

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

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:

25

**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.

31

**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."

50

**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.

53

**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:

## 56 "ARTICLE 14

57 31-7-350.

58 (a) This article shall be known and may be cited as the 'Georgia Long-term Care  
59 Background Check Program.'60 (b) The purpose of this article is to establish the minimum standards for the Georgia  
61 Long-term Care Background Check Program for conducting criminal background checks  
62 of owners, applicants for employment, and direct access employees at certain facilities.63 31-7-351.

64 As used in this article, the term:

65 (1) 'Applicant' means an individual applying to be a direct access employee at a facility.66 ~~(1)~~(2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of  
67 whether an appeal of the conviction has been sought.68 ~~(2)~~(3) 'Crime' means commission of an offense which constitutes a felony with respect  
69 to the following:70 (A) Any of the following offenses:71 ~~(A) A violation of Code Section 16-5-21;~~72 ~~(B) A violation of Code Section 16-5-24;~~73 ~~(C) A violation of Code Section 16-6-1;~~74 ~~(D) A violation of Code Section 16-8-2;~~75 ~~(E) A violation of Code Section 16-8-3;~~76 ~~(F) A violation of Code Section 16-8-4;~~77 ~~(G)~~(i) A violation of Code Section 16-5-1;78 ~~(H) A violation of Code Section 16-4-1;~~79 ~~(I) A violation of Code Section 16-8-40;~~80 ~~(J) A violation of Code Section 16-8-41;~~81 ~~(K) A felony violation of Code Section 16-9-1;~~82 ~~(L) A violation of Article 8 of Chapter 5 of Title 16;~~83 ~~(M) A violation of Chapter 13 of Title 16; or~~84 (ii) A violation of Code Section 16-5-2;85 (iii) A violation of Code Section 16-5-70;86 (iv) A violation of Code Section 16-5-101;87 (v) A violation of Code Section 16-5-102;88 (vi) A violation of Code Section 16-6-1;89 (vii) A violation of Code Section 16-6-4;90 (viii) A violation of Code Section 16-6-5;

- 91 (ix) A violation of Code Section 16-6-5.1;  
 92 (x) A violation of Code Section 16-6-22.2;  
 93 (xi) A violation of Code Section 16-8-41; or  
 94 (xii) A violation of Code Section 30-5-8;  
 95 (B) A felony violation of:  
 96 (i) Chapter 5, 8, 9, or 13 of Title 16;  
 97 (ii) Code Section 16-4-1;  
 98 (iii) Code Section 16-7-2; or  
 99 (iv) Subsection (f) of Code Section 31-7-12.1; or  
 100 ~~(N)~~(C) Any other offense committed in another jurisdiction which, if committed in this  
 101 state, would be deemed to be such a crime constitute an offense identified in this  
 102 paragraph without regard to its designation elsewhere.  
 103 (4) 'Criminal background check' means a search of the criminal records maintained by  
 104 GCIC and the Federal Bureau of Investigation to determine whether an owner, applicant,  
 105 or employee has a criminal record.  
 106 ~~(3)~~(5)(A) 'Criminal record' means any of the following which have reached final  
 107 disposition within ten years of the date the criminal record check is conducted:  
 108 ~~(A)~~(i) Conviction of a crime;  
 109 ~~(B)~~(ii) Arrest, charge, and sentencing for a crime where when:  
 110 (i)(I) A plea of nolo contendere was entered to the charge;  
 111 (ii)(II) First offender treatment without adjudication of guilt pursuant to the charge  
 112 was granted; or  
 113 (iii)(III) Adjudication or sentence was otherwise withheld or not entered on the  
 114 charge; or  
 115 ~~(C)~~(iii) Arrest and charges for a crime if the charge is pending, unless the time for  
 116 prosecuting such crime has expired pursuant to Chapter 3 of Title 17.  
 117 (B) Such term shall not include an owner, applicant, or employee for which at least ten  
 118 years have elapsed from the date of his or her criminal background check since the final  
 119 disposition of his or her sentence, including, but not limited to, being released from  
 120 incarceration or completion of probation.  
 121 (6) 'Direct access' means having, or expecting to have, duties that involve routine  
 122 personal contact with a patient, resident, or client, including face-to-face contact,  
 123 hands-on physical assistance, verbal cuing, reminding, standing by or monitoring or  
 124 activities that require the person to be routinely alone with the patient's, resident's, or  
 125 client's property or access to such property or financial information such as the patient's,  
 126 resident's, or client's checkbook, debit and credit cards, resident trust funds, banking  
 127 records, stock accounts, or brokerage accounts.

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

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

142 (8) 'Facility' means:

143 (A) A personal care home required to be licensed or permitted under Code Section  
 144 31-7-12;

145 (B) An assisted living community required to be licensed under Code Section  
 146 31-7-12.2;

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

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

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

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

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

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

157 ~~(5)~~(10) 'GCIC' means the Georgia Crime Information Center established under Article  
 158 2 of Chapter 3 of Title 35.

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

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

163 (12) 'Owner' in the context of a nursing home or intermediate care home means an  
 164 individual who is not an 'excluded party' as such term is defined in Code

165 Section 31-7-3.3, otherwise such term means an individual or any person affiliated with  
 166 a corporation, partnership, or association with 10 percent or greater ownership interest  
 167 in a facility who performs one or more of the following:

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

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

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

171 (D) Resides at a facility;

172 (E) Has direct access at a facility;

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

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

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

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

187 ~~(7)(15) 'Satisfactory 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 no criminal record.~~

190 ~~(8)(16) 'Unsatisfactory determination' means a written determination by a nursing home~~  
 191 ~~that a person that an individual for whom a record criminal background check was~~  
 192 ~~performed was found to have a criminal record.~~

193 31-7-351.

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

199 ~~(b) Any request for a criminal record check under this Code section shall be on a form~~  
 200 ~~approved by GCIC and submitted in person, by mail, or by facsimile request to any county~~

201 ~~sheriff or municipal law enforcement agency having access to GCIC information. The fee~~  
 202 ~~shall be no greater than the actual cost of processing the request. The law enforcement~~  
 203 ~~agency receiving the request shall perform a criminal record check for a nursing home~~  
 204 ~~within a reasonable time but in any event within a period not to exceed three days of~~  
 205 ~~receiving the request.~~

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

209 31-7-352.

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

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

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

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

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

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

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

232 (c) Nothing in this Code section shall be construed to limit the responsibility or ability of  
 233 a facility to screen owners, applicants, or employees through additional methods.

234 31-7-353.

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

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

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

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

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

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



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

274 31-7-354.

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

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

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

283 (B) There is a substantiated finding of neglect, abuse, or misappropriation of property  
284 by a state or federal agency pursuant to an investigation conducted in accordance with  
285 42 U.S.C. Section 1395i-3 or 1396r as it existed on February 1, 2018;

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

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

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

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

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

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

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

302 31-7-355.

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

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

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

309 (A) 'Abuse' means the willful infliction of injury, unreasonable confinement,  
310 intimidation, or punishment with resulting physical harm, pain, or mental anguish.

311 Such term includes the deprivation by an individual of goods or services that are  
312 necessary to attain or maintain physical, mental, and psychosocial well-being. Such  
313 term includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including  
314 abuse, facilitated or enabled through the use of technology.

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

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

329 (3) When the department determines that an applicant or employee has an unsatisfactory  
330 determination, the department shall notify the facility that such applicant or employee is  
331 ineligible to hire or employ and the facility shall take the necessary steps so that such  
332 employee is no longer employed at the facility.

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

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

338 31-7-356.

339 A facility that does not terminate an employee who has been found to have an  
340 unsatisfactory determination or failed a registry check shall be liable for a civil monetary  
341 penalty in the amount of the lesser of \$10,000.00 or \$500.00 for each day that a violation

342 occurs. The daily civil monetary penalty shall be imposed only from the time the facility  
343 knew or should have known that it employed an individual with a criminal record and until  
344 the date such individual's employment is terminated.

345 31-7-357.

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

350 31-7-358.

351 (a)(1) An owner of a facility with a criminal record or whose name appears on a registry  
352 check shall not operate or hold a license, and the department shall revoke the license of  
353 any owner operating such facility or refuse to issue a license to any owner operating such  
354 facility if it determines that such owner has a criminal record or is on 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) An employee or applicant who received an unsatisfactory determination or whose  
360 name appears on a registry check shall be eligible to appeal such determination pursuant  
361 to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

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

368 (B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing  
369 officer shall consider in mitigation the length of time since the crime was committed,  
370 the absence of additional criminal charges, the circumstances surrounding the  
371 commission of the crime, other indicia of rehabilitation, the facility's history of  
372 compliance with the regulations, and the owner's involvement with the licensed facility  
373 in arriving at a decision as to whether the criminal record requires the denial or  
374 revocation of the license to operate the facility. When a hearing is required, at least 30  
375 days prior to such hearing, the hearing officer shall notify the office of the prosecuting  
376 attorney who initiated the prosecution of the crime in question in order to allow the

377 prosecuting attorney to object to a possible determination that the conviction would not  
 378 be a bar for the grant or continuation of a license as contemplated within this Code  
 379 section. If objections are made, the hearing officer shall take such objections into  
 380 consideration.

381 (C) In a hearing held for employees and applicants, the hearing officer shall consider  
 382 in mitigation the length of time since the crime was committed, the absence of  
 383 additional criminal charges, the circumstances surrounding the commission of the  
 384 crime, and other indicia of rehabilitation.

385 (b) The requirements of this Code section are supplemental to any requirements for a  
 386 license imposed by Article 1 of Chapter 7 of Title 31.

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) A facility that has obtained a satisfactory determination and evidence of a satisfactory  
 394 registry check and licensure check on an applicant, employee, or owner in accordance with  
 395 this article, or confirmation that such applicant, employee, or owner has obtained a  
 396 favorable final appeal decision under Code Section 31-7-358, shall be immune from  
 397 liability for any claim for damages resulting from:

398 (1) Intentional acts of such applicant, employee, or owner involving a crime; and

399 (2) Negligent hiring, negligent retention, negligent screening, or other similar claims  
 400 relating to criminal history, registry check, or licensure check data that were not included  
 401 in the criminal background check or reports from the registry check or licensure check  
 402 for such applicant, employee, or owner, even when the information in such check and  
 403 reports is determined later to have been incomplete or inaccurate.

404 31-7-360.

405 The Department of Community Health shall be authorized to enforce this article and to  
 406 department shall promulgate written rules and regulations related to the requirements and  
 407 implementation of this article.

408 31-7-361.

409 (a) Effective July 1, 2009, all matters relating to facility licensing and employee criminal  
 410 background checks for personal care homes pursuant to Article 11 of this chapter as it

411 existed on June 30, 2009, shall be transferred from the Department of Human Services to  
 412 the department.

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

421 (c) All persons employed by the Department of Human Resources in capacities which  
 422 relate to the functions transferred to the department pursuant to this Code section on  
 423 June 30, 2009, shall, on July 1, 2009, become employees of the department in similar  
 424 capacities, as determined by the commissioner of community health. Such employees shall  
 425 be subject to the employment practices and policies of the department on and after July 1,  
 426 2009, but the compensation and benefits of such transferred employees shall not be reduced  
 427 as a result of such transfer. Employees who are subject to the rules of the State Personnel  
 428 Board and who are transferred to the department shall retain all existing rights under such  
 429 rules. Retirement rights of such transferred employees existing under the Employees'  
 430 Retirement System of Georgia or other public retirement systems on June 30, 2009, shall  
 431 not be impaired or interrupted by the transfer of such employees and membership in any  
 432 such retirement system shall continue in the same status possessed by the transferred  
 433 employees on June 30, 2009. Accrued annual and sick leave possessed by said employees  
 434 on June 30, 2009, shall be retained by said employees as employees of the department."

#### 435 **SECTION 1-5.**

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

#### 437 "ARTICLE 14A

438 31-7-380.

439 The purpose of this article is to enable employers who are family members or guardians  
 440 of elderly persons to obtain an employment eligibility determination from the department  
 441 for applicants who are seeking to provide and employees who are providing personal care  
 442 services to their family members or wards. It is the intent of the General Assembly to  
 443 allow the department to establish and maintain a caregiver registry so as to provide such  
 444 employers with access to employment eligibility determinations conducted by the

445 department in a similar manner as licensed facilities receive employment determinations  
446 as provided in Article 14 of this chapter.

447 31-7-381.

448 As used in this article, the term:

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

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

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

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

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

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

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

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

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

471 31-7-382.

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

478 31-7-383.

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

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

489 31-7-384.

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

496 31-7-385.

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

502 31-7-386.

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

505 **PART II**

506 **SECTION 2-1.**

507 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to  
 508 general provisions for the Department of Human Services, is amended by revising subsection

509 (e) of Code Section 49-2-14, relating to record search for conviction data on prospective  
510 employees, as follows:

511 "(e) Notwithstanding ~~the provisions of~~ subsection (c) of this Code section, when a  
512 contractor to this department is a personal care home, ~~the provisions of Code Sections~~  
513 ~~31-7-250 through 31-7-264~~ Article 14 of Chapter 7 of Title 31 shall apply."

514 **SECTION 2-2.**

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

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

520 **PART III**

521 **SECTION 3-1.**

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

523 **SECTION 3-2.**

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