

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

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

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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PART I

26

SECTION 1-1.

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

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SECTION 1-2.

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

34 "31-7-12.3.

35 The department shall adopt rules and regulations to implement Code Sections 31-7-12 and
 36 31-7-12.2. Such rules and regulations shall establish meaningful distinctions between the
 37 levels of care provided by personal care homes, assisted living communities, and nursing
 38 homes but shall not curtail the scope or levels of services provided by personal care homes
 39 or nursing homes as of June 30, 2011; provided, however, that nothing in this chapter shall
 40 preclude the department from issuing waivers or variances to personal care homes of the
 41 rules and regulations established pursuant to this Code section. Notwithstanding Code
 42 Section ~~31-2-9~~ or 31-7-12.2, the department shall not grant a waiver or variance unless:

- 43 (1) There are adequate standards affording protection for the health and safety of
 44 residents of the personal care home;
- 45 (2) The resident of the personal care home provides a medical assessment conducted by
 46 a licensed health care professional who is unaffiliated with the personal care home which
 47 identifies the needs of the resident; and
- 48 (3) The department finds that the personal care home can provide or arrange for the
 49 appropriate level of care for the resident."

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SECTION 1-3.

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

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SECTION 1-4.

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

"ARTICLE 14

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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.

~~(1)~~(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.

~~(2)~~(3) 'Crime' means commission of an offense which constitutes a felony with respect to the following:

(A) Any of the following offenses:

- ~~(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;

91 (B) A felony violation of:

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

93 (ii) Code Section 16-4-1;

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

95 (iv) Subsection (f) of Code Section 31-7-12.1; or

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

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

102 ~~(3)~~(5)(A) 'Criminal record' means any of the following which have reached final
 103 disposition within ten years of the date the criminal record check is conducted:

104 ~~(A)~~(i) Conviction of a crime;

105 ~~(B)~~(ii) Arrest, charge, and sentencing for a crime where when:

106 ~~(i)~~(I) A plea of nolo contendere was entered to the charge crime;

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

109 ~~(iii)~~(III) Adjudication or sentence was otherwise withheld or not entered on for the
 110 charge crime; or

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

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

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

125 (4) 'Employment applicant' means any person seeking employment by a nursing home.
 126 This term shall not include persons employed by the nursing home prior to July 1, 1995.

127 (7) 'Employee' means any individual who has direct access and who is hired by a facility
 128 through employment, or through a contract with such facility, including, but not limited
 129 to, housekeepers, maintenance personnel, dieticians, and any volunteer who has duties
 130 that are equivalent to the duties of an employee providing such services. Such term shall
 131 not include an individual who contracts with the facility, whether personally or through
 132 a company, to provide utility, construction, communications, accounting, quality
 133 assurance, human resource management, information technology, legal, or other services
 134 if the contracted services are not directly related to providing services to a patient,
 135 resident, or client of the facility. Such term shall not include any health care provider,
 136 including, but not limited to, physicians, dentists, nurses, and pharmacists who are
 137 licensed by the Georgia Composite Medical Board, the Georgia Board of Dentistry, the
 138 Georgia Board of Nursing, or the State Board of Pharmacy.

139 (8) 'Facility' means:

140 (A) A personal care home required to be licensed or permitted under Code Section
 141 31-7-12;

142 (B) An assisted living community required to be licensed under Code Section
 143 31-7-12.2;

144 (C) A private home care provider required to be licensed under Article 13 of this
 145 chapter;

146 (D) A home health agency as licensed pursuant to Code Section 31-7-151;

147 (E) A provider of hospice care as licensed pursuant to Code Section 31-7-173;

148 (F) A nursing home, skilled nursing facility, or intermediate care home licensed
 149 pursuant to rules of the department; or

150 (G) An adult day care facility licensed pursuant to rules of the department.

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

154 ~~(5)~~(10) 'GCIC' means the Georgia Crime Information Center established under Article
 155 2 of Chapter 3 of Title 35.

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

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

160 (12) 'Owner' in the context of a nursing home or intermediate care home means an
 161 individual who is not an 'excluded party' as such term is defined in Code
 162 Section 31-7-3.3, otherwise such term means an individual or any person affiliated with

163 a corporation, partnership, or association with 10 percent or greater ownership interest
 164 in a facility who performs one or more of the following:

165 (A) Purports to or exercises authority of a facility;

166 (B) Applies to operate or operates a facility;

167 (C) Maintains an office on the premises of a facility;

168 (D) Resides at a facility;

169 (E) Has direct access at a facility;

170 (F) Provides direct personal supervision of facility personnel by being immediately
 171 available to provide assistance and direction when such facility services are being
 172 provided; or

173 (G) Enters into a contract to acquire ownership of a facility.

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

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

184 ~~(7)~~(15) 'Satisfactory determination' means a written determination by a nursing home
 185 that a person that an individual for whom a ~~record~~ criminal background check was
 186 performed was found to have no criminal record.

187 ~~(8)~~(16) 'Unsatisfactory determination' means a written determination by a nursing home
 188 that a person that an individual for whom a ~~record~~ criminal background check was
 189 performed was found to have a criminal record.

190 ~~31-7-351.~~

191 ~~(a) Prior to hiring an employment applicant, each nursing home shall request a criminal~~
 192 ~~record check from GCIC to determine whether the applicant has a criminal record. A~~
 193 ~~nursing home shall make a written determination for each applicant for whom a criminal~~
 194 ~~record check is performed. A nursing home shall not employ a person with an~~
 195 ~~unsatisfactory determination.~~

196 ~~(b) Any request for a criminal record check under this Code section shall be on a form~~
 197 ~~approved by GCIC and submitted in person, by mail, or by facsimile request to any county~~
 198 ~~sheriff or municipal law enforcement agency having access to GCIC information. The fee~~

199 shall be no greater than the actual cost of processing the request. The law enforcement
 200 agency receiving the request shall perform a criminal record check for a nursing home
 201 within a reasonable time but in any event within a period not to exceed three days of
 202 receiving the request.

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

206 31-7-352.

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

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

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

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

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

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

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

229 (c) Except as provided in subsection (c) of Code Section 31-7-359, nothing in this Code
 230 section shall be construed to limit the responsibility or ability of a facility to screen owners,
 231 applicants, or employees through additional methods.

232 31-7-353.

233 ~~A nursing home that hires an applicant for employment with a criminal record shall be~~
234 ~~liable for a civil monetary penalty in the amount of the lesser of \$2,500.00 or \$500.00 for~~
235 ~~each day that a violation of subsection (a) of Code Section 31-7-351 occurs. The daily civil~~
236 ~~monetary penalty shall be imposed only from the time the nursing home administrator~~
237 ~~knew or should have known that the nursing home has in its employ an individual with a~~
238 ~~criminal record and until the date such individual is terminated.~~

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

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

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

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

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

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

272 31-7-354.

273 (a) An applicant seeking employment with a facility or a current employee at such facility
274 shall consent to a national and state background check that includes a registry check, a
275 check of information maintained by a professional licensing board, if applicable, and a
276 criminal background check.

277 (b)(1) An individual required to submit to a registry check and criminal background
278 check shall not be employed by, contracted with, or allowed to work as an employee at
279 a facility if:

280 (A) The individual appears on a registry check;

281 (B) There is a substantiated finding of neglect, abuse, or misappropriation of property
282 by a state or federal agency pursuant to an investigation conducted in accordance with
283 42 U.S.C. Section 1395i-3 or 1396r as it existed on February 1, 2018;

284 (C) The individual's professional license, if applicable, is not in good standing; or

285 (D) The facility receives notice from the department that the individual has been found
286 to have an unsatisfactory determination.

287 (2) An individual whose professional license is not in good standing may be employed
288 by a facility in a position wherein his or her duties do not require professional licensure,
289 provided that he or she provides a fingerprint record check determination in the same
290 manner as an applicant.

291 (c) An owner, applicant, or employee may:

292 (1) Obtain information concerning the accuracy of his or her criminal record, and the
293 department shall refer such individual to the appropriate state or federal law enforcement
294 agency that was involved in the arrest or conviction;

295 (2) Challenge the finding that he or she is the true subject of the results from a registry
296 check, and the department shall refer such individual to the agency responsible for
297 maintaining such registry; and

298 (3) Appeal his or her disqualifying unsatisfactory determination pursuant to Code
299 Section 31-7-358.

300 31-7-355.

301 (a) A personnel file for each employee shall be maintained by the applicable facility. Such
302 files shall be available for inspection by the appropriate enforcement authorities but shall
303 otherwise be maintained to protect the confidentiality of the information contained therein

304 and shall include, but not be limited to, evidence of each employee's satisfactory
 305 determination, registry check, and licensure check, if applicable.

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

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

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

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

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

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

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

337 31-7-356.

338 A facility that does not terminate an employee who has been found to have an
 339 unsatisfactory determination or failed a registry check shall be liable for a civil monetary

340 penalty in the amount of the lesser of \$10,000.00 or \$500.00 for each day that a violation
341 occurs. The daily civil monetary penalty shall be imposed only from the time the facility
342 knew or should have known that it employed an individual with a criminal record and until
343 the date such individual's employment is terminated.

344 31-7-357.

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

349 31-7-358.

350 (a)(1) An owner of a facility with an unsatisfactory determination or whose name
351 appears on a registry check shall not operate or hold a license, and the department shall
352 revoke the license of any owner operating such facility or refuse to issue a license to any
353 owner operating such facility if such owner has an unsatisfactory determination or is on
354 a registry check.

355 (2) Prior to approving any license for a facility and periodically as established by the
356 department by rule, the department shall require each owner and employee to submit to
357 a registry check and criminal background check pursuant to Code Sections 31-7-352 and
358 31-7-353.

359 (3)(A) An employee or applicant who received an unsatisfactory determination or
360 whose name appears on a registry check shall be eligible to appeal such determination
361 pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

362 (B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing
363 officer shall consider in mitigation the length of time since the crime was committed,
364 the absence of additional criminal charges, the circumstances surrounding the
365 commission of the crime, and other indicia of rehabilitation.

366 (4)(A) The department's determination regarding an owner's unsatisfactory criminal
367 background check, or any action by the department revoking or refusing to grant a
368 license based on such determination, shall constitute a contested case for purposes of
369 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that any
370 hearing required to be held pursuant thereto may be held reasonably expeditiously after
371 such determination or action by the department.

372 (B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing
373 officer shall consider in mitigation the length of time since the crime was committed,
374 the absence of additional criminal charges, the circumstances surrounding the

375 commission of the crime, other indicia of rehabilitation, the facility's history of
376 compliance with the regulations, and the owner's involvement with the licensed facility
377 in arriving at a decision as to whether the criminal record requires the denial or
378 revocation of the license to operate the facility. When a hearing is required, at least 30
379 days prior to such hearing, the hearing officer shall notify the office of the prosecuting
380 attorney who initiated the prosecution of the crime in question in order to allow the
381 prosecuting attorney to object to a possible determination that the conviction would not
382 be a bar for the grant or continuation of a license as contemplated within this Code
383 section. If objections are made, the hearing officer shall take such objections into
384 consideration.

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

387 31-7-359.

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

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

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

407 (c) Nothing in this article shall require a facility to conduct any other type of criminal
408 history check of an owner, applicant, or employee, and a facility shall not be held liable for
409 claims of negligent hiring, negligent retention, or other similar claims based solely or in
410 part on its failure to conduct other types of criminal history checks.

411 (d) Nothing in this article shall be construed to waive the sovereign immunity of the state,
412 the department, or any other entity of the state.

413 31-7-360.

414 ~~The Department of Community Health shall be authorized to enforce this article and to~~
415 department shall promulgate written rules and regulations related to the requirements and
416 implementation of this article.

417 31-7-361.

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

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

430 (c) All persons employed by the Department of Human Resources in capacities which
431 relate to the functions transferred to the department pursuant to this Code section on
432 June 30, 2009, shall, on July 1, 2009, become employees of the department in similar
433 capacities, as determined by the commissioner of community health. Such employees shall
434 be subject to the employment practices and policies of the department on and after July 1,
435 2009, but the compensation and benefits of such transferred employees shall not be reduced
436 as a result of such transfer. Employees who are subject to the rules of the State Personnel
437 Board and who are transferred to the department shall retain all existing rights under such
438 rules. Retirement rights of such transferred employees existing under the Employees'
439 Retirement System of Georgia or other public retirement systems on June 30, 2009, shall
440 not be impaired or interrupted by the transfer of such employees and membership in any
441 such retirement system shall continue in the same status possessed by the transferred
442 employees on June 30, 2009. Accrued annual and sick leave possessed by said employees
443 on June 30, 2009, shall be retained by said employees as employees of the department."

444 **SECTION 1-5.**

445 Said title is further amended by adding a new article to read as follows:

446 "ARTICLE 14A447 31-7-380.

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

456 31-7-381.457 As used in this article, the term:

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

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

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

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

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

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

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

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

478 (9) 'Ward' means an elder person for whom a guardian has been appointed pursuant to
479 Title 29.

480 31-7-382.

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

487 31-7-383.

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

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

498 31-7-384.

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

505 31-7-385.

506 No person, including the department, an employer, or an individual acting on behalf of
507 such entities, shall be liable for civil damages or be subject to any claim, demand, cause
508 of action, or proceeding of any nature as a result of actions taken in good faith to comply
509 with this article, including the disqualification of an applicant or employee from
510 employment on the basis of the results of a criminal background check or registry check.

511 31-7-386.

512 Except as provided in Code Section 31-7-384, the department shall promulgate rules and
 513 regulations related to the requirements and implementation of this article."

514 **PART II**

515 **SECTION 2-1.**

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

520 "(e) Notwithstanding ~~the provisions of~~ subsection (c) of this Code section, when a
 521 contractor to this department is a personal care home, ~~the provisions of Code Sections~~
 522 ~~31-7-250 through 31-7-264~~ Article 14 of Chapter 7 of Title 31 shall apply."

523 **SECTION 2-2.**

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

526 "(e) The requirements of this Code section are supplemental to any requirements for a
 527 license imposed by Article 3 of Chapter 5 of this title or Article ~~11~~ 14 of Chapter 7 of
 528 Title 31."

529 **PART III**

530 **SECTION 3-1.**

531 This Act shall become effective on October 1, 2019.

532 **SECTION 3-2.**

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