified entity shall not be disqualified from licensure when the operator has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(2) An applicant, ElderChoices provider, or employee shall not be disqualified from permanent employment or providing care to the elderly or an

individual with a disability or both when the applicant, provider, or employee has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(f) If an operator or qualified entity fails or refuses to cooperate in obtaining criminal records checks, such circumstances shall be grounds to deny or revoke the qualified entity's license or other operating authority, provided the process of obtaining criminal records checks shall not delay the process of the application for a license or other operational authority.

(g) Any unlicensed qualified entity violating this subchapter shall be guilty of a Class A misdemeanor for each violation.

SECTION 3. Arkansas Code 20-33-211 is amended to read as follows:

20-33-211. Exclusions - Licensed professionals - Completion of criminal history check.

(a) This subchapter shall not apply to persons who render care subject to professional licenses obtained pursuant to:

(1) § 17-27-101 et seq., regarding licensed professional counselors;

(2) § 17-103-101 et seq., regarding social workers;

(3) § 17-82-101 et seq., regarding dentists;

(4) § 17-87-101 et seq., regarding nurses;

(5) § 17-88-101 et seq., regarding occupational therapists;

(6) § 17-92-101 et seq., regarding pharmacists;

(7) § 17-93-101 et seq., regarding physical therapists;

(8) § 17-95-201 et seq., regarding physicians and surgeons;

(9) § 17-96-101 et seq., regarding podiatrists;

(10) § 17-97-101 et seq., regarding psychologists and psychological examiners; or

(11) § 17-100-101 et seq., regarding speech-language pathologists and audiologists; ~~or,~~

~~(12) § 20-10-401 et seq., regarding nursing home administrators.~~

~~(b) The term "professional license" shall not include certification. Certified persons include, but are not limited to, certified nursing assistants and certified home health aides.~~

~~(c)~~ (b) Any person who submits evidence of having maintained employment

1 in the State of Arkansas for the past twelve (12) months and of successfully
2 completing a criminal history check within the last twelve (12) months ~~or in~~
3 ~~accordance with that person's professional license~~ shall not be required to
4 apply for a criminal history check under this subchapter.

5 /s/ Carson
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