

[First Reprint]  
ASSEMBLY, No. 995

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen MORAN and CONNORS

1 AN ACT concerning the elderly and supplementing Title 26, Title 45,  
2 and Title 53 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. As used in sections 1 <sup>1</sup>[to 5] through 4<sup>1</sup> and section <sup>1</sup>[13] 12<sup>1</sup>  
8 of this act:

9 "Facility" means any facility or institution, whether public or  
10 private, offering health or health related services for the  
11 institutionalized elderly, and which is subject to regulation, visitation,  
12 inspection, or supervision by any government agency. Facilities  
13 include, but are not limited to, nursing homes, rehabilitation centers,  
14 residential health care facilities, <sup>1</sup>general hospitals,<sup>1</sup> special hospitals,  
15 chronic disease hospitals, psychiatric hospitals, developmental  
16 disabilities centers or facilities, day care facilities for the elderly,  
17 medical day care centers, and licensed home health care agencies.

18 "Patient, resident or client" means any person, 60 years of age or  
19 older, who is receiving treatment or care in any facility in all its  
20 aspects, including, but not limited to, admission, retention,  
21 confinement, commitment, period of residence, transfer, discharge and  
22 any instances directly related to such status.

23

24 2. a. A facility for the institutionalized elderly, as defined in  
25 section 1 of P.L. , c. (C. ) (pending before the Legislature as this  
26 bill) shall not hire any person serving in a professional or  
27 non-professional position which involves regular contact with a  
28 patient, resident or client as the case may be, except on a conditional  
29 basis as provided for in section 3 of P.L. , c. (C. ) (pending  
30 before the Legislature as this bill), unless the Commissioner of Health  
31 first determines, consistent with the requirements of this act, that no

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ASI committee amendments adopted January 29, 1996.

1 criminal history record information exists on file in the Federal Bureau  
2 of Investigation, Identification Division, or in the State Bureau of  
3 Identification in the Division of State Police, which would disqualify  
4 that person from being employed or utilized in such capacity or  
5 position. A person shall be disqualified from employment under this  
6 act if that person's criminal history record background check reveals  
7 a record of conviction of any of the following crimes and offenses:

- 8 (1) In New Jersey, any crime or disorderly persons offense:  
9 (a) involving danger to the person, meaning those crimes and  
10 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
11 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or  
12 N.J.S.2C:15-1 et seq.; or  
13 (b) against the family, children or incompetents, meaning those  
14 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et  
15 seq.; or  
16 (c) involving theft as set forth in chapter 20 of Title 2C of the New  
17 Jersey Statutes; or  
18 (d) involving any controlled dangerous substance or analog as set  
19 forth in chapter 35 of Title 2C of the New Jersey Statutes except  
20 paragraph (4) of subsection a. of N.J.S.2C:35-10.

21 (2) In any other state or jurisdiction, of conduct which, if  
22 committed in New Jersey, would constitute any of the crimes or  
23 disorderly persons offenses described in paragraph (1) of this  
24 subsection.

25 b. Notwithstanding the provisions of subsection a. of this section,  
26 no person shall be disqualified from employment under this act on the  
27 basis of any conviction disclosed by a criminal history record  
28 background check performed pursuant to this act if the person has  
29 affirmatively demonstrated to the Commissioner of Health clear and  
30 convincing evidence of his rehabilitation. In determining whether a  
31 person has affirmatively demonstrated rehabilitation, the following  
32 factors shall be considered:

- 33 (1) the nature and responsibility of the position which the  
34 convicted person would hold or has held, as the case may be;  
35 (2) the nature and seriousness of the offense;  
36 (3) the circumstances under which the offense occurred;  
37 (4) the date of the offense;  
38 (5) the age of the person when the offense was committed;  
39 (6) whether the offense was an isolated or repeated incident;  
40 (7) any social conditions which may have contributed to the  
41 offense; and  
42 (8) any evidence of rehabilitation, including good conduct in prison  
43 or in the community, counseling or psychiatric treatment received,  
44 acquisition of additional academic or vocational schooling, successful  
45 participation in correctional work-release programs, or the  
46 recommendation of those who have had the person under their

1 supervision.

2 c. If a person subject to the provisions of this act refuses to  
3 consent to, or cooperate in, the securing of a criminal history record  
4 background check, the commissioner shall direct the principal  
5 administrator of the facility not to consider the person for  
6 employment.

7

8 3. An applicant for employment at a facility shall submit to the  
9 Commissioner of Health his name, address and fingerprints taken on  
10 standard fingerprint cards by a State or municipal law enforcement  
11 agency. The commissioner is authorized to exchange fingerprint data  
12 with and receive criminal history record information from the Federal  
13 Bureau of Investigation and the Division of State Police for use in  
14 making the determinations required by P.L. , c. (C. ) (pending  
15 before the Legislature as this bill).

16 Upon receipt of the criminal history record information for a person  
17 from the Federal Bureau of Investigation or the Division of State  
18 Police, the commissioner shall immediately notify the applicant, in  
19 writing, of the person's qualification or disqualification for  
20 employment under this act. If the applicant is disqualified, the  
21 conviction or convictions which constitute the basis for the  
22 disqualification shall be identified therein.

23 The applicant shall have 30 days from the date of the written notice  
24 of disqualification to petition the commissioner for a hearing on the  
25 accuracy of his criminal history record information or to establish his  
26 rehabilitation under subsection b. of section 2 of P.L. , c. (C. )  
27 (pending before the Legislature as this bill).

28 A facility may employ a person conditionally for a period not to  
29 exceed 180 days, pending completion of a criminal history record  
30 background check required under this act, if the person submits to the  
31 commissioner a sworn statement attesting that he has not been  
32 convicted of any crime or disorderly persons offense as described in  
33 section 2 of P.L. , c. (C. ) (pending before the Legislature as this  
34 bill). A conditionally employed person who files a petition requesting  
35 a hearing pursuant to this act may remain employed at the facility until  
36 the commissioner rules on the applicant's petition. A person who is  
37 to be employed in any substitute capacity or position, who is rehired  
38 annually, shall only be required to undergo a criminal history record  
39 check upon initial employment.

40 Prospective and conditionally employed persons shall retain any  
41 available right of review provided to applicants under Title 11A of the  
42 New Jersey Statutes.

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44 4. The prospective employer may assume the cost of all criminal  
45 history record background checks conducted on prospective  
46 employees pursuant to this act; or the prospective employer may

1 require the prospective employee to pay the cost of the criminal  
2 history record background checks.

3

4 5. In accordance with the "Administrative Procedure Act,"  
5 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health  
6 shall adopt rules and regulations necessary to implement the provisions  
7 of sections 1 <sup>1</sup>[to] through<sup>1</sup> 4 of P.L. , c. (C. ) (pending before  
8 the Legislature as this bill).

9

10 <sup>1</sup>6. Any employer subject to the provisions of sections 1 through  
11 5 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 who fails to comply with those provisions or any person submitting a  
13 false sworn statement pursuant to section 3 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill) shall be subject to a fine of  
15 not more than \$1,000.<sup>1</sup>

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17 <sup>1</sup>[6.] 7.<sup>1</sup> a. A home health care agency, nurses' registry,  
18 employment agency, or temporary help agency which is licensed or  
19 regulated by the Division of Consumer Affairs in the Department of  
20 Law and Public Safety, shall not hire a home health aide or other  
21 health care employee, except on a conditional basis as provided for in  
22 section <sup>1</sup>[7] 8<sup>1</sup> of P.L. , c. (C. ) (pending before the Legislature  
23 as this bill), unless the director first determines, consistent with the  
24 requirements of this act, that no criminal history record information  
25 exists on file in the Federal Bureau of Investigation, Identification  
26 Division, or in the State Bureau of Identification in the Division of  
27 State Police, which would disqualify that person from being employed  
28 or utilized in such capacity or position. A person shall be disqualified  
29 from employment under P.L. , c. (C. ) (pending before the  
30 Legislature as this bill) if that person's criminal history record  
31 background check reveals a record of conviction of any of the  
32 following crimes and offenses:

33 (1) In New Jersey, any crime or disorderly persons offense:

34 (a) involving danger to the person, meaning those crimes and  
35 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
36 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or  
37 N.J.S.2C:15-1 et seq.; or

38 (b) against the family, children or incompetents, meaning those  
39 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et  
40 seq.; or

41 (c) involving theft as set forth in chapter 20 of Title 2C of the New  
42 Jersey Statutes; or

43 (d) involving any controlled dangerous substance or analog as set  
44 forth in chapter 35 of Title 2C of the New Jersey Statutes except  
45 paragraph (4) of subsection a. of N.J.S.2C:35-10.

46 (2) In any other state or jurisdiction, of conduct which, if

1 committed in New Jersey, would constitute any of the crimes or  
2 disorderly persons offenses described in paragraph (1) of this  
3 subsection.

4 b. Notwithstanding the provisions of subsection a. of this section,  
5 no person shall be disqualified from employment under this act on the  
6 basis of any conviction disclosed by a criminal history record  
7 background check performed pursuant to this act if the person has  
8 affirmatively demonstrated to the Director of the Division of  
9 Consumer Affairs clear and convincing evidence of his rehabilitation.  
10 In determining whether a person has affirmatively demonstrated  
11 rehabilitation, the following factors shall be considered:

12 (1) the nature and responsibility of the position which the  
13 convicted person would hold or has held, as the case may be;

14 (2) the nature and seriousness of the offense;

15 (3) the circumstances under which the offense occurred;

16 (4) the date of the offense;

17 (5) the age of the person when the offense was committed;

18 (6) whether the offense was an isolated or repeated incident;

19 (7) any social conditions which may have contributed to the  
20 offense; and

21 (8) any evidence of rehabilitation, including good conduct in prison  
22 or in the community, counseling or psychiatric treatment received,  
23 acquisition of additional academic or vocational schooling, successful  
24 participation in correctional work-release programs, or the  
25 recommendation of those who have had the person under their  
26 supervision.

27 c. If a person subject to the provisions of P.L. , c. (C. )  
28 (pending before the Legislature as this bill) refuses to consent to, or  
29 cooperate in, the securing of a criminal history record background  
30 check, the director shall direct the home health care agency, nurses'  
31 registry, employment agency, or temporary help agency not to  
32 consider the person for employment.

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34 <sup>1</sup>[7.] 8.<sup>1</sup> A home health aide or other health care employee who is  
35 an applicant for employment with a home health care agency, nurses'  
36 registry, employment agency, or temporary help agency which is  
37 licensed or regulated by the Division of Consumer Affairs shall submit  
38 to the Director of the Division of Consumer Affairs his name, address  
39 and fingerprints taken on standard fingerprint cards by the State or  
40 municipal law enforcement agency. The director is authorized to  
41 exchange fingerprint data with and receive criminal history record  
42 information from the Federal Bureau of Investigation and the Division  
43 of State Police for use in making the determinations required by  
44 P.L. , c. (C. ) (pending before the Legislature as this bill).

45 Upon receipt of the criminal history record information for a person  
46 from the Federal Bureau of Investigation or the Division of State

1 Police, the director shall immediately notify the applicant, in writing,  
2 of the person's qualification or disqualification for employment under  
3 P.L. , c. (C. ) (pending before the Legislature as this bill). If the  
4 applicant is disqualified, the conviction or convictions which constitute  
5 the basis for the disqualification shall be identified therein.

6 The applicant shall have 30 days from the date of the written notice  
7 of disqualification to petition the director for a hearing on the accuracy  
8 of his criminal history record information or to establish his  
9 rehabilitation under subsection b. of section <sup>1</sup>[6] 7<sup>1</sup> of P.L. , c.  
10 (C. ) (pending before the Legislature as this bill).

11 A home health care agency, nurses' registry, employment agency,  
12 or temporary help agency may employ a home health aide or other  
13 health care employee conditionally for a period not to exceed 180  
14 days, pending completion of a criminal history record background  
15 check required under this act, if the person submits to the director a  
16 sworn statement attesting that he has not been convicted of any crime  
17 or disorderly persons offense as described in section <sup>1</sup>[6] 7<sup>1</sup> of P.L. ,  
18 c. (C. ) (pending before the Legislature as this bill). A person who  
19 is to be employed in any substitute capacity or position, who is rehired  
20 annually, shall only be required to undergo a criminal history record  
21 check upon initial employment.

22  
23 <sup>1</sup>[8.] 9<sup>1</sup> The home health care agency, nurses' registry,  
24 employment agency, or temporary help agency shall assume the cost  
25 of all criminal history record background checks conducted on  
26 prospective employees pursuant to P.L. , c. (C. ) (pending  
27 before the Legislature as this bill).

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29 <sup>1</sup>[9.] 10<sup>1</sup> In accordance with the "Administrative Procedure Act,"  
30 P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the Division of  
31 Consumer Affairs shall adopt rules and regulations necessary to  
32 implement the provisions of sections <sup>1</sup>[6] 7<sup>1</sup> through 9 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill).

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35 <sup>1</sup>[10.] 11<sup>1</sup> Any employer subject to the provisions of <sup>1</sup>sections 7  
36 through 10 of<sup>1</sup> P.L. , c. (C. ) (pending before the Legislature as  
37 this bill) who fails to comply with <sup>1</sup>[its] those <sup>1</sup>provisions or any  
38 person submitting a false sworn statement pursuant to <sup>1</sup>[sections 3 or  
39 7] section 8<sup>1</sup> of P.L. , c. (C. ) (pending before the Legislature as  
40 this bill) shall be subject to a fine of not more than \$1,000.

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42 <sup>1</sup>[11.] 12<sup>1</sup> The Division of State Police in the Department of Law  
43 and Public Safety shall conduct a criminal history record background  
44 check including a name and fingerprint identification check of each  
45 prospective employee of a facility as defined in section 1 of P.L. ,  
46 c. (C. ) (pending before the Legislature as this bill) or of a home

1 health care agency, nurses' registry, employment agency, or temporary  
2 help agency licensed or regulated by the Director of the Division of  
3 Consumer Affairs. The requirement of a criminal history record  
4 background check shall apply only to a prospective employee who is  
5 or would be serving in a position which involves regular contact with  
6 a patient, resident or client as the case may be, who is 60 years of age  
7 or older.

8 For the purpose of conducting the criminal history record  
9 background check, the Division of State Police shall examine its own  
10 files and arrange for a similar examination by federal authorities. The  
11 division shall immediately forward the information obtained as a result  
12 of conducting the check to the Commissioner of Health, in the case of  
13 a facility, and to the Director of the Division of Consumer Affairs, in  
14 the case of a home health care agency, nurses' registry, employment  
15 agency, or temporary help agency.

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17 <sup>1</sup>[12.] 13.<sup>1</sup> This act shall take effect on the first day of the sixth  
18 month after enactment.

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24 Requires criminal history record checks of certain persons applying for  
jobs to provide care for the elderly.