Senate Bill 406
By: Senators Strickland of the 17th, Walker III of the 20th, Stone of the 23rd, Miller of the 49th, Martin of the 9th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to enact the "Georgia Long-term Care Background Check Program" and to promote public safety and provide for comprehensive criminal background checks for owners, applicants for employment, and employees providing care or owning a personal care home, assisted living community, private home care provider, home health agency, hospice care, nursing home, skilled nursing facility, or an adult day care as recommended by the Georgia Council on Criminal Justice Reform; to repeal conflicting provisions relating to criminal background checks of such individuals and facilities; to provide for definitions; to require facilities to conduct a search of applicable registries for owners, applicants, and employees prior to a criminal background check; to provide the Department of Community Health the authority to conduct national fingerprint based criminal background checks; to provide for an appeal process when an owner, applicant, or employee has been disqualified from licensure or employment; to provide for civil penalties for not terminating an employee with an unsatisfactory criminal background check; to provide for application form notice; to provide for immunity from liability; to provide for rules and regulations; to provide the Department of Community Health with authority over matters relating to facility licensing and employee records checks; to establish a caregiver's registry to allow certain employers access to criminal background checks conducted by the department; to provide for procedure; to provide for an appeal process; to provide for immunity from liability; to provide a purpose and intent statement; to amend Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to general provisions for the Department of Human Services, so as to provide for conforming cross-references; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:
PART I

SECTION 1-1.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by repealing Code Section 31-2-9, relating to records check requirement for certain facilities, definitions, use of information gathered in investigation, penalties for unauthorized release or disclosure, and rules and regulations, and designating said Code section as reserved.

SECTION 1-2.

Said title is further amended by revising Code Section 31-7-12.3, relating to adoption of rules and regulations, as follows:

"31-7-12.3. The department shall adopt rules and regulations to implement Code Sections 31-7-12 and 31-7-12.2. Such rules and regulations shall establish meaningful distinctions between the levels of care provided by personal care homes, assisted living communities, and nursing homes but shall not curtail the scope or levels of services provided by personal care homes or nursing homes as of June 30, 2011; provided, however, that nothing in this chapter shall preclude the department from issuing waivers or variances to personal care homes of the rules and regulations established pursuant to this Code section. Notwithstanding Code Section 31-2-9 or 31-7-12.2, the department shall not grant a waiver or variance unless:

(1) There are adequate standards affording protection for the health and safety of residents of the personal care home;

(2) The resident of the personal care home provides a medical assessment conducted by a licensed health care professional who is unaffiliated with the personal care home which identifies the needs of the resident; and

(3) The department finds that the personal care home can provide or arrange for the appropriate level of care for the resident."

SECTION 1-3.

Said title is further amended by repealing in its entirety Article 11 of Chapter 7, relating to facility licensing and employee records checks, and designating said article as reserved.

SECTION 1-4.

Said title is further amended by revising Article 14 of Chapter 7, relating to nursing homes employee records checks, as follows:
ARTICLE 14

31-7-350.
(a) This article shall be known and may be cited as the 'Georgia Long-term Care Background Check Program.'
(b) The purpose of this article is to establish the minimum standards for the Georgia Long-term Care Background Check Program for conducting criminal background checks of owners, applicants for employment, and direct access employees at certain facilities.

31-7-351.
As used in this article, the term:

(1) 'Applicant' means an individual applying to be a direct access employee at a facility.
(2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.
(3) 'Crime' means commission of an offense which constitutes a felony with respect to the following:

(A) A violation of Code Section 16-5-21;
(B) A violation of Code Section 16-5-24;
(C) A violation of Code Section 16-6-1;
(D) A violation of Code Section 16-8-2;
(E) A violation of Code Section 16-8-3;
(F) A violation of Code Section 16-8-4;
(G) A violation of Code Section 16-5-1;
(H) A violation of Code Section 16-4-1;
(I) A violation of Code Section 16-8-40;
(J) A violation of Code Section 16-8-41;
(K) A felony violation of Code Section 16-9-1;
(L) A violation of Article 8 of Chapter 5 of Title 16;
(M) A violation of Chapter 13 of Title 16; or
   (i) A violation of Code Section 16-5-70;
   (ii) A violation of Code Section 16-5-101;
   (iii) A violation of Code Section 16-5-102;
   (iv) A violation of Code Section 16-6-4;
   (v) A violation of Code Section 16-6-5;
   (vi) A violation of Code Section 16-6-5.1; or
   (vii) A violation of Code Section 30-5-8;
(B) A felony violation of:

(i) Chapter 5, 6, 8, 9, or 13 of Title 16;

(ii) Code Section 16-4-1;

(iii) Code Section 16-7-2; or

(iv) Subsection (f) of Code Section 31-7-12; or

(N)(C) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime constitute an offense identified in this paragraph without regard to its designation elsewhere.

(4) ‘Criminal background check’ means a search of the criminal records maintained by GCIC and the Federal Bureau of Investigation to determine whether an owner, applicant, or employee has a criminal record.

(5)(A) ‘Criminal record’ means any of the following which have reached final disposition within ten years of the date the criminal record check is conducted:

(i) Conviction of a crime;

(ii) Arrest, charge, and sentencing for a crime when:

(I) A plea of nolo contendere was entered to the charge;

(II) First offender treatment without adjudication of guilt pursuant to the charge was granted to the crime; or

(III) Adjudication or sentence was otherwise withheld or not entered on the crime; or

(iii) Arrest and charges for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(B) Such term shall not include an owner, applicant, or employee for which at least ten years have elapsed from the date of his or her criminal background check since the completion of all of the terms of his or her sentence; provided, however, that such ten-year period or exemption shall never apply to any crime identified in subsection (j) of Code Section 42-8-60.

(6) ‘Direct access’ means having, or expecting to have, duties that involve routine personal contact with a patient, resident, or client, including face-to-face contact, hands-on physical assistance, verbal cuing, reminding, standing by or monitoring or activities that require the person to be routinely alone with the patient's, resident's, or client's property or access to such property or financial information such as the patient's, resident's, or client's checkbook, debit and credit cards, resident trust funds, banking records, stock accounts, or brokerage accounts.

(4) ‘Employment applicant’ means any person seeking employment by a nursing home. This term shall not include persons employed by the nursing home prior to July 1, 1995.
(7) 'Employee' means any individual who has direct access and who is hired by a facility through employment, or through a contract with such facility, including, but not limited to, housekeepers, maintenance personnel, diéticians, and any volunteer who has duties that are equivalent to the duties of an employee providing such services. Such term shall not include an individual who contracts with the facility, whether personally or through a company, to provide utility, construction, communications, accounting, quality assurance, human resource management, information technology, legal, or other services if the contracted services are not directly related to providing services to a patient, resident, or client of the facility. Such term shall not include any health care provider, including, but not limited to, physicians, dentists, nurses, and pharmacists who are licensed by the Georgia Composite Medical Board, the Georgia Board of Dentistry, the Georgia Board of Nursing, or the State Board of Pharmacy.

(8) 'Facility' means:
(A) A personal care home required to be licensed or permitted under Code Section 31-7-12;
(B) An assisted living community required to be licensed under Code Section 31-7-12.2;
(C) A private home care provider required to be licensed under Article 13 of this chapter;
(D) A home health agency as licensed pursuant to Code Section 31-7-151;
(E) A provider of hospice care as licensed pursuant to Code Section 31-7-173;
(F) A nursing home, skilled nursing facility, or intermediate care home licensed pursuant to rules of the department; or
(G) An adult day care facility licensed pursuant to rules of the department.

(9) 'Fingerprint records check determination' means a satisfactory or unsatisfactory determination by the department based upon fingerprint based national criminal history information.

(10) 'GCIC' means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(11) 'License' means the document issued by the department to authorize a facility to operate.

(12) 'Nursing home' or 'home' means a home required to be licensed or permitted as a nursing home under the provisions of this chapter.

(13) 'Owner' in the context of a nursing home or intermediate care home means an individual who is not an 'excluded party' as such term is defined in Code Section 31-7-3.3, otherwise such term means an individual or any person affiliated with
a corporation, partnership, or association with 10 percent or greater ownership interest
in a facility who performs one or more of the following:
(A) Purports to or exercises authority of a facility;
(B) Applies to operate or operates a facility;
(C) Maintains an office on the premises of a facility;
(D) Resides at a facility;
(E) Has direct access at a facility;
(F) Provides direct personal supervision of facility personnel by being immediately
available to provide assistance and direction when such facility services are being
provided; or
(G) Enters into a contract to acquire ownership of a facility.

(13) 'Records check application' means fingerprints in such form and of such quality as
prescribed by GCIC under standards adopted by the Federal Bureau of Investigation and
a records search fee to be established by the department by rule and regulation, payable
in such form as the department may direct to cover the cost of obtaining a criminal
background check.

(14) 'Registry check' means a review of the nurse aide registry provided for in Code
Section 31-2-14, the state sexual offender registry, and the List of Excluded Individuals
and Entities as authorized in Sections 1128 and 1156 of the federal Social Security Act,
as it existed on February 1, 2018, or any other registry useful for the administration of
this article as specified by rules of the department.

(7)(15) 'Satisfactory determination' means a written determination by a nursing home
that a person for whom a record criminal background check was
performed was found to have no criminal record.

(9)(16) 'Unsatisfactory determination' means a written determination by a nursing home
that a person for whom a record criminal background check was
performed was found to have a criminal record.

31-7-351.
(a) Prior to hiring an employment applicant, each nursing home shall request a criminal
record check from GCIC to determine whether the applicant has a criminal record. A
nursing home shall make a written determination for each applicant for whom a criminal
record check is performed. A nursing home shall not employ a person with an
unsatisfactory determination.

(b) Any request for a criminal record check under this Code section shall be on a form
approved by GCIC and submitted in person, by mail, or by facsimile request to any county
sheriff or municipal law enforcement agency having access to GCIC information. The fee
shall be no greater than the actual cost of processing the request. The law enforcement agency receiving the request shall perform a criminal record check for a nursing home within a reasonable time but in any event within a period not to exceed three days of receiving the request.

(c) Each application form provided by the employer to the employment applicant shall conspicuously state the following: ‘FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT.’

31-7-352.

(a) Neither GCIC nor any law enforcement agency providing GCIC information pursuant to this article shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A nursing home, its administrator, and its employees shall have no liability for wrongful discharge, unemployment security benefits, or any other claim based upon:

(1) Refusal to employ any person with a criminal record;

(2) Termination of employment of persons with a criminal record already employed by the home; or

(3) Other action taken in good faith reliance upon GCIC information received pursuant to this article.

(a) A registry check of an owner, applicant, or employee shall be required prior to a criminal background check and shall be initiated by the applicable facility. A registry check shall be performed by such facility and may include reviewing registries of any other states in which the applicant previously resided. If an applicant has not resided in this state for at least two years, the facility shall conduct registry checks of each state in which the applicant resided for the previous two years, as represented by such applicant or as otherwise determined by the applicable facility.

(b) If applicable to an owner, applicant, or employee, a query of available information maintained by the Georgia Composite Medical Board, the Secretary of State, or other applicable licensing boards shall be conducted prior to a criminal background check to validate that such individual's professional license is in good standing.

(c) Except as provided in subsection (c) of Code Section 31-7-359, nothing in this Code section shall be construed to limit the responsibility or ability of a facility to screen owners, applicants, or employees through additional methods.
A nursing home that hires an applicant for employment with a criminal record shall be
liable for a civil monetary penalty in the amount of the lesser of $2,500.00 or $500.00 for
each day that a violation of subsection (a) of Code Section 31-7-351 occurs. The daily civil
monetary penalty shall be imposed only from the time the nursing home administrator
knew or should have known that the nursing home has in its employ an individual with a
criminal record and until the date such individual is terminated.

(a) Accompanying any application for a new license, the candidate facility shall furnish
to the department a records check application for each owner and each applicant and
employee. In lieu of such records check application, such facility may submit evidence,
satisfactory to the department, that within the immediately preceding 12 months each
owner, applicant, or employee received a satisfactory determination that includes a records
check clearance date that is no more than 12 months old, or that any owner, applicant, or
employee whose fingerprint records check determination revealed a criminal record of any
kind has subsequently received a satisfactory determination.

(b) On or before January 1, 2021, each owner and employee of a currently licensed facility
shall furnish to the department a records check application. In lieu of such records check
application, a facility may submit evidence, satisfactory to the department, that within the
immediately preceding 12 months each owner and employee received a satisfactory
determination.

(c) Upon receipt of fingerprints submitted pursuant to a record check application, GCIC
shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search
of bureau records and shall promptly conduct a search of its own records and records to
which it has access. Within ten days after receiving fingerprints acceptable to GCIC, it
shall notify the department in writing of any criminal record or if there is no such finding.
After a search of Federal Bureau of Investigation records and fingerprints and upon receipt
of the bureau's report, the department shall make a determination about an owner's,
applicant's, or employee's criminal record.

(d) Neither GCIC, the department, any law enforcement agency, nor the employees of any
such entities shall be responsible for the accuracy of information nor have any liability for
defamation, invasion of privacy, negligence, or any other claim in connection with any
dissemination of information or determination based thereon pursuant to this Code section.

(e) All information received from the Federal Bureau of Investigation or GCIC shall be
used exclusively for employment or licensure purposes and shall not be released or
otherwise disclosed to any other person or agency. All such information collected by the
department shall be maintained by the department pursuant to laws regarding and rules or
regulations of the Federal Bureau of Investigation and GCIC, as is applicable. Penalties

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for the unauthorized release or disclosure of any such information shall be as prescribed
pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation
and GCIC, as is applicable.

31-7-354.
(a) An applicant seeking employment with a facility or a current employee at such facility
shall consent to a national and state background check that includes a registry check, a
check of information maintained by a professional licensing board, if applicable, and a
criminal background check.
(b)(1) An individual required to submit to a registry check and criminal background
check shall not be employed by, contracted with, or allowed to work as an employee at
a facility if:
(A) The individual appears on a registry check;
(B) There is a substantiated finding of neglect, abuse, or misappropriation of property
by a state or federal agency pursuant to an investigation conducted in accordance with
42 U.S.C. Section 1395i-3 or 1396r as it existed on February 1, 2018;
(C) The individual's professional license, if applicable, is not in good standing; or
(D) The facility receives notice from the department that the individual has been found
to have an unsatisfactory determination.
(2) An individual whose professional license is not in good standing may be employed
by a facility in a position wherein his or her duties do not require professional licensure,
provided that he or she provides a fingerprint record check determination in the same
manner as an applicant.
(c) An owner, applicant, or employee may:
(1) Obtain information concerning the accuracy of his or her criminal record, and the
department shall refer such individual to the appropriate state or federal law enforcement
agency that was involved in the arrest or conviction;
(2) Challenge the finding that he or she is the true subject of the results from a registry
check, and the department shall refer such individual to the agency responsible for
maintaining such registry; and
(3) Appeal his or her disqualifying unsatisfactory determination pursuant to Code
Section 31-7-358.

31-7-355.
(a) A Personnel file for each employee shall be maintained by the applicable facility. Such
files shall be available for inspection by the appropriate enforcement authorities but shall
otherwise be maintained to protect the confidentiality of the information contained therein
and shall include, but not be limited to, evidence of each employee's satisfactory determination, registry check, and licensure check, if applicable.

(b)(1) As used in this paragraph, the term:

(A) 'Abuse' means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Such term includes the deprivation by an individual of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Such term includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including abuse, facilitated or enabled through the use of technology.

(B) 'Willful' means acting deliberately, not that there is an intention to inflict injury or harm.

(2) The department may require a criminal background check on any owner of or employee at a facility during the course of an abuse investigation involving such owner or employee or if the department receives information that such owner or employee was arrested for a crime. In such instances, the department shall require the owner or employee to furnish two full sets of fingerprints which the department shall submit to GCIC together with appropriate fees collected from the owner or employee. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. GCIC shall notify the department in writing of any unsatisfactory finding, including but not limited to any criminal record obtained through the fingerprint records check determination or if there is no such finding.

(3) When the department determines that an applicant or employee has an unsatisfactory determination, the department shall notify the facility that such applicant or employee is ineligible to hire or employ and the facility shall take the necessary steps so that such employee is no longer employed at the facility; provided, however, that a facility may retain a current employee during the period of his or her administrative appeal.

(4) When the department determines that an owner has an unsatisfactory determination, the department shall notify such owner of the ineligible status for ownership and shall take the necessary steps to revoke the facility's license.

(5) An owner, applicant, or employee may appeal their disqualifying unsatisfactory determination pursuant to Code Section 31-7-358.

A facility that does not terminate an employee who has been found to have an unsatisfactory determination or failed a registry check shall be liable for a civil monetary penalty.
penalty in the amount of the lesser of $10,000.00 or $500.00 for each day that a violation
occurs. The daily civil monetary penalty shall be imposed only from the time the facility
knew or should have known that it employed an individual with a criminal record and until
the date such individual's employment is terminated.

31-7-357.
Each application form provided by a facility to an applicant shall conspicuously state the
following: 'FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A
NATIONAL AND STATE BACKGROUND CHECK AS A CONDITION OF
EMPLOYMENT.'

31-7-358.
(a)(1) An owner of a facility with an unsatisfactory determination or whose name
appears on a registry check shall not operate or hold a license, and the department shall
revoke the license of any owner operating such facility or refuse to issue a license to any
owner operating such facility if such owner has an unsatisfactory determination or is on
a registry check.
(2) Prior to approving any license for a facility and periodically as established by the
department by rule, the department shall require each owner and employee to submit to
a registry check and criminal background check pursuant to Code Sections 31-7-352 and
31-7-353.
(3)(A) An employee or applicant who received an unsatisfactory determination or
whose name appears on a registry check shall be eligible to appeal such determination
pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
(B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing
officer shall consider in mitigation the length of time since the crime was committed,
the absence of additional criminal charges, the circumstances surrounding the
commission of the crime, and other indicia of rehabilitation.
(4)(A) The department's determination regarding an owner's unsatisfactory criminal
background check, or any action by the department revoking or refusing to grant a
license based on such determination, shall constitute a contested case for purposes of
Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that any
hearing required to be held pursuant thereto may be held reasonably expeditiously after
such determination or action by the department.
(B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing
officer shall consider in mitigation the length of time since the crime was committed,
the absence of additional criminal charges, the circumstances surrounding the
commission of the crime, other indicia of rehabilitation, the facility's history of
compliance with the regulations, and the owner's involvement with the licensed facility
in arriving at a decision as to whether the criminal record requires the denial or
revocation of the license to operate the facility. When a hearing is required, at least 30
days prior to such hearing, the hearing officer shall notify the office of the prosecuting
attorney who initiated the prosecution of the crime in question in order to allow the
prosecuting attorney to object to a possible determination that the conviction would not
be a bar for the grant or continuation of a license as contemplated within this Code
section. If objections are made, the hearing officer shall take such objections into
consideration.

(b) The requirements of this Code section are supplemental to any requirements for a
license imposed by Article 1 of this chapter.

31-7-359.

(a) No person, including the department, a facility, or an individual acting on behalf of
such entities, shall be liable for civil damages or be subject to any claim, demand, cause
of action, or proceeding of any nature as a result of actions taken in good faith to comply
with this article, including the disqualification of an applicant from employment on the
basis of a disqualifying crime.

(b)(1) A facility that has obtained a satisfactory determination on an owner, applicant,
or employee in accordance with this article, or confirmation that such owner, applicant,
or employee has obtained a favorable final appeal decision under Code Section 31-7-358,
shall be immune from liability for claims of negligent hiring when such claims are based
upon the criminal record of such owner, applicant, or employee, even when the
information contained in the criminal background check used by the department is later
determined to have been incomplete or inaccurate; provided, however, that such
immunity shall not preclude the liability of a facility concerning claims based on
information beyond the scope of the criminal record and satisfactory determination about
the owner, applicant, or employee which the facility knew or should have known.

(2) When a facility has obtained a satisfactory determination on an owner, applicant, or
employee, there shall be a rebuttable presumption of due care for claims of negligent
hiring, negligent retention, or other similar claims to the extent such claims are based
upon an owner's, applicant's, or employee's criminal record.

(c) Nothing in this article shall require a facility to conduct any other type of criminal
history check of an owner, applicant, or employee, and a facility shall not be held liable for
claims of negligent hiring, negligent retention, or other similar claims based solely or in
part on its failure to conduct other types of criminal history checks.
(d) Nothing in this article shall be construed to waive the sovereign immunity of the state, the department, or any other entity of the state.

31-7-360.
The Department of Community Health shall be authorized to enforce this article and to department shall promulgate written rules and regulations related to the requirements and implementation of this article.

31-7-361.
(a) Effective July 1, 2009, all matters relating to facility licensing and employee criminal background checks for personal care homes pursuant to Article 11 of this chapter as it existed on June 30, 2009, shall be transferred from the Department of Human Services to the department.

(b) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the department pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the department. In all such instances, the department shall be substituted for the Department of Human Resources, and the department shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the department pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the department in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the department on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the department."
Said title is further amended by adding a new article to read as follows:

"ARTICLE 14A

31-7-380. The purpose of this article is to enable employers who are family members or guardians of elderly persons to obtain an employment eligibility determination from the department for applicants who are seeking to provide and employees who are providing personal care services to their family members or wards. It is the intent of the General Assembly to allow the department to establish and maintain a caregiver registry so as to provide such employers with access to employment eligibility determinations conducted by the department in a similar manner as licensed facilities receive employment determinations as provided in Article 14 of this chapter.

31-7-381. As used in this article, the term:

(1) 'Applicant' means an individual applying to provide personal care services to an elderly person in a residence or location not licensed by the department.

(2) 'Criminal background check' means a search of the criminal records maintained by Georgia Crime Information Center and the Federal Bureau of Investigation to determine whether an applicant or employee has a criminal record.

(3) 'Elderly person' means an individual who is 65 years of age or older.

(4) 'Employee' means any individual who is providing personal care services to an elderly person in a residence or location not licensed by the department.

(5) 'Employer' means an individual who is considering an applicant or has hired an employee for a family member or ward.

(6) 'Family member' means an individual with a close familial relationship, including, but not limited to, a spouse, parent, sibling, or grandparent.

(7) 'Personal care services' means home care, health care, companionship, or transportation and includes, but is not limited to, providing assistance with bathing, eating, dressing, walking, shopping, fixing meals, and housework.

(8) 'Registry check' means a review of the nurse aide registry provided for in Code Section 31-2-14, the state sexual offender registry, and the List of Excluded Individuals and Entities as authorized in Sections 1128 and 1156 of the federal Social Security Act, as it existed on February 1, 2018, or any other registry useful for the administration of this article as specified by rules of the department.
(9) 'Ward' means an elder person for whom a guardian has been appointed pursuant to Title 29.

31-7-382.
The department may establish and maintain a central caregiver registry which shall be accessible to employers as a data base operated by the department that contains information on eligible and ineligible applicants and employees as determined by the department from criminal background checks and registry checks conducted on behalf of facilities as provided in Article 14 of this chapter and criminal background checks and registry checks conducted on behalf of employers as provided in this article.

31-7-383.
(a) The department shall allow an employer to inquire with the department about the eligibility or ineligibility for employment as if the applicant or employee were applying to work or working in one of the facilities licensed under Article 14 of this chapter so long as the applicant or employee agrees to such request, provides his or her fingerprints as set forth in Article 14 of this chapter, and consents to the inclusion of the results in the caregiver registry. Any fees associated with such check shall be paid by the employer, applicant, or employee.

(b) An employer shall be responsible for all employment decisions made based on the eligible or ineligible employment determination provided to the employer from the department.

31-7-384.
An applicant or employee who receives a determination of ineligibility for employment from the department shall be eligible to appeal such determination by requesting, in writing, an administrative review by the department. The department shall promulgate rules and regulations in order to implement this Code section. The department shall maintain the specifics of the employment determination in the same manner as required by subsection (e) of Code Section 31-7-353.

31-7-385.
No person, including the department, an employer, or an individual acting on behalf of such entities, shall be liable for civil damages or be subject to any claim, demand, cause of action, or proceeding of any nature as a result of actions taken in good faith to comply with this article, including the disqualification of an applicant or employee from employment on the basis of the results of a criminal background check or registry check.
Except as provided in Code Section 31-7-384, the department shall promulgate rules and regulations related to the requirements and implementation of this article.

PART II
SECTION 2-1.

Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to general provisions for the Department of Human Services, is amended by revising subsection (e) of Code Section 49-2-14, relating to record search for conviction data on prospective employees, as follows:

“(e) Notwithstanding the provisions of subsection (c) of this Code section, when a contractor to this department is a personal care home, the provisions of Code Sections 31-7-250 through 31-7-264 Article 14 of Chapter 7 of Title 31 shall apply.”

SECTION 2-2.

Said article is further amended by revising subsection (e) of Code Section 49-2-14.1, relating to definitions and records check requirement for licensing certain facilities, as follows:

“(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of this title or Article 14 of Chapter 7 of Title 31.”

PART III
SECTION 3-1.

This Act shall become effective on October 1, 2019.

SECTION 3-2.

All laws and parts of laws in conflict with this Act are repealed.