

[Second Reprint]
ASSEMBLY, No. 995

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen MORAN, CONNORS, Asselta
and Assemblywoman Heck

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 ¹[to 5] through 4¹ and section ¹[13] 12¹
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, ¹general hospitals,¹ 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

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:

¹ Assembly ASI committee amendments adopted January 29, 1996.

² Assembly floor amendments adopted February 8, 1996.

1 first determines, consistent with the requirements of this act, that no
2 criminal history record information exists on file in the Federal Bureau
3 of Investigation, Identification Division, or in the State Bureau of
4 Identification in the Division of State Police, which would disqualify
5 that person from being employed or utilized in such capacity or
6 position. A person shall be disqualified from employment under this
7 act if that person's criminal history record background check reveals
8 a record of conviction of any of the following crimes and offenses:

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

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

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

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

1 recommendation of those who have had the person under their
2 supervision.

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

8

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

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

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

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

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

44

45 4. The prospective employer may assume the cost of all criminal
46 history record background checks conducted on prospective

1 employees pursuant to this act; or the prospective employer may
2 require the prospective employee to pay the cost of the criminal
3 history record background checks.

4
5 5. In accordance with the "Administrative Procedure Act,"
6 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health
7 shall adopt rules and regulations necessary to implement the provisions
8 of sections 1 ¹[to] through¹ 4 of P.L. , c. (C.) (pending before
9 the Legislature as this bill).

10
11 ¹6. Any employer subject to the provisions of sections 1 through
12 5 of P.L. , c. (C.) (pending before the Legislature as this bill)
13 who fails to comply with those provisions or any person submitting a
14 false sworn statement pursuant to section 3 of P.L. , c. (C.)
15 (pending before the Legislature as this bill) shall be subject to a fine of
16 not more than \$1,000.¹

17
18 ¹[6.] 7¹ a. A home health care agency, nurses' registry,
19 employment agency, or temporary help agency which is licensed or
20 regulated by the Division of Consumer Affairs in the Department of
21 Law and Public Safety, shall not hire a home health aide or other
22 health care employee, except on a conditional basis as provided for in
23 section ¹[7] 8¹ of P.L. , c. (C.) (pending before the Legislature
24 as this bill), unless the director first determines, consistent with the
25 requirements of this act, that no criminal history record information
26 exists on file in the Federal Bureau of Investigation, Identification
27 Division, or in the State Bureau of Identification in the Division of
28 State Police, which would disqualify that person from being employed
29 or utilized in such capacity or position. A person shall be disqualified
30 from employment under P.L. , c. (C.) (pending before the
31 Legislature as this bill) if that person's criminal history record
32 background check reveals a record of conviction of any of the
33 following crimes and offenses:

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

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

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

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

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

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

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

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

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

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

17 (4) the date of the offense;

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

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

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

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

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

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

46 Upon receipt of the criminal history record information for a person

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

7 The applicant shall have 30 days from the date of the written notice
8 of disqualification to petition the director for a hearing on the accuracy
9 of his criminal history record information or to establish his
10 rehabilitation under subsection b. of section ¹[6] ¹7¹ of P.L. , c.
11 (C.) (pending before the Legislature as this bill).

12 A home health care agency, nurses' registry, employment agency,
13 or temporary help agency may employ a home health aide or other
14 health care employee conditionally for a period not to exceed 180
15 days, pending completion of a criminal history record background
16 check required under this act, if the person submits to the director a
17 sworn statement attesting that he has not been convicted of any crime
18 or disorderly persons offense as described in section ¹[6] ¹7¹ of P.L. ,
19 c. (C.) (pending before the Legislature as this bill). A person who
20 is to be employed in any substitute capacity or position, who is rehired
21 annually, shall only be required to undergo a criminal history record
22 check upon initial employment.

23

24 ¹[8.] ¹9.¹ The home health care agency, nurses' registry,
25 employment agency, or temporary help agency ²[shall] may ² assume
26 the cost of all criminal history record background checks conducted
27 on prospective employees pursuant to P.L. , c. (C.) (pending
28 before the Legislature as this bill) ²; or it may require the prospective
29 employee to pay the cost of the criminal history record background
30 checks².

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32 ²10. The Division of Consumer Affairs shall require that the Board
33 of Nursing issue biennial recertifications to home health aides only
34 upon receiving documented proof from a home health care agency or
35 health care service firm that the home health aide is currently
36 employed and regularly supervised by a registered professional nurse.²

37

38 ²11. The Division of Consumer Affairs shall require that a Board
39 of Nursing certificate issued to a home health aide contain the
40 following statement: "Valid only if certified home health aide is
41 employed by a home care services agency and is performing delegated
42 nursing regimen or nursing tasks delegated through the authority of a
43 duly licensed registered professional nurse."²

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45 ¹[9.] ²[10.] ¹12.² In accordance with the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director

1 of the Division of Consumer Affairs shall adopt rules and regulations
2 necessary to implement the provisions of sections ¹[6] ¹7 through 9 of
3 P.L. , c. (C.) (pending before the Legislature as this bill).

4
5 ¹[10.] ²[11.1] ^{13.}² Any employer subject to the provisions of
6 ¹sections 7 through 10 of¹ P.L. , c. (C.) (pending before the
7 Legislature as this bill) who fails to comply with ¹[its] those¹
8 provisions or any person submitting a false sworn statement pursuant
9 to ¹[sections 3 or 7] section 8¹ of P.L. , c. (C.) (pending before
10 the Legislature as this bill) shall be subject to a fine of not more than
11 \$1,000.

12
13 ¹[11.] ²[12.1] ^{14.}² The Division of State Police in the Department
14 of Law and Public Safety shall conduct a criminal history record
15 background check including a name and fingerprint identification
16 check of each prospective employee of a facility as defined in section
17 1 of P.L. , c. (C.) (pending before the Legislature as this bill) or
18 of a home health care agency, nurses' registry, employment agency, or
19 temporary help agency licensed or regulated by the Director of the
20 Division of Consumer Affairs. The requirement of a criminal history
21 record background check shall apply only to a prospective employee
22 who is or would be serving in a position which involves regular
23 contact with a patient, resident or client as the case may be, who is 60
24 years of age or older.

25 For the purpose of conducting the criminal history record
26 background check, the Division of State Police shall examine its own
27 files and arrange for a similar examination by federal authorities. The
28 division shall immediately forward the information obtained as a result
29 of conducting the check to the Commissioner of Health, in the case of
30 a facility, and to the Director of the Division of Consumer Affairs, in
31 the case of a home health care agency, nurses' registry, employment
32 agency, or temporary help agency.

33
34 ¹[12.] ²[13.1] ^{15.}² This act shall take effect on the first day of the
35 sixth month after enactment.

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