

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

SENATE BILL 819

4
5 By: Senator Laverty
6 By: Representatives Cooper, Everett

For An Act To Be Entitled

7
8
9
10 AN ACT TO IMPROVE ADMINISTRATIVE PROCESSES AT THE
11 DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT
12 OF HEALTH TO BETTER PROTECT PERSONS WHO HAVE
13 DISABILITIES, PERSONS WHO HAVE DEVELOPMENTAL
14 DISABILITIES, PERSONS WHO ARE ELDERLY, AND
15 CHILDREN BY CONSOLIDATING THE VARIOUS PROCESSES
16 FOR CONDUCTING CRIMINAL HISTORY CHECKS FOR
17 DIVERSE SERVICE PROVIDERS AND THEIR EMPLOYEES;
18 AND FOR OTHER PURPOSES.

Subtitle

19
20
21 TO IMPROVE ADMINISTRATIVE PROCESSES AT
22 THE DEPARTMENT OF HUMAN SERVICES AND THE
23 DEPARTMENT OF HEALTH TO BETTER PROTECT
24 CLIENTS BY CONSOLIDATING THE VARIOUS
25 PROCESSES FOR CONDUCTING CRIMINAL
26 HISTORY CHECKS FOR DIVERSE SERVICE.

27
28
29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

30
31 SECTION 1. Arkansas Code §12-12-1012(a), regarding fees for
32 noncriminal justice records searches, is amended to read as follows:

33 (a)(1)(A) A fee may be charged for providing criminal history
34 information for noncriminal justice purposes.

35 (B) However, the fee for providing information may be
36 waived at the request of a:



1 (i) Local school district, for providing information
2 concerning a volunteer in a public school program; or

3 (ii)(a) Nonprofit organization whose purpose is to
4 serve juveniles, for providing information concerning volunteers to the
5 nonprofit organization.

6 (b) This exemption shall not be applicable to
7 a child care facility whose owner, operator, or employees are required under
8 ~~§ 20-78-601 et seq.~~ § 20-78-606 to apply to the Identification Bureau of the
9 Department of Arkansas State Police for a criminal records check.

10
11 SECTION 2. Arkansas Code §17-87-707(b), regarding disciplinary actions
12 for the Board of Nursing, is amended to read as follows:

13 (b) The board shall refuse to issue or shall revoke the certificate of
14 any person who would be disqualified from employment under the provisions of
15 ~~§ 20-33-205~~ § 20-33-213.

16
17 SECTION 3. Arkansas Code §19-6-465 is amended to read as follows:
18 19-6-465. Child Care Fund.

19 The Child Care Fund shall consist of those special revenues as
20 specified in § 19-6-301(133) and (157) and moneys received from the
21 Department of Human Services, there to be used by the Division of Child Care
22 and Early Childhood Education of the Department of Human Services exclusively
23 to provide grants to child care facilities for enhancement of the facility or
24 for training of personnel in child care facilities and to meet the costs of
25 conducting the statewide criminal records checks required under ~~§ 20-78-602~~ §
26 20-78-606, all as set out in § 20-78-201 et seq.

27
28 SECTION 4. Arkansas Code Title 20 is amended to add a new Chapter read
29 as follows:

30 Chapter 38. Criminal Background Checks.
31 20-38-101. Definitions.

32 (1) "Care" means treatment, services, assistance, education,
33 training, instruction, or supervision for which the service provider is
34 compensated either directly or indirectly;

35 (2) "Determination" means the determination made by the
36 licensing or certifying agency that a service provider, operator, applicant

1 for employment with, or employee of a service provider is disqualified from
 2 licensure, exemption from licensure, certification, any other operating
 3 authority, or employment based on the criminal history of the service
 4 provider, operator, applicant, or employee;

5 (3)(A) "Employee" means a person who:

6 (i) Has unsupervised access to clients of a service
 7 provider except as provided in subdivision (3)(B) of this section; and

8 (ii) A person who:

9 (a) Provides care to clients of a service
 10 provider on behalf of, under the supervision of, or by arrangement with the
 11 service provider;

12 (b) Is employed by a service provider to
 13 provide care to clients of the service provider;

14 (c) Is a temporary employee placed with a
 15 service provider to provide care to clients of the service provider; or

16 (d) Resides in an alternative living home in
 17 which services are provided to an individual with developmental disabilities.

18 (B) "Employee" does not include a person who:

19 (i) Is a family member of a client receiving care
 20 from a service provider;

21 (ii) Is a volunteer who does not have:

22 (a) Unsupervised access to clients of a
 23 service provider; and

24 (b) Regular, routine contact with clients; or

25 (iii) Works in an administrative capacity and does
 26 not provide direct client care;

27 (4) "Licensing or certifying agency" means the state agency
 28 charged with licensing, exempting from licensure, certifying, or granting
 29 other operating authority to a service provider;

30 (5) "National criminal history records check" means a review of
 31 criminal history records maintained by the Federal Bureau of Investigation
 32 based on fingerprint identification or other positive identification methods;

33 (6) "Operator" means the person signing the application of a
 34 service provider for licensure, exemption from licensure, certification, or
 35 any other operating authority;

36 (7) "Registry records check" means a review of records in one

1 (1) or more of the following databases maintained by the Department of Human
 2 Services;

3 (A) The Child Maltreatment Registry;

4 (B) The Adult Maltreatment Registry; and

5 (C) The Employment Clearance Registry.

6 (8) "Report" means a statement of the criminal history of a
 7 service provider, operator, applicant for employment with, or employee of a
 8 service provider issued by the Identification Bureau of the Department of
 9 Arkansas State Police;

10 (9) "Service provider" means any of the following:

11 (A) An Alternative Community Services Waiver Program
 12 provider certified by the Division of Developmental Disabilities Services of
 13 the Department of Human Services;

14 (B) A child care facility as defined by § 20-78-202;

15 (C) A church-exempt child care facility as recognized
 16 under § 20-78-209;

17 (D) An early intervention provider certified by the
 18 Division of Developmental Disabilities Services of the Department of Human
 19 Services;

20 (E) An ElderChoices provider certified by the Division of
 21 Aging of the Department of Human Services;

22 (F) A home health care service under § 20-10-801;

23 (G) A hospice program under § 20-7-117;

24 (H) A long-term care facility as defined by § 20-10-702;

25 or

26 (I) A nonprofit community program as defined by § 20-48-
 27 101.

28 (10) "State criminal history records check" means a review of
 29 state criminal history records conducted by the bureau; and

30 (11)(A) "Volunteer" means a person who has unsupervised access
 31 to clients of a service provider and regular, routine contact with clients
 32 without any express or implied promise of compensation from the service
 33 provider or client.

34 (B) "Volunteer" does not include a family member of a
 35 client receiving care from a service provider.

36 20-38-102. Criminal history records checks – Operators.

1 (a)(1)(A) When an operator applies for a license, exemption from
2 licensure, certificate, or other operating authority for a service provider
3 from the licensing or certifying agency, the operator shall submit a criminal
4 history check form and a complete set of fingerprints to the Identification
5 Bureau of the Department of Arkansas State Police and request a state
6 criminal history check and a national criminal history check on the operator.

7 (B) The operator shall attach evidence of the request for
8 a criminal history check to the application for a service provider's license,
9 exemption from licensure, certificate, or other operating authority.

10 (2) The bureau shall conduct a state criminal history check and
11 request a national criminal history check on the operator. Upon completion
12 of the criminal history check, the bureau shall issue a report to the
13 licensing or certifying agency.

14 (3) Based on the criminal history records check, the licensing
15 or certifying agency shall determine whether the operator is disqualified
16 from licensure, exemption from licensure, certification, or other operating
17 authority.

18 (4) The licensing or certifying agency shall forward its
19 determination to the operator and the service provider seeking licensure,
20 exemption from licensure, certification, or other operating authority.

21 (b) Except as provided in subsection (c) of this section, this section
22 applies only to the first application signed by an operator if the operator
23 has served continuously in a position as an operator with not more than a
24 sixty-day interruption in service.

25 (c) Operators are required to undergo periodic criminal history
26 records checks no less than one (1) time every five (5) years.

27
28 20-38-103. Criminal history records checks – Applicants and employees
29 of service providers.

30 (a)(1) Before making an offer of employment, a service provider shall
31 inform an applicant that employment is contingent on the satisfactory results
32 of criminal history records checks.

33 (2) If a service provider intends to make an offer of employment
34 to an applicant, the service provider shall conduct criminal history records
35 checks on the applicant under this section.

36 (3) If the service provider can verify that the applicant has

1 lived continuously in the state for the past six (6) years, the service
2 provider shall require the applicant to submit a criminal history records
3 check form and shall:

4 (A) Initiate a state criminal history records check on the
5 applicant with the Identification Bureau of the Department of Arkansas State
6 Police; and

7 (B) Conduct a registry check on the applicant in
8 accordance with the rules of the appropriate licensing or certifying agency.

9 (4) If the service provider cannot verify that the applicant has
10 lived continuously in the state for the past six (6) years, the service
11 provider shall require the applicant to submit a criminal history records
12 check form and a complete set of fingerprints and shall:

13 (A) Initiate a state criminal history records check on the
14 applicant with the Identification Bureau of the Department of Arkansas State
15 Police;

16 (B) Forward the applicant's fingerprints to the bureau to
17 initiate a national criminal history records check on the applicant; and

18 (C) Conduct a registry check on the applicant in
19 accordance with the rules of the appropriate licensing or certifying agency.

20 (b) After a service provider satisfies the regulatory requirements of
21 the appropriate licensing or certifying agency governing registry checks of
22 applicants for employment, the service provider may temporarily employ an
23 applicant pending receipt of a determination from the appropriate licensing
24 or certifying agency.

25 (c) If a service provider uses temporary employees as caregivers, the
26 service provider shall:

27 (1) Use a contract to detail the requirements for placing
28 temporary employees with the service provider; and

29 (2) Ensure that the contract pertaining to the service
30 provider's use of temporary employees requires the entity providing the
31 temporary employees to comply with the following terms:

32 (A) The entity is responsible for conducting a criminal
33 history records check on each temporary employee under this subchapter before
34 the placement of the temporary employee with the service provider; and

35 (B) The entity shall maintain all documentation regarding
36 criminal history records checks for each temporary employee placed with a

1 service provider and shall make the documentation available to the service
2 provider or the appropriate licensing agency upon request.

3 (d) A service provider shall inform employees that continued
4 employment is contingent on the satisfactory results of criminal history
5 records checks and shall conduct periodic criminal history records checks on
6 all employees no less than one (1) time every five (5) years.

7 (e)(1)(A) When a service provider initiates a request for a state
8 criminal history records check on an applicant for employment with or an
9 employee of the service provider, the bureau shall issue within twenty-four
10 (24) hours an electronic report to the service provider and the licensing or
11 certifying agency.

12 (B) When a service provider initiates a request for a
13 national criminal history records check on an applicant for employment with
14 or an employee of the service provider, the bureau shall issue within ten
15 (10) days a report to the service provider and the licensing or certifying
16 agency.

17 (2) After receipt of a report from the bureau, the licensing or
18 certifying agency shall determine whether the applicant or employee is
19 disqualified from employment with the service provider based on the criminal
20 history of the applicant or employee and shall forward its determination to
21 the service provider.

22 (3)(A) If the licensing or certifying agency determines that an
23 applicant or employee is disqualified from employment based on the criminal
24 history of the applicant or employee, the service provider shall deny
25 employment to the applicant or shall terminate the employment of the
26 employee.

27 (B) If the licensing or certifying agency issues a
28 determination that an applicant or employee is not disqualified from
29 employment or if there is no criminal history on an applicant or employee,
30 the service provider may employ the applicant or continue the employment of
31 the employee.

32 (f)(1) The subject of a criminal history records check shall not be
33 assessed a fee for the statewide criminal records check records check
34 required under this section.

35 (2) The subject of a criminal history records check shall be
36 responsible for the payment of any fee associated with the nationwide

1 criminal records check.

2 (g) A person may challenge the completeness or accuracy of his or her
3 criminal history information under § 12-12-1013.

4
5 20-38-104. Criminal history records checks – Volunteers.

6 (a) A service provider shall inform every volunteer that acceptance
7 for service involving unsupervised access to clients of the service provider
8 and regular, routine contact with clients is contingent on the satisfactory
9 results of criminal history records checks.

10 (b) If a volunteer will have unsupervised access to a client of a
11 service provider and regular, routine contact with clients, the service
12 provider shall conduct criminal history records checks on the applicant
13 under this subchapter.

14
15 20-38-105. Request for records check – Requirement.

16 (a) A request for a state criminal history records check on a person
17 shall include a completed statement that:

18 (1) Contains the name, address, and date of birth appearing on a
19 valid identification document issued by a government entity to the person who
20 is the subject of the check;

21 (2) Indicates whether the person has been found guilty of or
22 pleaded guilty or nolo contendere to a crime and, if so, includes a
23 description of the crime and the particulars of the finding of guilt or the
24 plea;

25 (3) Notifies the person that a service provider may conduct
26 national criminal history records checks, state criminal history records
27 checks, and registry records checks on the person;

28 (4) Provides the consent of the person who is the subject of the
29 check to disclosure of checks, reports, and determinations under this
30 subchapter;

31 (5) Notifies the person that if the person is employed by the
32 service provider, the service provider may choose to deny the employee
33 unsupervised access to persons to whom the service provider provides care;

34 (6) Informs the person how to object to the content of reports;
35 and

36 (7) Contains the notarized signature of the person who is the

1 subject of the check.

2 (b)(1) A request for a national criminal history records check on a
3 person shall conform to applicable federal standards and shall include a
4 complete set of fingerprints.

5 (2) The Identification Bureau of the Department of Arkansas
6 State Police may maintain fingerprints submitted for a national criminal
7 history records check in an automated fingerprint identification system.

8
9 20-38-106. Disqualification from employment – Denial or revocation –
10 Penalties.

11 (a)(1) The licensing or certifying agency shall issue a determination
12 that a person is disqualified as a service provider, operator, or from
13 employment with a service provider if the person:

14 (A) Has been found guilty of or pleaded guilty or nolo
15 contendere to any of the offenses listed in subsection (b) of this section;
16 or

17 (B) Is registered as a sex offender or is required to
18 register as a sex offender.

19 (2) Except as provided in subdivisions (c)(1)(B)-(D) of this
20 section and except as provided in subsection (f) of this section, a service
21 provider shall not knowingly employ a person and the licensing or certifying
22 agency shall not knowingly contract with or license, exempt from licensure,
23 certify, or otherwise authorize a person to be a service provider if the
24 person:

25 (A) Has pleaded guilty or nolo contendere to or has been
26 found guilty of any of the offenses listed in subsection (b) of this section
27 by any court in the State of Arkansas or of any similar offense by a court in
28 another state or of any similar offense by a federal court; or

29 (B) Is registered as a sex offender or is required to
30 register as a sex offender.

31 (b) As used in this section, the following criminal offenses apply to
32 this section:

33 (1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202,
34 criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401;

35 (2) Capital murder, § 5-10-101;

36 (3) Murder, §§ 5-10-102 and 5-10-103;

- 1 (4) Manslaughter, § 5-10-104;
- 2 (5) Negligent homicide, § 5-10-105;
- 3 (6) Kidnapping, § 5-11-102;
- 4 (7) False imprisonment in the first degree, § 5-11-103;
- 5 (8) Permanent detention or restraint, § 5-11-106;
- 6 (9) Robbery, §§ 5-12-102 and 5-12-103;
- 7 (10) Battery, §§ 5-13-201 and 5-13-202;
- 8 (11) Assault, §§ 5-13-204 and 5-13-206;
- 9 (12) Coercion, § 5-13-208;
- 10 (13) Introduction of controlled substance into body of another
11 person, § 5-13-210;
- 12 (14) Terroristic threatening, § 5-13-301;
- 13 (15) Terroristic act, § 5-13-310;
- 14 (16) Any sexual offense, § 5-14-101 et seq.;
- 15 (17) Voyeurism, § 5-16-102;
- 16 (18) Death threats concerning a school employee or student, § 5-
17 17-101;
- 18 (19) Incest, § 5-26-202;
- 19 (20) Domestic battery, § 5-26-303 – § 5-26-306;
- 20 (21) Interference with visitation, § 5-26-501;
- 21 (22) Interference with court-ordered custody, § 5-26-502;
- 22 (23) Endangering the welfare of an incompetent person, §§ 5-27-
23 201 and 5-27-202;
- 24 (24) Endangering the welfare of a minor, §§ 5-27-205 and 5-27-
25 206;
- 26 (25) Contributing to the delinquency of a minor, § 5-27-209;
- 27 (26) Contributing to the delinquency of a juvenile, § 5-27-220;
- 28 (27) Permitting abuse of a minor, § 5-27-221;
- 29 (28) Soliciting money or property from incompetents, § 5-27-229;
- 30 (29) Engaging children in sexually explicit conduct for use in
31 visual or print media, § 5-27-303;
- 32 (30) Pandering or possessing visual or print medium depicting
33 sexually explicit conduct involving a child, § 5-27-304;
- 34 (31) Transportation of minors for prohibited sexual conduct, §
35 5-27-305;
- 36 (32) Employing or consenting to the use of a child in a sexual

1 performance, § 5-27-402;

2 (33) Producing, directing, or promoting a sexual performance by
3 a child, § 5-27-403;

4 (34) Computer crimes against minors, § 5-27-601 et seq.;

5 (35) Felony abuse of an endangered or impaired person, § 5-28-
6 103;

7 (36) Theft of property, § 5-36-103;

8 (37) Theft of services, § 5-36-104;

9 (38) Theft by receiving, § 5-36-106;

10 (39) Forgery, § 5-37-201;

11 (40) Criminal impersonation, § 5-37-208;

12 (41) Financial identity fraud, § 5-37-227;

13 (42) Arson, § 5-38-301;

14 (43) Burglary, § 5-39-201;

15 (44) Breaking or entering, § 5-39-202;

16 (45) Resisting arrest, § 5-54-103;

17 (46) Felony interference with a law enforcement officer, § 5-54-
18 104;

19 (47) Cruelty to animals, § 5-62-101;

20 (48) Felony violation of the Uniform Controlled Substances Act,
21 §§ 5-64-101 - 5-64-501 et seq.;

22 (49) Public display of obscenity, § 5-68-205;

23 (50) Promoting obscene materials, § 5-68-303;

24 (51) Promoting obscene performance, § 5-68-304;

25 (52) Obscene performance at a live public show, § 5-68-305;

26 (53) Prostitution, § 5-70-102;

27 (54) Patronizing a prostitute, § 5-70-103;

28 (55) Promotion of prostitution, §§ 5-70-104, 5-70-105, and 5-70-

29 106;

30 (56) Stalking, § 5-71-229;

31 (57) Criminal use of a prohibited weapon, § 5-73-104;

32 (58) Simultaneous possession of drugs and firearms, § 5-74-106;

33 and

34 (59) Unlawful discharge of a firearm from a vehicle, § 5-74-107.

35 (c)(1)(A) The provisions of this section shall not be waived by the
36 licensing or certifying agency.

1 (B) Except for any conviction stated in subsection (b) of
2 this section that involves violence or a sexual offense, this section does
3 not disqualify a person from employment if:

4 (i) The conviction was for a misdemeanor offense;
5 (ii) The date of the conviction is at least five (5)
6 years from the date of the background check request; and
7 (iii) The individual has no criminal convictions of
8 any type or nature during the five-year period preceding the background check
9 request.

10 (C) Except for any conviction stated in subsection (b) of
11 this section that involves violence or any sexual offense, this section does
12 not disqualify a person from employment if:

13 (i) The conviction was for a felony offense;
14 (ii) The date of the conviction is at least ten (10)
15 years from the date of the background check request; and
16 (iii) The individual has no criminal convictions of
17 any type or nature during the ten-year period preceding the background check
18 request.

19 (2)(A) Because of the serious nature of the offenses and the
20 close relationship to the type of work that is to be performed, the following
21 offenses shall result in permanent disqualification from employment with a
22 service provider or licensure or certification as a service provider and are
23 not subject to subdivisions (c)(1)(B)-(C) of this section:

24 (i) Capital murder, § 5-10-101;
25 (ii) Murder in the first degree, § 5-10-102;
26 (iii) Murder in the second degree, § 5-10-103;
27 (iv) Kidnapping, § 5-11-102;
28 (v) Rape, § 5-14-103;
29 (vi) Sexual assault in the first degree, § 5-14-124,
30 and sexual assault in the second degree, § 5-14-125;
31 (vii) Endangering the welfare of an incompetent
32 person in the first degree, § 5-27-201;
33 (viii) Felony adult abuse, § 5-28-103; and
34 (ix) Arson and other burning, § 5-38-301.

35 (B) A person registered as a sex offender or required to
36 register as a sex offender shall be permanently disqualified as a service

1 provider, operator or from employment with a service provider.

2 (3) A person shall not be disqualified from licensure, exemption
3 from licensure, certification, other operating authority, or employment with
4 a service provider if the person has been found guilty of or has pleaded
5 guilty or nolo contendere to a misdemeanor if the offense did not involve
6 exploitation of an adult, abuse of a person, neglect of a person, theft, or
7 sexual contact.

8
9 20-38-107. Evidence of records checks.

10 A service provider shall maintain on file, subject to inspection by the
11 Arkansas Crime Information Center, the Identification Bureau of the
12 Department of Arkansas State Police, or the licensing or certifying agency
13 evidence that criminal history records checks have been completed on all
14 operators, applicants for employment, and employees of the service provider.

15
16 20-38-108. Remedies for failure to comply.

17 The licensing or certifying agency shall establish remedies for failure
18 to comply with this subchapter to be imposed on a service provider licensed,
19 exempted from licensure, certified, or otherwise authorized to operate by its
20 licensing or certifying agency.

21
22 20-38-109. Duties of Identification Bureau.

23 (a) The Identification Bureau of the Department of Arkansas State
24 Police shall make reasonable efforts to respond immediately to requests for
25 state criminal history checks and to respond to requests for national
26 criminal history checks within ten (10) calendar days after the receipt of a
27 national criminal history check from the Federal Bureau of Investigation.

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

31
32 20-38-110. Regulations.

33 The Arkansas Crime Information Center, the Identification Bureau of the
34 Department of Arkansas State Police, and the licensing or certifying agency
35 shall cooperate to prepare forms and promulgate consistent rules as necessary
36 to implement this subchapter.

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20-38-111. Confidentiality.

(a) All reports obtained under this subchapter are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Identification Bureau of the Arkansas State Police, the licensing or certifying agency, the service provider, and the person who is the subject of the report.

(b) The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and is specifically exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., except to the licensing or certifying agency and the service provider.

20-38-112. Immunity.

The Arkansas Crime Information Center, the Identification Bureau of the Arkansas State Police, the licensing or certifying agency, and the service provider are immune from suit or liability for damages for acts or omissions other than malicious acts or omissions occurring in the performance of duties imposed by this subchapter.

20-38-113. Exclusions – Licensed professionals – Completion of criminal history records check.

(a) Except for employees of licensed child care facilities or church-operated exempt child care facilities, this subchapter does not apply to a person who provides care to clients of a service provider subject to a professional license issued under:

- (1) § 17-27-101 et seq., regarding licensed professional counselors;
- (2) § 17-82-101 et seq., regarding dentists;
- (3) § 17-87-101 et seq., regarding nurses;
- (4) § 17-88-101 et seq., regarding occupational therapists;
- (5) § 17-92-101 et seq., regarding pharmacists;
- (6) § 17-93-101 et seq., regarding physical therapists;
- (7) § 17-95-201 et seq., regarding physicians and surgeons;
- (8) § 17-96-101 et seq., regarding podiatrists;
- (9) § 17-97-101 et seq., regarding psychologists and

1 psychological examiners;

2 (10) § 17-100-101 et seq., regarding speech-language
3 pathologists and audiologists; or

4 (11) § 17-103-101 et seq., regarding social workers.

5 (b)(1) "Professional license" shall not include certification.

6 (2) "Certified persons" includes certified nursing assistants
7 and certified home health aides.

8 (c) If the service provider can verify that the applicant has
9 maintained employment in the State of Arkansas for the past twelve (12)
10 months and has successfully completed a criminal history records check within
11 the past twelve (12) months, the service provider is not required to conduct
12 a criminal history records check on the applicant.

13
14 SECTION 5. Arkansas Code §§ 20-33-201 through 20-33-212 are repealed.

15 ~~20-33-201. Definitions.~~

16 ~~As used in this subchapter:~~

17 ~~(1) "Bureau" means the Identification Bureau of the Department~~
18 ~~of Arkansas State Police;~~

19 ~~(2) "Care" means treatment, services, assistance, education,~~
20 ~~training, instruction, or supervision for which the care giving person or~~
21 ~~entity is reimbursed either directly or by arrangement with a qualified~~
22 ~~entity or receives reimbursement or payment either directly or indirectly~~
23 ~~from Medicaid;~~

24 ~~(3) "Determination" means a licensing agency's determination~~
25 ~~that an applicant or employee is or is not disqualified from employment or~~
26 ~~that a qualified entity is disqualified from licensure based on the criminal~~
27 ~~history of the operator;~~

28 ~~(4) "Elderly" means persons sixty five (65) years of age or~~
29 ~~older;~~

30 ~~(5) "Employee" means any person who provides care to the elderly~~
31 ~~or to individuals with disabilities, or both, on behalf of, under the~~
32 ~~supervision of, or by arrangement with a qualified entity or any person~~
33 ~~employed by a qualified entity, including persons provided by or pursuant to~~
34 ~~contract with a private placement agency or contract staffing agency, unless~~
35 ~~the person is a family member or a volunteer or works in an administrative~~
36 ~~capacity and does not provide direct patient care;~~

1 ~~(6) “Index” means the database maintained by the Identification~~
 2 ~~Bureau of the Department of Arkansas State Police of criminal records checks~~
 3 ~~that have been conducted on applicants for employment with and employees of~~
 4 ~~qualified entities or ElderChoices providers;~~

5 ~~(7) “Individuals with disabilities” means persons with mental or~~
 6 ~~physical impairments who require assistance to perform one (1) or more of the~~
 7 ~~following tasks of daily living:~~

8 ~~(A) Feeding;~~

9 ~~(B) Mobility;~~

10 ~~(C) Toileting; or~~

11 ~~(D) Medication;~~

12 ~~(8) “Licensing agency” means the government agency charged with~~
 13 ~~licensing the operator or qualified entity to provide care to the elderly or~~
 14 ~~to individuals with disabilities, or both;~~

15 ~~(9) “National criminal history check” means a review of national~~
 16 ~~criminal records maintained by the Federal Bureau of Investigation based on~~
 17 ~~fingerprint identification or other positive identification methods;~~

18 ~~(10) “Operator” means a person responsible for signing an~~
 19 ~~application for an initial or renewal license to operate a qualified entity;~~

20 ~~(11) “Qualified entity” means a long term care facility as~~
 21 ~~defined by § 20-10-101 or § 20-10-702, a home health care service as defined~~
 22 ~~by § 20-10-801, a hospice service as defined by § 20-7-117, any individual or~~
 23 ~~entity who provides services in the home of individuals and who is designated~~
 24 ~~by the Division of Aging and Adult Services of the Department of Health and~~
 25 ~~Human Services as an ElderChoices provider, and any employment agency that~~
 26 ~~hires or procures, on behalf of another entity or organization, individuals~~
 27 ~~who provide services in the home and are designated by the division as~~
 28 ~~ElderChoices providers whether or not the entity has applied for or possesses~~
 29 ~~any license or certification necessary for operation. In no event shall an~~
 30 ~~individual or entity hired and paid by the recipient be considered a~~
 31 ~~qualified entity or be subject to this subchapter unless the individual or~~
 32 ~~entity is otherwise enrolled as a Medicaid provider of ElderChoices services;~~

33 ~~(12) “Report” means a statement of the criminal history of an~~
 34 ~~applicant, employee, ElderChoices provider, or operator issued by the~~
 35 ~~Identification Bureau of the Department of Arkansas State Police;~~

36 ~~(13) “Requesting agency” means the government agency charged~~

1 with certifying the individual or qualified entity to provide care to the
2 elderly or to individuals with disabilities, or both; and

3 ~~(14) "State criminal history check" means a review of state~~
4 ~~criminal records conducted by the Identification Bureau of the Department of~~
5 ~~Arkansas State Police.~~

6
7 ~~20-33-202. Mandatory criminal records checks for operators.~~

8 ~~(a) When an operator applies for a license to operate a qualified~~
9 ~~entity, the operator shall complete a criminal history check form and shall~~
10 ~~request the Identification Bureau of the Department of Arkansas State Police~~
11 ~~to conduct a state criminal history check and a national criminal history~~
12 ~~check on the operator. The operator shall attach evidence of the request for~~
13 ~~a criminal history check to the application for licensure of the qualified~~
14 ~~entity. The bureau shall conduct a state criminal history check and a~~
15 ~~national criminal history check on the operator, and upon completion of the~~
16 ~~criminal history check, the bureau shall issue a report to the licensing~~
17 ~~agency of the qualified entity. The licensing agency shall determine whether~~
18 ~~the qualified entity is disqualified from licensure based on the report of~~
19 ~~the operator's criminal history and forward its determination to the~~
20 ~~qualified entity seeking licensure.~~

21 ~~(b) This section shall only apply to the first application signed by~~
22 ~~an operator, provided that the operator has served continuously in a position~~
23 ~~as an operator with not more than a sixty-day interruption in such service.~~
24

25 ~~20-33-203. Mandatory criminal records checks for applicants,~~
26 ~~ElderChoices providers, and employees.~~

27 ~~(a)(1) When a person applies for a position as an employee of a~~
28 ~~qualified entity and if the qualified entity intends to make an offer of~~
29 ~~employment to the applicant, the applicant shall complete a criminal history~~
30 ~~check form obtained from the qualified entity and shall submit the form to~~
31 ~~the qualified entity as part of the application process to be an employee.~~

32 ~~(2) If the qualified entity intends to make an offer of~~
33 ~~employment to the applicant, the qualified entity shall within five (5)~~
34 ~~business days of that decision forward the criminal history check form to the~~
35 ~~Identification Bureau of the Department of Arkansas State Police accompanied~~
36 ~~by appropriate payment and request the bureau to review the bureau's index of~~

1 ~~riminal history checks on persons caring for the elderly or individuals with~~
2 ~~disabilities. Prior to an ElderChoices provider's providing care, the~~
3 ~~provider shall complete a criminal history check form obtained from the~~
4 ~~Division of Aging and Adult Services of the Department of Health and Human~~
5 ~~Services and shall submit the completed form with appropriate payment to the~~
6 ~~bureau and request the bureau to review the bureau's index of criminal~~
7 ~~history checks on persons caring for the elderly or individuals with~~
8 ~~disabilities.~~

9 ~~(3) Within three (3) business days of the receipt of a request~~
10 ~~to review the index, the bureau shall notify the qualified entity and the~~
11 ~~division whether the index contains any criminal history records on the~~
12 ~~applicant or ElderChoices provider.~~

13 ~~(4)(A) A qualified entity may make an offer of temporary~~
14 ~~employment to an applicant, pending receipt of notification from the bureau~~
15 ~~after checking the database of the licensing agency.~~

16 ~~(B) If no criminal history records regarding the applicant~~
17 ~~are found in the index, then the qualified entity may continue to temporarily~~
18 ~~employ the applicant while the bureau completes a criminal history check and~~
19 ~~the licensing agency determines whether the applicant is disqualified from~~
20 ~~employment with the qualified entity.~~

21 ~~(C)(i) If a criminal history record regarding the~~
22 ~~applicant is found in the bureau's index, then the applicant is temporarily~~
23 ~~disqualified from employment until the licensing agency issues a~~
24 ~~determination.~~

25 ~~(ii) If the licensing agency issues a determination~~
26 ~~that the applicant is not qualified, then the qualified entity may~~
27 ~~temporarily employ the applicant while the bureau completes a criminal~~
28 ~~history check.~~

29 ~~(b)(1) Except as provided in subdivision (b)(2) of this section, the~~
30 ~~bureau shall conduct a state criminal history check and a national criminal~~
31 ~~history check on an applicant, ElderChoices provider, or employee upon~~
32 ~~receiving a criminal history check request from a qualified entity, a~~
33 ~~requesting agency, or the division.~~

34 ~~(2) If the qualified entity, requesting agency, the division, or~~
35 ~~the ElderChoices provider can verify that the applicant or ElderChoices~~
36 ~~provider has been employed within the State of Arkansas to provide care to~~

1 ~~the elderly or to individuals with disabilities, or both, within sixty (60)~~
2 ~~days before the application or request from the agency or the division or has~~
3 ~~lived continuously in the State of Arkansas for the past five (5) years, the~~
4 ~~bureau shall conduct only a state criminal history check on the applicant or~~
5 ~~ElderChoices provider.~~

6 ~~(3) When the qualified entity determines the need to utilize~~
7 ~~temporary employees provided by a private placement agency or other contract~~
8 ~~staffing company, it shall be the responsibility of the private placement~~
9 ~~agency or contract staffing agency to initiate the criminal background check~~
10 ~~as provided by this subchapter, prior to the placement of the person in the~~
11 ~~qualified entity's facility, and at all times the private placement agency or~~
12 ~~contract staffing agency must be able to document the pending background~~
13 ~~check or the final determination if requested by the Office of Long-Term~~
14 ~~Care.~~

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

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

21 ~~(3)(A) If the licensing agency determines that an applicant or~~
22 ~~employee is disqualified from employment, then the qualified entity shall~~
23 ~~terminate the employment of the employee or shall deny employment to the~~
24 ~~applicant.~~

25 ~~(B) If the requesting agency determines that the~~
26 ~~ElderChoices provider is disqualified from providing care, the requesting~~
27 ~~agency shall forward its determination to the provider, and the provider~~
28 ~~shall be prohibited from providing care to the elderly or to individuals with~~
29 ~~disabilities.~~

30 ~~(d) Before making a temporary or permanent offer of employment, a~~
31 ~~qualified entity shall inform applicants and employees that continued~~
32 ~~employment is contingent upon the results of periodic criminal records checks~~
33 ~~and that the applicant or employee has the right to obtain a copy of the~~
34 ~~report from the bureau.~~

35
36 ~~20-33-204. Evidence of records checks.~~

1 ~~Each qualified entity shall maintain on file, subject to inspection by~~
 2 ~~the Arkansas Crime Information Center, the Identification Bureau of the~~
 3 ~~Department of Arkansas State Police, or the licensing agency, evidence that~~
 4 ~~criminal records checks have been initiated on all operators and employees~~
 5 ~~and a copy of each determination received from the licensing agency.~~

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

9 ~~(a) Except as provided in subsection (c), subsection (d), or~~
 10 ~~subsection (f) of this section:~~

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

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

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

24 ~~(B) Except as provided in subsection (c), subsection (d),~~
 25 ~~or subsection (f) of this section:~~

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

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

1 ~~pleaded guilty or nolo contendere to any of the offenses listed in subsection~~
 2 ~~(b) of this section.~~

3 ~~(b) For the purposes of this section, the following criminal offenses~~
 4 ~~apply to this section:~~

5 ~~(1) Capital murder as prohibited in § 5-10-101;~~

6 ~~(2) Murder in the first degree as prohibited in § 5-10-102 and~~
 7 ~~murder in the second degree as prohibited in § 5-10-103;~~

8 ~~(3) Manslaughter as prohibited in § 5-10-104;~~

9 ~~(4) Negligent homicide as prohibited in § 5-10-105;~~

10 ~~(5) Kidnapping as prohibited in § 5-11-102;~~

11 ~~(6) False imprisonment in the first degree as prohibited in § 5-~~
 12 ~~11-103;~~

13 ~~(7) Permanent detention or restraint as prohibited in § 5-11-~~
 14 ~~106;~~

15 ~~(8) Robbery as prohibited in § 5-12-102;~~

16 ~~(9) Aggravated robbery as prohibited in § 5-12-103;~~

17 ~~(10) Battery as prohibited in §§ 5-13-201—5-13-203;~~

18 ~~(11) Aggravated assault as prohibited in § 5-13-204;~~

19 ~~(12) Introduction of controlled substance into the body of~~
 20 ~~another person as prohibited in § 5-13-210;~~

21 ~~(13) Terroristic threatening in the first degree as prohibited~~
 22 ~~in § 5-13-301(a);~~

23 ~~(14) Rape as prohibited in § 5-14-103;~~

24 ~~(15) Sexual indecency with a child as prohibited in § 5-14-110;~~

25 ~~(16) Sexual assault in the first degree, second degree, third~~
 26 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~

27 ~~(17) Incest as prohibited in § 5-26-202;~~

28 ~~(18) Offenses against the family as prohibited in §§ 5-26-303—~~
 29 ~~5-26-306;~~

30 ~~(19) Endangering the welfare of an incompetent person in the~~
 31 ~~first degree as prohibited in 5-27-201;~~

32 ~~(20) Endangering the welfare of a minor in the first degree as~~
 33 ~~prohibited in § 5-27-203;~~

34 ~~(21) Permitting child abuse as prohibited in § 5-27-221(a)(1)~~
 35 ~~and (3);~~

36 ~~(22) Engaging children in sexually explicit conduct for use in~~

1 ~~visual or print media, transportation of minors for prohibited sexual~~
 2 ~~conduct, pandering or possessing visual or print medium depicting sexually~~
 3 ~~explicit conduct involving a child, or use of a child or consent to use of a~~
 4 ~~child in a sexual performance by producing, directing, or promoting a sexual~~
 5 ~~performance by a child as prohibited in §§ 5-27-303—5-27-305, 5-27-402, and~~
 6 ~~5-27-403;~~

7 ~~(23) Felony adult abuse as prohibited by § 5-28-103;~~

8 ~~(24) Theft of property as prohibited in § 5-36-103;~~

9 ~~(25) Theft by receiving as prohibited in § 5-36-106;~~

10 ~~(26) Arson as prohibited in § 5-38-301;~~

11 ~~(27) Burglary as prohibited in § 5-39-201;~~

12 ~~(28) Felony violation of the Uniform Controlled Substances Act,~~
 13 ~~§ 5-64-101—§ 5-64-608, as prohibited in § 5-64-401~~

14 ~~(29) Promotion of prostitution in the first degree as prohibited~~
 15 ~~in § 5-70-104;~~

16 ~~(30) Stalking as prohibited in § 5-71-229;~~

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

20 ~~(32) Forgery as prohibited in § 5-37-201;~~

21 ~~(33) Breaking or entering as prohibited in § 5-39-202;~~

22 ~~(34) Obtaining a controlled substance by fraud as prohibited in~~
 23 ~~§ 5-64-403;~~

24 ~~(35) Computer child pornography as prohibited in § 5-27-603; and~~

25 ~~(36) Computer exploitation of a child in the first degree as~~
 26 ~~prohibited in § 5-27-605.~~

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 entity's license shall be immediately denied or~~
 32 ~~revoked.~~

33 ~~(d)(1) The provisions of this section shall not be waived by the~~
 34 ~~licensing or requesting agency.~~

35 ~~(2)(A) Except as provided in subdivision (d)(2)(B) of this~~
 36 ~~section, a conviction or plea of guilty or nolo contendere for a felony or~~

1 ~~misdemeanor offense listed in subsection (b) of this section shall not~~
 2 ~~disqualify an applicant for employment if the date of conviction of the~~
 3 ~~offense is at least ten (10) years from the date of the application and the~~
 4 ~~individual has no criminal convictions of any type or nature during the ten-~~
 5 ~~year period.~~

6 ~~(B) Because of the serious nature of the offenses and the~~
 7 ~~close relationship to the type of work that is to be performed, the following~~
 8 ~~shall result in permanent disqualification of employment:~~

9 ~~(i) Capital murder as prohibited in § 5-10-101;~~

10 ~~(ii) Murder in the first degree as prohibited in § 5-10-~~
 11 ~~102 and murder in the second degree as prohibited in § 5-10-103;~~

12 ~~(iii) Kidnapping as prohibited in § 5-11-102;~~

13 ~~(iv) Rape as prohibited in § 5-14-103;~~

14 ~~(v) Sexual assault in the first degree as prohibited in §~~
 15 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~

16 ~~(vi) Endangering the welfare of an incompetent person in~~
 17 ~~the first degree as prohibited in § 5-27-201;~~

18 ~~(vii) Felony adult abuse as prohibited by § 5-28-103; and~~

19 ~~(viii) Arson as prohibited in § 5-38-301.~~

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

24 ~~(2) An applicant, ElderChoices provider, or employee shall not~~
 25 ~~be disqualified from permanent employment or providing care to the elderly or~~
 26 ~~to an individual with a disability, or both, when the applicant, provider, or~~
 27 ~~employee has been found guilty of or has pleaded guilty or nolo contendere to~~
 28 ~~a misdemeanor if the offense did not involve exploitation of an adult, abuse~~
 29 ~~of a person, neglect of a person, theft, or sexual contact.~~

30 ~~(f) For purposes of this section, an expunged record of a conviction~~
 31 ~~or plea of guilty or nolo contendere to an offense listed in subsection (b)~~
 32 ~~of this section shall not be considered a conviction, guilty plea, or nolo~~
 33 ~~contendere plea to the offense unless the offense is also listed in~~
 34 ~~subdivision (d)(2)(B) of this section.~~

35 ~~(g) If an operator or qualified entity fails or refuses to cooperate~~
 36 ~~in obtaining criminal records checks, such circumstances shall be grounds to~~

1 ~~deny or revoke the qualified entity's license or other operating authority,~~
 2 ~~provided the process of obtaining criminal records checks shall not delay the~~
 3 ~~process of the application for a license or other operational authority.~~

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

6 ~~(i) To the extent that there is any conflict with § 17-1-103, this~~
 7 ~~section shall supersede § 17-1-103.~~

8 ~~(j) This section shall not apply to teacher licensure or certification~~
 9 ~~or nursing licensure and certification as governed by §§ 6-17-410 and 17-87-~~
 10 ~~312, respectively.~~

11
 12 ~~20-33-206. Request for records check—Requirement.~~

13 ~~(a) A request for a state criminal history records check on a person~~
 14 ~~shall include a completed statement that:~~

15 ~~(1) Contains the name, address, and date of birth appearing on a~~
 16 ~~valid identification document issued by a government entity to the person who~~
 17 ~~is the subject of the check;~~

18 ~~(2) Indicates whether the person has been found guilty of or~~
 19 ~~pled guilty or nolo contendere to a crime, and if so, includes a description~~
 20 ~~of the crime and the particulars of the finding of guilt or the plea;~~

21 ~~(3) Notifies the person that qualified entities may request~~
 22 ~~reports of state criminal history checks;~~

23 ~~(4) Consents to disclosure of reports and determinations as~~
 24 ~~provided by this subchapter;~~

25 ~~(5) Notifies the person that prior to the completion of a state~~
 26 ~~criminal history check, the qualified entity may choose to deny the employee~~
 27 ~~unsupervised access to a person to whom the qualified entity provides care;~~

28 ~~(6) Informs the person how to object to the content of reports;~~
 29 ~~and~~

30 ~~(7) Contains the notarized signature of the person who is the~~
 31 ~~subject of the check.~~

32 ~~(b) Each request for a national criminal history check shall conform~~
 33 ~~to the requirements for a state criminal history check and shall include a~~
 34 ~~complete set of fingerprints.~~

35
 36 ~~20-33-207. Duties of Identification Bureau and licensing agencies.~~

1 ~~(a) After receipt of a request for a criminal history check, the~~
2 ~~Identification Bureau of the Department of Arkansas State Police shall make~~
3 ~~reasonable efforts to respond to requests for state criminal history checks~~
4 ~~within twenty (20) calendar days and to respond to requests for national~~
5 ~~criminal history checks within ten (10) calendar days after the receipt of a~~
6 ~~national criminal history check from the Federal Bureau of Investigation.~~

7 ~~(b) Upon completion of a criminal records check, the bureau shall~~
8 ~~forward all information obtained concerning the applicant or employee to the~~
9 ~~Arkansas Crime Information Center.~~

10 ~~(c) The bureau shall maintain an index of the results of each~~
11 ~~operator's, employee's, or applicant's criminal history check. The bureau~~
12 ~~shall furnish a report to the licensing agency upon completion of each~~
13 ~~criminal history check and upon request of the licensing agency.~~

14 ~~(d) The bureau shall develop forms to be used for criminal history~~
15 ~~checks conducted under this subchapter.~~

16 ~~(e) Each licensing agency shall develop and maintain a database of~~
17 ~~determinations regarding applicants for employment with and employees of~~
18 ~~qualified entities that are within the purview of the licensing agency. The~~
19 ~~database may be accessed by telephone.~~

20
21 ~~20-33-208. Regulations—Remedies for failure to comply—Challenges~~
22 ~~to agency determinations.~~

23 ~~(a) The Arkansas Crime Information Center, the Identification Bureau~~
24 ~~of the Department of Arkansas State Police, and each licensing or requesting~~
25 ~~agency shall cooperate to prepare forms and promulgate consistent regulations~~
26 ~~as necessary to implement this subchapter.~~

27 ~~(b) Each licensing agency shall establish remedies to be imposed on~~
28 ~~the qualified entities licensed by the respective agencies for failure to~~
29 ~~comply with this subchapter.~~

30 ~~(c) Each licensing or requesting agency shall establish a procedure~~
31 ~~for operators, applicants, employees, ElderChoices providers, and qualified~~
32 ~~entities to challenge determinations.~~

33 ~~(d) A person may challenge the completeness or accuracy of criminal~~
34 ~~history information pursuant to § 12-12-1013.~~

35
36 ~~20-33-209. Confidentiality.~~

1 All reports obtained under this subchapter are confidential and are
 2 restricted to the exclusive use of the Arkansas Crime Information Center, the
 3 Identification Bureau of the Department of Arkansas State Police, the
 4 licensing or requesting agency, and the person who is the subject of the
 5 report. The information contained in reports shall not be released or
 6 otherwise disclosed to any other person or agency except by court order and
 7 is specifically exempt from disclosure under the Freedom of Information Act
 8 of 1967, § 25-19-101 et seq., except that the licensing or requesting agency
 9 is authorized and directed to furnish determinations to qualified entities or
 10 ElderChoices providers.

11
 12 ~~20-33-210. Immunity.~~

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

16
 17 ~~20-33-211. Exclusions—Licensed professionals—Completion of~~
 18 ~~criminal history check.~~

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

21 (1) ~~Section 17-27-101 et seq., regarding licensed professional~~
 22 ~~counselors;~~

23 (2) ~~Section 17-103-101 et seq., regarding social workers;~~

24 (3) ~~Section 17-82-101 et seq., regarding dentists;~~

25 (4) ~~Section 17-87-101 et seq., regarding nurses;~~

26 (5) ~~Section 17-88-101 et seq., regarding occupational~~
 27 ~~therapists;~~

28 (6) ~~Section 17-92-101 et seq., regarding pharmacists;~~

29 (7) ~~Section 17-93-101 et seq., regarding physical therapists;~~

30 (8) ~~Section 17-95-201 et seq., regarding physicians and~~
 31 ~~surgeons;~~

32 (9) ~~Section 17-96-101 et seq., regarding podiatrists;~~

33 (10) ~~Section 17-97-101 et seq., regarding psychologists and~~
 34 ~~psychological examiners; or~~

35 (11) ~~Section 17-100-101 et seq., regarding speech language~~
 36 ~~pathologists and audiologists.~~

1 ~~(b) Any person who submits evidence of having maintained employment in~~
 2 ~~the State of Arkansas for the past twelve (12) months and of successfully~~
 3 ~~completing a criminal history check within the last twelve (12) months shall~~
 4 ~~not be required to apply for a criminal history check under this subchapter.~~

5
 6 ~~20-33-212. Effective date—Criminal history checks for incumbent~~
 7 ~~operators and employees.~~

8 ~~(a) Operators licensed, ElderChoices providers seeking to provide~~
 9 ~~care, and employees hired on and after October 1, 1997, shall apply for~~
 10 ~~criminal records checks.~~

11 ~~(b) Criminal history checks shall be obtained for all operators,~~
 12 ~~ElderChoices providers, and employees by October 1, 2000, and each licensing~~
 13 ~~or requesting agency shall promulgate a rule that prescribes how criminal~~
 14 ~~history checks for incumbent operators, ElderChoices providers, and employees~~
 15 ~~will be phased in during the period prior to October 1, 2000. The rule shall~~
 16 ~~require:~~

17 ~~(1) Operators to apply for criminal history checks in~~
 18 ~~conjunction with the deadline for the operator to seek renewal of the~~
 19 ~~qualified entity's license from the licensing agency;~~

20 ~~(2) Incumbent employees to apply for criminal history checks in~~
 21 ~~the same manner as applicants for employment in conjunction with the~~
 22 ~~employee's anniversary of employment or any time before that date; and~~

23 ~~(3) ElderChoices providers to apply for criminal history checks~~
 24 ~~prior to providing care.~~

25
 26 SECTION 6. Arkansas Code Title 20, Chapter 33, Subchapter 2 is amended
 27 to add an additional section to read as follows:

28 20-33-213. Criminal history and registry records checks required.

29 (a) Long-term care facilities under § 20-10-702, home health care
 30 services under § 20-10-101, hospice program under § 20-7-117, and
 31 ElderChoices providers shall comply with the requirements of § 20-38-101 et
 32 seq., concerning criminal history records checks.

33 (b)(1) The applicable licensing or certifying agency shall establish
 34 by rule requirements for registry records checks for long-term care
 35 facilities as defined by § 20-10-702, home health care services under § 20-
 36 10-801, hospice program under § 20-7-117, and ElderChoices providers.

1 (2) As used in this section, "registry records check" means the
2 review of one (1) or more database systems maintained by a state agency that
3 contain information relative to a person's suitability for employment as a
4 caregiver.

5
6 SECTION 7. Arkansas Code §§ 20-48-801 through 20-48-811 are repealed:

7 ~~20-48-801. Definitions.~~

8 ~~As used in this subchapter:~~

9 ~~(1) "Bureau" means the Identification Bureau of the Department~~
10 ~~of Arkansas State Police;~~

11 ~~(2) "Care" means treatment, services, assistance, education,~~
12 ~~training, instruction, or supervision for which the service provider is~~
13 ~~reimbursed either directly or by arrangement with a government agency or~~
14 ~~receives reimbursement or payment either directly or indirectly from~~
15 ~~Medicaid;~~

16 ~~(3) "Central registry check" means a review of a central~~
17 ~~registry data base maintained by a state agency;~~

18 ~~(4) "Determination" means a service provider's determination~~
19 ~~that an applicant or employee is or is not disqualified from employment based~~
20 ~~on the criminal history of the applicant or employee;~~

21 ~~(5) "Developmentally disabled person" means a person with a~~
22 ~~disability that is:~~

23 ~~(A) Attributable to mental retardation, cerebral palsy,~~
24 ~~epilepsy, or autism;~~

25 ~~(B) Attributable to any other condition of a person found~~
26 ~~to be closely related to mental retardation because it results in an~~
27 ~~impairment of general intellectual functioning or adaptive behavior similar~~
28 ~~to those of mentally retarded persons or requires treatment and services~~
29 ~~similar to those required for mentally retarded persons; or~~

30 ~~(C) Attributable to dyslexia resulting from a disability~~
31 ~~associated with mental retardation, cerebral palsy, epilepsy, or autism;~~

32 ~~(6) "Employee" means any adult person residing in an alternative~~
33 ~~living home and any person who provides care to individuals with disabilities~~
34 ~~on behalf of, under the supervision of, or by arrangement with a service~~
35 ~~provider or any person employed by a service provider, including persons~~
36 ~~provided by or pursuant to contract with a private placement agency or~~

1 ~~contract staffing agency unless the person is a family member or a volunteer~~
 2 ~~or works in an administrative capacity and does not provide direct patient~~
 3 ~~care;~~

4 ~~(7) "Index" means the data base of completed background checks~~
 5 ~~maintained by the bureau that have been conducted on applicants for~~
 6 ~~employment with and employees of a service provider;~~

7 ~~(8) "Licensing agency" means the government agency charged with~~
 8 ~~licensing the service provider to provide care to developmentally disabled~~
 9 ~~persons;~~

10 ~~(9) "National criminal history records check" means a review of~~
 11 ~~criminal history records maintained by the Federal Bureau of Investigation~~
 12 ~~based on fingerprint identification or other positive identification methods;~~

13 ~~(10) "Report" means a statement of the criminal history of an~~
 14 ~~applicant or employee of the service provider issued by the bureau;~~

15 ~~(11) "Service provider" means the qualified entity responsible~~
 16 ~~for direct care services to developmentally disabled persons; and~~

17 ~~(12) "State criminal history records check" means a review of~~
 18 ~~state criminal history records conducted by the bureau.~~

19
 20 ~~20-48-802. Mandatory criminal history records checks for applicants~~
 21 ~~and employees of service providers.~~

22 ~~(a)(1) When a person applies for a position as an employee of a~~
 23 ~~service provider, the service provider shall require each applicant pursuant~~
 24 ~~to this section to complete a criminal history records check form. Prior to~~
 25 ~~employment, the applicant must be fingerprinted. The fingerprints shall be~~
 26 ~~available for use by the Federal Bureau of Investigation and for transmittal~~
 27 ~~to the Federal Bureau of Investigation for a national criminal history~~
 28 ~~records check. The information obtained from the national criminal history~~
 29 ~~records check conducted pursuant to this section may be used by the service~~
 30 ~~provider to determine the applicant's eligibility for employment.~~

31 ~~(2) If the service provider intends to make an offer of~~
 32 ~~employment to the applicant, the service provider shall within five (5)~~
 33 ~~business days of that decision forward the criminal history records check~~
 34 ~~form and the applicant's fingerprint card to the bureau accompanied by~~
 35 ~~appropriate payment and request the bureau to review the bureau's index of~~
 36 ~~criminal history records.~~

1 ~~(3) Within three (3) business days of the receipt of a request~~
2 ~~to review the index, the bureau shall notify the service provider whether the~~
3 ~~index contains any criminal history records on the applicant.~~

4 ~~(4)(A) A service provider may make an offer of temporary~~
5 ~~employment to an applicant pending receipt of notification from the bureau~~
6 ~~after conducting a central registry check.~~

7 ~~(B) If no finding of fault records regarding the applicant~~
8 ~~are found in the central registry, then the service provider may continue to~~
9 ~~temporarily employ the applicant while the bureau completes a criminal~~
10 ~~history records check.~~

11 ~~(C)(i) If a criminal history record regarding the~~
12 ~~applicant is found, then the applicant is temporarily disqualified from~~
13 ~~employment until the licensing agency issues a determination.~~

14 ~~(ii) If the licensing agency issues a determination~~
15 ~~that the applicant is qualified, then the service provider may employ the~~
16 ~~applicant.~~

17 ~~(b)(1) Except as provided in subdivision (b)(2) of this section, the~~
18 ~~bureau shall conduct a national criminal history records check on an~~
19 ~~applicant or employee upon receiving a request from a service provider.~~

20 ~~(2) If the service provider can verify that the applicant or~~
21 ~~employee has been employed within the State of Arkansas to provide care to~~
22 ~~individuals with disabilities within sixty (60) days before the application~~
23 ~~or request from the service provider or has lived continuously in the state~~
24 ~~for the past five (5) years, the bureau shall conduct only a state criminal~~
25 ~~history records check on the applicant or employee.~~

26 ~~(3) If the service provider determines the need to utilize~~
27 ~~temporary employees provided by a private placement agency or other contract~~
28 ~~staffing company, it shall be the responsibility of the private placement~~
29 ~~agency or contract staffing agency to initiate the criminal background check~~
30 ~~as provided by this subchapter before the placement of the person in the~~
31 ~~service provider's facility, and the private placement agency or contract~~
32 ~~staffing agency must document the pending background check or the final~~
33 ~~determination for the service provider.~~

34 ~~(c)(1) Upon completion of a criminal history records check on an~~
35 ~~applicant or employee, the bureau shall issue a report to the entity making~~
36 ~~the request.~~

1 ~~(2) The licensing agency shall determine whether the applicant~~
 2 ~~or employee is disqualified from employment with the service provider and~~
 3 ~~shall forward its determination to the service provider.~~

4 ~~(3) If the licensing agency determines that an applicant or~~
 5 ~~employee is disqualified from employment, then the service provider shall~~
 6 ~~terminate the employment of the employee or shall deny employment to the~~
 7 ~~applicant.~~

8 ~~(d) Before making an offer of employment to an applicant and on an~~
 9 ~~ongoing basis for current employees, as required in § 20-48-811(b), a service~~
 10 ~~provider shall inform applicants and employees that continued employment is~~
 11 ~~contingent upon the results of periodic criminal history records checks and~~
 12 ~~that the applicant or employee has the right to obtain a copy of the report~~
 13 ~~from the bureau.~~

14
 15 ~~20-48-803. Evidence of records checks.~~

16 ~~Each service provider shall maintain on file, subject to inspection by~~
 17 ~~the Arkansas Crime Information Center, the Identification Bureau of the~~
 18 ~~Department of Arkansas State Police, or the licensing agency, evidence that~~
 19 ~~criminal history records checks have been initiated on all applicants and~~
 20 ~~employees as required by § 20-48-811(b) and that a copy of each determination~~
 21 ~~has been received from the licensing agency.~~

22
 23 ~~20-48-804. Disqualification from employment — Denial or revocation —~~
 24 ~~Penalties.~~

25 ~~(a)(1) Except as provided in subsection (f) of this section, a~~
 26 ~~licensing agency shall issue a determination that a person is disqualified~~
 27 ~~from employment with a service provider if the person:~~

28 ~~(A) Has been found guilty of or pleaded guilty or nolo~~
 29 ~~contendere to any of the offenses listed in subsection (b) of this section;~~
 30 ~~or~~

31 ~~(B) Is registered as a sex offender or is required to~~
 32 ~~register as a sex offender.~~

33 ~~(2) Except as provided in subdivisions (c)(1)(B)–(D) of this~~
 34 ~~section and except as provided in subsection (f) of this section, a service~~
 35 ~~provider shall not knowingly employ a person who:~~

36 ~~(A) Has pleaded guilty or nolo contendere to or has been~~

1 ~~found guilty of any of the offenses listed in subsection (b) of this section~~
 2 ~~by any court in the State of Arkansas or of any similar offense by a court in~~
 3 ~~another state or of any similar offense by a federal court; or~~

4 ~~(B) Is registered as a sex offender or is required to~~
 5 ~~register as a sex offender.~~

6 ~~(b) For the purposes of this section, the following criminal offenses~~
 7 ~~apply to this section:~~

8 ~~(1) Capital murder as prohibited in § 5-10-101;~~

9 ~~(2) Murder in the first degree as prohibited in § 5-10-102 and~~
 10 ~~murder in the second degree as prohibited in § 5-10-103;~~

11 ~~(3) Manslaughter as prohibited in § 5-10-104;~~

12 ~~(4) Negligent homicide as prohibited in § 5-10-105;~~

13 ~~(5) Kidnapping as prohibited in § 5-11-102;~~

14 ~~(6) False imprisonment in the first degree as prohibited in § 5-~~
 15 ~~11-103;~~

16 ~~(7) Permanent detention or restraint as prohibited in § 5-11-~~
 17 ~~106;~~

18 ~~(8) Robbery as prohibited in § 5-12-102;~~

19 ~~(9) Aggravated robbery as prohibited in § 5-12-103;~~

20 ~~(10) Battery as prohibited in §§ 5-13-201—5-13-203;~~

21 ~~(11) Aggravated assault as prohibited in §§ 5-13-204;~~

22 ~~(12) Introduction of controlled substance into body of another~~
 23 ~~person as prohibited in § 5-13-210;~~

24 ~~(13) Terroristic threatening in the first degree and second~~
 25 ~~degree as prohibited in § 5-13-301(a) and (b);~~

26 ~~(14) Rape as prohibited in § 5-14-103;~~

27 ~~(15) Sexual indecency with a child as prohibited in § 5-14-110;~~

28 ~~(16) Sexual assault in the first degree, second degree, third~~
 29 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~

30 ~~(17) Incest as prohibited in § 5-26-202;~~

31 ~~(18) Offenses against the family as prohibited in §§ 5-26-303—~~
 32 ~~5-26-306;~~

33 ~~(19) Endangering the welfare of an incompetent person in the~~
 34 ~~first degree as prohibited in § 5-27-201;~~

35 ~~(20) Endangering the welfare of a minor in the first degree as~~
 36 ~~prohibited in § 5-27-203;~~

1 ~~(21) Permitted child abuse as prohibited in § 5-27-221(a)(1)~~
2 ~~and (3);~~

3 ~~(22) Engaging children in sexually explicit conduct for use in~~
4 ~~visual or print media, transportation of minors for prohibited sexual~~
5 ~~conduct, pandering or possessing visual or print medium depicting sexually~~
6 ~~explicit conduct involving a child, or use of a child or consent to use of a~~
7 ~~child in a sexual performance by producing, directing, or promoting a sexual~~
8 ~~performance by a child as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-~~
9 ~~27-402, and 5-27-403;~~

10 ~~(23) Felony adult abuse as prohibited in § 5-28-103;~~

11 ~~(24) Theft of property as prohibited in § 5-36-103;~~

12 ~~(25) Theft by receiving as prohibited in § 5-36-106;~~

13 ~~(26) Arson as prohibited in § 5-38-301;~~

14 ~~(27) Felony violation of the Uniform Controlled Substances Act,~~
15 ~~§ 5-64-101 et seq., as prohibited in § 5-64-401;~~

16 ~~(28) Burglary as prohibited in § 5-39-201;~~

17 ~~(29) Promotion of prostitution in the first degree as prohibited~~
18 ~~in § 5-70-104;~~

19 ~~(30) Stalking as prohibited in § 5-71-229;~~

20 ~~(31) Forgery as prohibited in § 5-37-201;~~

21 ~~(32) Breaking or entering as prohibited in § 5-39-202;~~

22 ~~(33) Obtaining a controlled substance by fraud as prohibited in~~
23 ~~§ 5-64-403;~~

24 ~~(34) Criminal attempt, criminal complicity, criminal~~
25 ~~solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-~~
26 ~~3-301, and 5-3-401, to commit any of the offenses listed in this subsection;~~

27 ~~(35) Computer child pornography as prohibited in § 5-27-603;~~

28 ~~(36) Computer exploitation of a child in the first degree as~~
29 ~~prohibited in § 5-27-605;~~

30 ~~(37) School bus piracy as prohibited in § 5-11-107 [repealed];~~

31 ~~(38) Assault in the first degree and second degree as prohibited~~
32 ~~in §§ 5-13-205 and 5-13-206;~~

33 ~~(39) Terroristic act as prohibited in § 5-13-310;~~

34 ~~(40) Any sexual offense as prohibited in § 5-14-101 et seq.;~~

35 ~~(41) Voyeurism offenses as prohibited in § 5-16-101;~~

36 ~~(42) Death threats concerning a school employee or student as~~

1 prohibited in § 5-17-101;
2 (43) Interference with visitation as prohibited in § 5-26-501;
3 (44) Interference with custody as prohibited in § 5-26-502;
4 (45) Contributing to the delinquency of a minor as prohibited in
5 § 5-27-205;
6 (46) Contributing to the delinquency of a juvenile as prohibited
7 in § 5-27-220;
8 (47) Soliciting money or property from incompetents as
9 prohibited in § 5-27-229;
10 (48) Computer crimes against minors as prohibited in § 5-27-601
11 et seq.;

12 (49) Theft of services as prohibited in § 5-36-104;
13 (50) Criminal impersonation as prohibited in § 5-37-208;
14 (51) Financial identity fraud as prohibited in § 5-37-227;
15 (52) Resisting arrest as prohibited in § 5-54-103;
16 (53) Felony interference with a law enforcement officer as
17 prohibited in § 5-54-104;
18 (54) Cruelty to animals as prohibited in § 5-62-101;
19 (55) Engaging in conduct with respect to controlled substances
20 as prohibited in § 5-64-401 et seq.;

21 (56) Public display of obscenity as prohibited in § 5-68-205;
22 (57) Promoting obscene materials as prohibited in § 5-68-303;
23 (58) Promoting obscene performance as prohibited in § 5-68-304;
24 (59) Obscene performance at a live public show as prohibited in
25 § 5-68-305;
26 (60) Prostitution as prohibited in § 5-70-102;
27 (61) Patronizing a prostitute as prohibited in § 5-70-103;
28 (62) Promotion of prostitution in the first degree, second
29 degree, or third degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;
30 (63) Criminal use of a prohibited weapon as prohibited in § 5-
31 73-104;
32 (64) Simultaneous possession of drugs and firearms as prohibited
33 in § 5-74-106; and
34 (65) Unlawful discharge of a firearm from a vehicle as
35 prohibited in § 5-74-107.

36 (c)(1)(A) The provisions of this section shall not be waived by the

1 ~~licensing or requesting agency.~~

2 ~~(B) Except for any conviction stated in subsection (b) of~~
 3 ~~this section that involves violence or any sexual offense, this section shall~~
 4 ~~not disqualify a person from employment if:~~

5 ~~(i) The conviction was for a misdemeanor offense;~~

6 ~~(ii) The date of the conviction is at least five (5)~~
 7 ~~years from the date of the background check request; and~~

8 ~~(iii) The individual has no criminal convictions of~~
 9 ~~any type or nature during the five year period preceding the background check~~
 10 ~~request.~~

11 ~~(C) Except for any conviction stated in subsection (b) of~~
 12 ~~this section that involves violence or any sexual offense, this section shall~~
 13 ~~not disqualify a person from employment if:~~

14 ~~(i) The conviction was for a felony offense;~~

15 ~~(ii) The date of the conviction is at least ten (10)~~
 16 ~~years from the date of the background check request; and~~

17 ~~(iii) The individual has no criminal convictions of~~
 18 ~~any type or nature during the ten year period preceding the background check~~
 19 ~~request.~~

20 ~~(D) A person registered as a sex offender or required to~~
 21 ~~register as a sex offender shall be disqualified from employment.~~

22 ~~(2) Because of the serious nature of the offenses and the close~~
 23 ~~relationship to the type of work that is to be performed, the following~~
 24 ~~offenses shall result in permanent disqualification of employment and are not~~
 25 ~~subject to subdivisions (c)(1)(B)-(D) of this section:~~

26 ~~(A) Capital murder as prohibited in § 5-10-101;~~

27 ~~(B) Murder in the first degree as prohibited in § 5-10-102~~
 28 ~~and murder in the second degree as prohibited in § 5-10-103;~~

29 ~~(C) Kidnapping as prohibited in § 5-11-102;~~

30 ~~(D) Rape as prohibited in § 5-14-103;~~

31 ~~(E) Sexual assault in the first degree as prohibited in §~~
 32 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~

33 ~~(F) Endangering the welfare of an incompetent person in~~
 34 ~~the first degree as prohibited in § 5-27-201;~~

35 ~~(G) Felony adult abuse as prohibited in § 5-28-103; and~~

36 ~~(H) Arson as prohibited in § 5-38-301.~~

1 ~~(3) An applicant or employee shall not be disqualified from~~
 2 ~~permanent employment if the applicant or employee has been found guilty of or~~
 3 ~~has pleaded guilty or nolo contendere to a misdemeanor if the offense did not~~
 4 ~~involve exploitation of an adult, abuse of a person, neglect of a person,~~
 5 ~~theft, or sexual contact.~~

6 ~~(d) If a service provider fails or refuses to cooperate in obtaining~~
 7 ~~criminal history records checks, those circumstances shall be grounds to deny~~
 8 ~~or revoke the service provider's license or other operating authority.~~

9 ~~(e) Any service provider violating this subchapter shall be guilty of~~
 10 ~~a Class A misdemeanor for each violation.~~

11 ~~(f) For purposes of this section, an expunged record of a conviction~~
 12 ~~or plea of guilty or nolo contendere to an offense listed in subsection (b)~~
 13 ~~of this section shall not be considered a conviction, guilty plea, or nolo~~
 14 ~~contendere plea to the offense unless the offense is also listed in~~
 15 ~~subdivision (c)(2) of this section.~~

16
 17 ~~20-48-805. Request for records check—Requirement.~~

18 ~~(a) A request for a state criminal history records check on a person~~
 19 ~~shall include a completed statement that:~~

20 ~~(1) Contains the name, address, and date of birth appearing on a~~
 21 ~~valid identification document issued by a government entity to the person who~~
 22 ~~is the subject of the check;~~

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

27 ~~(3) Notifies the person that qualified entities may request~~
 28 ~~reports of state criminal history records checks;~~

29 ~~(4) Consents to disclosure of reports and determinations as~~
 30 ~~provided by this subchapter;~~

31 ~~(5) Notifies the person that prior to the completion of a state~~
 32 ~~criminal history records check, the service provider may choose to deny the~~
 33 ~~employee unsupervised access to a person to whom the service provider~~
 34 ~~provides care;~~

35 ~~(6) Informs the person how to object to the content of reports;~~
 36 ~~and~~

1 ~~(7) Contains the notarized signature of the person who is the~~
2 ~~subject of the check.~~

3 ~~(b) Each request for a national criminal history records check shall~~
4 ~~conform to the requirements for a state criminal history records check and~~
5 ~~shall include a complete set of fingerprints.~~

6
7 ~~20-48-806. Duties of Identification Bureau and licensing agencies.~~

8 ~~(a) After receipt of a request for a criminal history records check,~~
9 ~~the Identification Bureau of the Department of Arkansas State Police shall~~
10 ~~make reasonable efforts to respond to requests for state criminal history~~
11 ~~records checks within twenty (20) calendar days and to respond to requests~~
12 ~~for national criminal history records checks within ten (10) calendar days.~~

13 ~~(b)(1) The bureau shall maintain an index of the results of each~~
14 ~~applicant's or employee's criminal history records check.~~

15 ~~(2) The bureau shall furnish a report to the service provider~~
16 ~~upon completion of each criminal history records check and upon request of~~
17 ~~the licensing agency.~~

18 ~~(c) The bureau shall develop forms to be used for criminal history~~
19 ~~records checks conducted under this subchapter.~~

20
21 ~~20-48-807. Regulations—Remedies for failure to comply—Challenges~~
22 ~~to completeness and accuracy of information.~~

23 ~~(a) The Arkansas Crime Information Center, the Identification Bureau~~
24 ~~of the Department of Arkansas State Police, and each licensing or requesting~~
25 ~~agency shall cooperate to prepare forms and promulgate consistent regulations~~
26 ~~as necessary to implement this subchapter.~~

27 ~~(b) The licensing agency shall establish remedies to be imposed on a~~
28 ~~service provider licensed by the agency for failure to comply with this~~
29 ~~subchapter.~~

30 ~~(c) A person may challenge the completeness or accuracy of criminal~~
31 ~~history information pursuant to 12-12-1013.~~

32
33 ~~20-48-808. Confidentiality.~~

34 ~~(a) All reports obtained under this subchapter are confidential and~~
35 ~~are restricted to the exclusive use of the Arkansas Crime Information Center,~~
36 ~~the Identification Bureau of the Arkansas State Police, the licensing agency,~~

1 ~~the service provider or requesting agency, and the person who is the subject~~
2 ~~of the report.~~

3 ~~(b) The information contained in reports shall not be released or~~
4 ~~otherwise disclosed to any other person or agency except by court order and~~
5 ~~is specifically exempt from disclosure under the Freedom of Information Act~~
6 ~~of 1967, § 25-19-101 et seq., except to the licensing agency, the service~~
7 ~~provider, or the requesting agency.~~

8
9 ~~20-48-809. Immunity.~~

10 ~~Individuals, the licensing agency, the service provider, and a~~
11 ~~requesting agency are immune from suit or liability for damages for acts or~~
12 ~~omissions other than malicious acts or omissions occurring in the performance~~
13 ~~of duties imposed by this subchapter.~~

14
15 ~~20-48-810. Exclusions — Licensed professionals — Completion of~~
16 ~~criminal history records check.~~

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

19 ~~(1) Section 17-27-101 et seq., regarding licensed professional~~
20 ~~counselors;~~

21 ~~(2) Section 17-82-101 et seq., regarding dentists;~~

22 ~~(3) Section 17-87-101 et seq., regarding nurses;~~

23 ~~(4) Section 17-88-101 et seq., regarding occupational~~
24 ~~therapists;~~

25 ~~(5) Section 17-92-101 et seq., regarding pharmacists;~~

26 ~~(6) Section 17-93-101 et seq., regarding physical therapists;~~

27 ~~(7) Section 17-95-201 et seq., regarding physicians and~~
28 ~~surgeons;~~

29 ~~(8) Section 17-96-101 et seq., regarding podiatrists;~~

30 ~~(9) Section 17-97-101 et seq., regarding psychologists and~~
31 ~~psychological examiners;~~

32 ~~(10) Section 17-100-101 et seq., regarding speech language~~
33 ~~pathologists and audiologists;~~

34 ~~(11) Section 17-103-101 et seq., regarding social workers; or~~

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

1 ~~(b)(1) The term “professional license” shall not include~~
2 ~~certification.~~

3 ~~(2) Certified persons include certified nursing assistants and~~
4 ~~certified home health aides.~~

5 ~~(c) Any person who submits evidence of having maintained employment in~~
6 ~~the State of Arkansas for the past twelve (12) months and of successfully~~
7 ~~completing a criminal history records check within the last twelve (12)~~
8 ~~months or in accordance with that person’s professional license shall not be~~
9 ~~required to apply for a criminal history records check under this subchapter.~~

10
11 ~~20-48-811. Effective date — Criminal history record checks for~~
12 ~~applicants and employees.~~

13 ~~(a) All applicants for jobs involving direct care services to~~
14 ~~developmentally disabled adult persons hired on and after August 13, 2001,~~
15 ~~shall apply for criminal history records checks.~~

16 ~~(b) Service providers who offer direct care services to~~
17 ~~developmentally disabled adult persons shall complete criminal history~~
18 ~~records checks on all employees by October 1, 2002.~~

19
20 SECTION 8. Arkansas Code Title 20, Chapter 48, Subchapter 8 is amended
21 to add a new section to read as follows:

22 20-48-812. Criminal history records checks required.

23 (a) Service providers responsible for the provision of direct care
24 services to persons with developmental disabilities shall comply with § 20-
25 38-101 et seq., concerning criminal history records checks.

26 (b)(1) The Division of Developmental Disabilities Services of the
27 Department of Human Services shall establish by rule requirements for
28 registry records checks for service providers responsible for the provision
29 of direct care services to persons with developmental disabilities.

30 (2) As used in this section, “registry records check” means the
31 review of one (1) or more database systems maintained by a state agency that
32 contain information relative to a person’s suitability for employment as a
33 caregiver.

34
35 SECTION 9. Arkansas Code § 20-78-219 is amended to read as follows:
36 20-78-219. Fines and penalties – Disposition of funds.

1 (a) If any licensee fails to pay any monetary fine imposed as a civil
 2 penalty within sixty (60) days of the Division of Child Care and Early
 3 Childhood Education's decision imposing the penalty, the amount of the fine
 4 shall be considered to be a debt owed the State of Arkansas and may be
 5 collected by civil action.

6 (b)(1) All fines and penalties collected under the provisions of this
 7 subchapter shall be special revenues to be deposited in the State Treasury to
 8 the credit of a special fund to be known as the Child Care Fund, to be used
 9 by the division to meet the costs of conducting the statewide criminal
 10 records checks required under ~~§ 20-78-602~~ § 20-78-606 or to provide grants to
 11 child care facilities for enhancement of the facility or for training of
 12 personnel in child care facilities under the direction of the division.

13 (2) Subject to those rules and regulations as may be implemented
 14 by the Chief Fiscal Officer of the State, the disbursing officer for the
 15 Department of Human Services is authorized to transfer all unexpended funds
 16 relative to the fines and penalties collected from child care facilities as
 17 certified by the Chief Fiscal Officer of the State, to be carried forward and
 18 made available for expenditures for the same purpose for any following fiscal
 19 year.

20
 21 SECTION 10. Arkansas Code §§ 20-78-601 through 20-78-605 are repealed.

22 ~~20-78-601. Child abuse central registry check—Owners, operators, and~~
 23 ~~prospective employees in licensed or church-operated exempt facilities.~~

24 ~~(a)(1) All applicants for a church-operated exemption or a license to~~
 25 ~~own or operate a child care facility shall be checked with the child abuse~~
 26 ~~central registry for reports of child maltreatment upon application for the~~
 27 ~~license or church-operated exemption and every two (2) years thereafter.~~

28 ~~(2) All employees or conditional employees in licensed child~~
 29 ~~care facilities or facilities operating with a church-operated exemption~~
 30 ~~shall be checked with the registry for reports of child maltreatment prior to~~
 31 ~~hire and every two (2) years thereafter.~~

32 ~~(b) The Division of Child Care and Early Childhood Education shall~~
 33 ~~have the authority to deny a license or church-operated exemption to any~~
 34 ~~applicant found to have any record of founded child maltreatment in the~~
 35 ~~official record of the registry.~~

36 ~~(c) Any person employed in a licensed child care facility found to~~

1 have any record of child maltreatment in the official record of the registry
 2 shall be reviewed by the owner or operator of the facility in consultation
 3 with the division to determine appropriate corrective action measures, which
 4 would include, but are not limited to, training, probationary employment, or
 5 nonselection for employment. The division shall also have the authority to
 6 deny a license or church operated exemption to an applicant who continues to
 7 employ a person with any record of founded child maltreatment.

8
 9 ~~20-78-602. Criminal records check.~~

10 ~~(a)(1)(A) Each applicant for a license to own or operate a child care~~
 11 ~~facility shall be required to apply to the Bureau of Identification and~~
 12 ~~Information for a statewide criminal records check and a nationwide criminal~~
 13 ~~records check, the latter to be conducted by the Federal Bureau of~~
 14 ~~Investigation.~~

15 ~~(B) The nationwide criminal records check shall conform to~~
 16 ~~the applicable federal standards and shall include the taking of~~
 17 ~~fingerprints.~~

18 ~~(C) The applicant shall sign a release of information and~~
 19 ~~shall be responsible for the payment of any fee associated with the~~
 20 ~~nationwide criminal records check. The applicant shall not be assessed a fee~~
 21 ~~for the statewide criminal records check.~~

22 ~~(2) In the event that a legible set of fingerprints as~~
 23 ~~determined by the Bureau of Identification and Information and the Federal~~
 24 ~~Bureau of Investigation cannot be obtained after a minimum of three (3)~~
 25 ~~attempts, the Division of Child Care and Early Childhood Education shall~~
 26 ~~determine eligibility for employment based upon a name check by the Bureau of~~
 27 ~~Identification and Information and the Federal Bureau of Investigation.~~

28 ~~(3) Upon completion of the criminal records checks, the Bureau~~
 29 ~~of Identification and Information shall forward all information obtained~~
 30 ~~concerning the applicant for a license to the division.~~

31 ~~(b) Criminal Records Check—Employees.~~

32 ~~(1)(A)(i) Any employee or conditional employee if that~~
 33 ~~employment involves supervisory or disciplinary power over a child or~~
 34 ~~children or involves contact with a child or children in any child care~~
 35 ~~facility which is required to be licensed by the division who has not been a~~
 36 ~~resident of the State of Arkansas for the preceding six (6) years, shall~~

1 apply to the Bureau of Identification and Information for a statewide
2 eriminal records check and a nationwide criminal records check to be
3 conducted through the Federal Bureau of Investigation.

4 (ii) The nationwide criminal records check shall
5 conform to the applicable federal standards and shall include the taking of
6 fingerprints.

7 (iii) Upon applying for a criminal records check,
8 the person shall sign a release of information and shall be responsible for
9 the payment of any fee associated with the nationwide criminal records check.
10 The applicant shall not be assessed a fee for the statewide criminal records
11 check.

12 (B) In the event that a legible set of fingerprints as
13 determined by the Bureau of Identification and Information and the Federal
14 Bureau of Investigation cannot be obtained after a minimum of three (3)
15 attempts, the division shall determine eligibility for employment based upon
16 a name check by the Bureau of Identification and Information and the Federal
17 Bureau of Investigation.

18 (C)(i) Any employee, if that employment involves
19 supervisory or disciplinary power over a child or children or involves
20 contact with a child or children, in any child care facility which is
21 required to be licensed by the division and who has been a resident of the
22 State of Arkansas for the preceding six (6) years, shall only be required to
23 apply to the Bureau of Identification and Information for a statewide
24 eriminal records check.

25 (ii) The applicant shall not be assessed a fee for
26 the statewide criminal records check.

27 (2) Upon completion of a criminal records check, the Bureau of
28 Identification and Information shall forward all information obtained
29 concerning the employee or conditional employee in a child care facility to
30 the division.

31 (3)(A) The owner or operator of a child care facility shall
32 maintain on file, subject to inspection by the division, evidence that
33 eriminal records checks have been initiated on all current employees hired on
34 or after September 1, 1993, and the results of the checks.

35 (B) Failure to maintain that evidence on file will be
36 prima facie grounds to revoke the license of the owner or operator of the

1 ~~child care facility.~~

2 ~~(c) Procedures Generally.~~

3 ~~(1) Each applicant for a license to own or operate a child care~~
4 ~~facility and each employee in any child care facility required to be licensed~~
5 ~~by the division shall complete a criminal records check form developed by the~~
6 ~~Department of Human Services and shall sign the form under oath before a~~
7 ~~notary public.~~

8 ~~(2) The owner or operator of the child care facility shall~~
9 ~~submit the criminal records check form to the division for processing within~~
10 ~~ten (10) days of hiring the employee, who shall remain under conditional~~
11 ~~employment until the child abuse central registry check and criminal records~~
12 ~~checks required under this subchapter are completed.~~

13 ~~(3) Nothing in this section shall be construed to prevent the~~
14 ~~division from denying a license to an owner or preventing an operator or~~
15 ~~employee in a child care facility from having unsupervised access to children~~
16 ~~by reason of the pending status of a criminal prosecution or pending appeal~~
17 ~~of a child maltreatment determination.~~

18 ~~(d) False Swearing.~~

19 ~~(1) An owner or operator of a child care facility shall not be~~
20 ~~liable during a conditional period of employment for hiring an employee who~~
21 ~~may be subject to a charge of false swearing upon completion of registry and~~
22 ~~criminal records checks.~~

23 ~~(2)(A) Pursuant to this subchapter, false swearing shall occur~~
24 ~~when a person while under oath provides false information or omits~~
25 ~~information that the person knew or should reasonably have known was~~
26 ~~material.~~

27 ~~(B) Lack of knowledge that information is material is not~~
28 ~~a defense to a charge of false swearing.~~

29 ~~(3) For purposes of this subchapter, false swearing is a Class A~~
30 ~~misdemeanor.~~

31 ~~(e) Repeat Checks.~~

32 ~~(1) After the initial checks, licensed owners or operators of~~
33 ~~child care facilities and all child care facility employees shall reapply~~
34 ~~every five (5) years to the Bureau of Identification and Information for a~~
35 ~~statewide criminal records check, the results of which, upon completion,~~
36 ~~shall be forwarded to the division.~~

1 ~~(2) The applicants shall not be assessed a fee for the statewide~~
2 ~~criminal records check required under this subsection.~~

3 ~~(f) Churches. All applicants for a church operated exemption and~~
4 ~~their employees shall comply with this section, in addition to applicants for~~
5 ~~a license to own or operate a child care facility and their employees.~~

6
7 ~~20-78-604. Qualifications for child care ownership, operation, or~~
8 ~~employment.~~

9 ~~(a) Without proof of rehabilitation as provided in subsection (b) of~~
10 ~~this section, no person shall be eligible to be a child care facility owner,~~
11 ~~operator, or employee in a licensed or church operated exempt facility if~~
12 ~~that person has pleaded guilty or nolo contendere to or has been found guilty~~
13 ~~of any of the following offenses by any court in the State of Arkansas or of~~
14 ~~any similar offense by a court in another state or of any similar offense by~~
15 ~~a federal court:~~

16 ~~(1) Capital murder as prohibited in § 5-10-101;~~

17 ~~(2) Murder in the first and second degrees as prohibited in §§~~
18 ~~5-10-102 and 5-10-103;~~

19 ~~(3) Manslaughter as prohibited in § 5-10-104;~~

20 ~~(4) Battery in the first and second degrees as prohibited in §§~~
21 ~~5-13-201 and 5-13-202;~~

22 ~~(5) Aggravated assault as prohibited in § 5-13-204;~~

23 ~~(6) Terroristic threatening in the first degree as prohibited in~~
24 ~~§ 5-13-301;~~

25 ~~(7) Kidnapping as prohibited in § 5-11-102;~~

26 ~~(8) False imprisonment in the first degree as prohibited in § 5-~~
27 ~~11-103;~~

28 ~~(9) Permanent detention or restraint as prohibited in § 5-11-~~
29 ~~106;~~

30 ~~(10) Rape as prohibited in § 5-14-103;~~

31 ~~(11) Sexual § assault in the first degree, second degree, third~~
32 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~

33 ~~(12) Incest as prohibited in §§ 5-26-202;~~

34 ~~(13) Endangering the welfare of a minor in the first degree as~~
35 ~~prohibited in § 5-27-203;~~

36 ~~(14) Permitting child abuse as prohibited in § 5-27-221(a)(1)~~

1 and (3);

2 (15) ~~Engaging children in sexually explicit conduct for use in~~
3 ~~visual or print media, transportation of minors for prohibited sexual~~
4 ~~conduct, or use of a child or consent to use of a child in a sexual~~
5 ~~performance by producing, directing, or promoting a sexual performance by a~~
6 ~~child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;~~

7 (16) ~~Distribution to minors as prohibited in § 5-64-406;~~

8 (17) ~~Manufacture, delivery, or possession with intent to~~
9 ~~manufacture or deliver any controlled substance as prohibited in § 5-64-401;~~

10 (18) ~~Sexual indecency with a child as prohibited in § 5-14-110;~~

11 (19) ~~Pandering or possessing visual or print medium depicting~~
12 ~~sexually explicit conduct involving a child as prohibited by § 5-27-304;~~

13 (20) ~~Negligent homicide as prohibited by § 5-10-105;~~

14 (21) ~~Assault in the first degree as prohibited by § 5-13-205;~~

15 (22) ~~Coercion as prohibited by § 5-13-208;~~

16 (23) ~~Sexual misconduct as prohibited by § 5-14-107 [repealed];~~

17 (24) ~~Public sexual indecency as prohibited by § 5-14-111;~~

18 (25) ~~Indecent exposure as prohibited by § 5-14-112;~~

19 (26) ~~Endangering the welfare of a minor in the second degree as~~
20 ~~prohibited by § 5-27-204;~~

21 (27) ~~Any felony or any misdemeanor involving violence or sexual~~
22 ~~misconduct;~~

23 (28) ~~Criminal attempt, criminal solicitation, or criminal~~
24 ~~conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to~~
25 ~~commit any of the offenses listed in this section;~~

26 (29) ~~Computer child pornography as prohibited in § 5-27-603; and~~

27 (30) ~~Computer exploitation of a child in the first degree as~~
28 ~~prohibited in § 5-27-605.~~

29 (b)(1) ~~Any person pleading guilty or nolo contendere or found guilty~~
30 ~~of any of the offenses listed in subsection (a) of this section shall be~~
31 ~~absolutely disqualified to be an owner, operator, or employee in a child care~~
32 ~~facility, licensed or church operated exempt, during the period of that~~
33 ~~person's confinement, probation, or parole.~~

34 (2)(A) ~~Any person pleading guilty or nolo contendere or found~~
35 ~~guilty of any of the offenses listed in subsection (a) of this section shall~~
36 ~~be presumed to be disqualified to be an owner, operator, or employee in a~~

1 ~~child care facility, licensed or church-operated exempt, after the completion~~
 2 ~~of that person's term of confinement, probation, or parole.~~

3 ~~(B)(i)(a) The applicant to own, operate, or be an employee~~
 4 ~~in a licensed or church-operated exempt facility must petition the Division~~
 5 ~~of Child Care and Early Childhood Education of the Department of Human~~
 6 ~~Services to make a determination that five (5) years have passed since the~~
 7 ~~date of conviction or plea of guilty or nolo contendere and that the~~
 8 ~~applicant does not pose a risk of harm to any person served by the facility.~~

9 ~~(b) The applicant shall bear the burden of~~
 10 ~~making that showing.~~

11 ~~(ii) The division, in its discretion, may permit the~~
 12 ~~applicant to own, operate, or be an employee in a child care facility,~~
 13 ~~licensed or church-operated exempt, upon making a determination that five (5)~~
 14 ~~years have passed since the date of conviction or plea of guilty or nolo~~
 15 ~~contendere and that the applicant does not pose a risk of harm to any person~~
 16 ~~served by the facility.~~

17
 18 ~~20-78-605. Definitions—Volunteers' records check.~~

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

20 ~~(1) "Employee" means a person in the service of a child care~~
 21 ~~facility other than a person providing auxiliary services under a~~
 22 ~~professional license, whether full-time or part-time and whether employed by~~
 23 ~~contract or at will, in which the employer has authority to control the~~
 24 ~~person in the material details of how work will be performed and when~~
 25 ~~compensation will be provided and:~~

26 ~~(A) Compensation will be provided; or~~

27 ~~(B) The person is a volunteer who has supervisory or~~
 28 ~~disciplinary control over children or who is left alone with children;~~

29 ~~(2) "Operator" means any person who is responsible for managing~~
 30 ~~day-to-day operation of a child care facility;~~

31 ~~(3) "Owner" means any person who assumes the legal~~
 32 ~~responsibility for operation of a child care facility by signing the~~
 33 ~~application for a license or for an exemption; and~~

34 ~~(4)(A) "Volunteer" means a person who provides his or her~~
 35 ~~services without any express or implied promise of compensation.~~

36 ~~(B)(i) Volunteers who are not left alone with children or~~

1 ~~who do not have disciplinary control over children in child care facilities~~
2 ~~shall not be required to have criminal records checks.~~

3 ~~(ii) All volunteers shall be checked with the child~~
4 ~~abuse central registry for reports of child maltreatment.~~

5
6 SECTION 11. Arkansas Code Title 20, Chapter 78, Subchapter 6 is
7 amended to add an additional section to read as follows:

8 20-78-606. Criminal history records checks required.

9 (a) Licensed child care facilities and child care facilities with a
10 church-operated exemption shall comply with the requirements of § 20-38-101
11 et seq., concerning criminal history records checks.

12 (b)(1) The Division of Child Care and Early Childhood Education of the
13 Department of Human Services shall establish by rule requirements for
14 registry records checks for licensed child care facilities and child care
15 facilities with a church-operated exemption.

16 (2) As used in this section, “registry records check” means the
17 review of one (1) or more database systems maintained by a state agency that
18 contain information relative to a person’s suitability for employment as a
19 caregiver.

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