

ASSEMBLY, No. 2962

STATE OF NEW JERSEY

INTRODUCED MAY 12, 1997

By Assemblymen MORAN and CONNORS

1 AN ACT concerning criminal history record background checks for  
2 certain persons who care for the elderly.

3

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

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7 1. For the purposes of sections 2 through 6 of P.L. , c. (C. )  
8 (pending before the Legislature as this bill):

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, general hospitals, special hospitals,  
15 chronic disease hospitals, psychiatric hospitals, developmental  
16 disabilities centers or facilities, day care facilities for the elderly, and  
17 medical day care centers. Licensed home health agencies are not  
18 facilities for the purposes of this act.

19 "Patient, resident or client" means any person, 60 years of age or  
20 older, who receives treatment, care or other services in a facility  
21 including, but not limited to, services such as admission, retention,  
22 confinement, commitment, residence, transfer and discharge.

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24 2. a. A facility shall not hire any unlicensed person to serve in a  
25 position which involves regular contact with a patient, resident or  
26 client as the case may be, except on a conditional basis as provided for  
27 in subsection d. of section 3 of P.L. , c. (C. ) (pending before  
28 the Legislature as this bill), unless the Commissioner of Health and  
29 Senior Services first determines, consistent with the requirements of  
30 sections 1 through 6 of P.L. , c. (C. ) (pending before the  
31 Legislature as this bill), that no criminal history record information  
32 exists on file in the Federal Bureau of Investigation, Identification  
33 Division, or in the State Bureau of Identification in the Division of  
34 State Police, which would disqualify that person from being employed  
35 or utilized in that capacity or position. A person shall be disqualified  
36 from employment under P.L. , c. (C. ) (pending before  
37 the Legislature as this bill) if that person's criminal history record

1 background check reveals a record of conviction of any of the  
2 following crimes and offenses:

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

4 (a) involving danger to the person, meaning those crimes and  
5 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
6 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  
7 N.J.S.2C:15-1 et seq.; or

8 (b) against the family, children or incompetents, meaning those  
9 crimes and disorderly persons offenses set forth in N.J.S.2C:24-4 et  
10 seq.; or

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

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

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

20 b. Notwithstanding the provisions of subsection a. of this section,  
21 no person shall be disqualified from employment under P.L. , c.  
22 (C. ) (pending before the Legislature as this bill) on the basis of  
23 any conviction disclosed by a criminal history record background  
24 check performed pursuant to P.L. , c. (C. ) (pending before  
25 the Legislature as this bill) if the person has affirmatively demonstrated  
26 to the Commissioner of Health and Senior Services clear and  
27 convincing evidence of the person's rehabilitation. In determining  
28 whether a person has affirmatively demonstrated rehabilitation, the  
29 following factors shall be considered:

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

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

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

34 (4) the date of the offense;

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

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

37 (7) any social conditions which may have contributed to the  
38 offense; and

39 (8) any evidence of rehabilitation, including good conduct in prison  
40 or in the community, counseling or psychiatric treatment received,  
41 acquisition of additional academic or vocational schooling, successful  
42 participation in correctional work-release programs, or the  
43 recommendation of those who have had the person under their  
44 supervision.

45 c. If a person subject to the provisions of P.L. , c. (C. )  
46 (pending before the Legislature as this bill) refuses to consent to, or

1 cooperate in, the securing of a criminal history record background  
2 check, the commissioner shall direct the principal administrator of the  
3 facility not to consider the person for employment.

4  
5 3. a. An applicant for employment at a facility shall submit to the  
6 Commissioner of Health and Senior Services the applicant's name,  
7 address and fingerprints taken on standard fingerprint cards by a State  
8 or municipal law enforcement agency. The commissioner is authorized  
9 to exchange fingerprint data with and receive criminal history record  
10 information from the Federal Bureau of Investigation and the Division  
11 of State Police for use in making the determinations required by  
12 P.L. , c. (C. ) (pending before the Legislature as this bill).

13 b. Upon receipt of the criminal history record information for a  
14 person from the Federal Bureau of Investigation or the Division of  
15 State Police, the commissioner shall immediately notify the applicant  
16 and the applicant's employer or prospective employer, in writing, of  
17 the person's qualification or disqualification for employment under  
18 P.L. , c. (C. ) (pending before the Legislature as this bill). If  
19 the applicant is disqualified, the conviction or convictions which  
20 constitute the basis for the disqualification shall be identified in the  
21 notice to the applicant, but shall not be identified in the notice to the  
22 applicant's employer or prospective employer.

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

31 d. A facility may employ a person conditionally, for a period not to  
32 exceed 180 days, pending completion of a criminal history record  
33 background check required under P.L. , c. (C. ) (pending  
34 before the Legislature as this bill), if the person submits to the  
35 commissioner a sworn statement attesting that the person has not been  
36 convicted of any crime or disorderly persons offense as described in  
37 section 2 of P.L. , c. (C. ) (pending before the Legislature as  
38 this bill). A person who submits a false sworn statement shall be  
39 disqualified from employment by any facility, home health care agency,  
40 nurses' registry, employment agency, or temporary help agency, and  
41 shall not have an opportunity to establish rehabilitation pursuant to  
42 subsection b. of section 2 of P.L. , c. (C. ) (pending before  
43 the Legislature as this bill). A conditionally employed person who  
44 disputes the accuracy of the criminal history record information and  
45 who files a petition requesting a hearing pursuant to subsection c. of  
46 this section may remain employed at the facility until the commissioner

1 rules on the applicant's petition but, pending the commissioner's  
2 ruling, the facility shall not permit the applicant to have unsupervised  
3 contact with elderly patients, residents or clients, as the case may be.

4 e. A person who is to be employed in any substitute capacity or  
5 position, who is rehired annually, shall only be required to undergo a  
6 criminal history record check upon initial employment. A person who  
7 has been qualified for employment as a result of a criminal history  
8 record background check pursuant to P.L. , c. (C. ) (pending  
9 before the Legislature as this bill) may use that qualification to obtain  
10 employment with a simultaneous or subsequent employer without  
11 having to undergo another check required by P.L. , c. (C. )  
12 (pending before the Legislature as this bill) for a period of 12 months  
13 from the date of the initial notice of qualification from the  
14 commissioner. The person may request and the commissioner shall  
15 send a notice of qualification upon request to simultaneous or  
16 subsequent employers within 12 months following the date of the  
17 initial qualification notice.

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

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22 4. The prospective employer may assume the cost of all criminal  
23 history record background checks conducted on prospective  
24 employees pursuant to P.L. , c. (C. ) (pending before the  
25 Legislature as this bill); or the prospective employer may require the  
26 prospective employee to pay the cost of the criminal history record  
27 background check.

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29 5. In accordance with the "Administrative Procedure Act,"  
30 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health  
31 shall adopt rules and regulations necessary to implement the provisions  
32 of sections 1 through 4 and section 6 of P.L. , c. (C. )  
33 (pending before the Legislature as this bill).

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35 6. Any employer subject to the provisions of sections 1 through 5  
36 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
37 who fails to comply with those provisions or any person submitting a  
38 false sworn statement pursuant to section 3 of P.L. , c. (C. )  
39 (pending before the Legislature as this bill) shall be subject to a fine of  
40 not more than \$1,000.

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42 7. a. The New Jersey Board of Nursing in the Division of  
43 Consumer Affairs in the Department of Law and Public Safety, shall  
44 not issue a homemaker-home health aide certification to any applicant  
45 except on a conditional basis as provided for in section 8  
46 of P.L. , c. (C. ) (pending before the Legislature as this bill),

1 unless the Board of Nursing first determines, consistent with the  
2 requirements of P.L. , c. (C. ) (pending before the Legislature  
3 as this bill) , that no criminal history record information exists on file  
4 in the Federal Bureau of Investigation, Identification Division, or in  
5 the State Bureau of Identification in the Division of State Police, that  
6 would disqualify that person from being certified. A person shall be  
7 disqualified from certification under P.L. , c. (C. ) (pending  
8 before the Legislature as this bill) if that person's criminal history  
9 record background check reveals a record of conviction of any of the  
10 following crimes and offenses:

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

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

16 (b) against the family, children or incompetents, meaning those  
17 crimes and disorderly persons offenses set forth in N.J.S.2C:24-4 et  
18 seq.; or

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

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

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

28 b. Notwithstanding the provisions of subsection a. of this section,  
29 no person shall be disqualified from certification under  
30 P.L. , c. (C. ) (pending before the Legislature as this bill) on  
31 the basis of any conviction disclosed by a criminal history record  
32 background check performed pursuant to P.L. , c. (C. )  
33 (pending before the Legislature as this bill) if the person has  
34 affirmatively demonstrated to the New Jersey Board of Nursing in the  
35 Division of Consumer Affairs clear and convincing evidence of the  
36 person's rehabilitation. In determining whether a person has  
37 affirmatively demonstrated rehabilitation, the following factors shall be  
38 considered:

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

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

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

43 (4) the date of the offense;

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

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

1 (7) any social conditions which may have contributed to the  
2 offense; and

3 (8) any evidence of rehabilitation, including good conduct in prison  
4 or in the community, counseling or psychiatric treatment received,  
5 acquisition of additional academic or vocational schooling, successful  
6 participation in correctional work-release programs, or the  
7 recommendation of those who have had the person under their  
8 supervision.

9 c. If a person subject to the provisions of P.L. , c. (C. )  
10 (pending before the Legislature as this bill) refuses to consent to, or  
11 cooperate in, the securing of a criminal history record background  
12 check, the New Jersey Board of Nursing shall not issue a homemaker-  
13 home health aide certification and shall notify the applicant of that  
14 denial.

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16 8. a. An applicant for homemaker-home health aide certification  
17 shall submit to the New Jersey Board of Nursing the applicant's name,  
18 address and fingerprints taken on standard fingerprint cards by the  
19 State or municipal law enforcement agency. The New Jersey Board  
20 of Nursing is authorized to exchange fingerprint data with and receive  
21 criminal history record information from the Federal Bureau of  
22 Investigation, Information Division, and the Division of State Police  
23 for use in making the determinations required by P.L. , c. (C. )  
24 (pending before the Legislature as this bill).

25 b. Upon receipt of the criminal history record information for a  
26 person from the Federal Bureau of Investigation or the Division of  
27 State Police, the Board of Nursing shall immediately notify the  
28 applicant and the applicant's employer or prospective employer, in  
29 writing, of the person's qualification or disqualification for  
30 homemaker-home health aide certification under P.L. , c. (C. )  
31 (pending before the Legislature as this bill). If the applicant is  
32 disqualified, the conviction or convictions which constitute the basis  
33 for the disqualification shall be identified in the notice to the applicant,  
34 but shall not be identified in the notice to the applicant's employer or  
35 prospective employer.

36 c. The applicant shall have 30 days from the date of the written  
37 notice of disqualification to petition the director for a hearing on the  
38 accuracy of the applicant's criminal history record information or to  
39 establish the applicant's rehabilitation under subsection b. of section  
40 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
41 The Board of Nursing shall notify the applicant's employer or  
42 prospective employer of the applicant's petition for a hearing within  
43 five days following the receipt of the petition from the applicant.

44 d. An applicant may be employed as a homemaker-home health  
45 aide conditionally for a period not to exceed 180 days, pending  
46 completion of a criminal history record background check required

1 under P.L. , c. (C. ) (pending before the legislature as this  
2 bill), if the person submits to the New Jersey Board of Nursing a  
3 sworn statement attesting that the person has not been convicted of  
4 any crime or disorderly persons offense as described in section 7 of  
5 P.L. , c. (C. ) (pending before the Legislature as this bill). a  
6 person who submits a false sworn statement shall be disqualified from  
7 certification as a homemaker-home health aide and shall not have an  
8 opportunity to establish rehabilitation pursuant to subsection b. of  
9 section 7 of P.L. , c. (C. ) (pending before the Legislature as  
10 this bill). a conditionally employed person who disputes the accuracy  
11 of the criminal history record information and who files a petition  
12 requesting a hearing pursuant to subsection c. of this section may  
13 remain employed by the employing agency until the New Jersey Board  
14 of Nursing rules on the applicant's petition but, pending the board's  
15 ruling, the employing agency shall not permit the applicant to have  
16 unsupervised contact with patients or clients who are 60 years of age  
17 or older.

18 e. A person who is to be employed in any substitute capacity or  
19 position, who is rehired annually, shall only be required to undergo a  
20 criminal history record check upon initial homemaker-home health aide  
21 certification.

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23 9. The home health agency or health care service firm may assume  
24 the cost of all criminal history record background checks conducted  
25 on applicants for homemaker-home health aide certification pursuant  
26 to P.L. , c. (C. ) (pending before the Legislature as this bill);  
27 or it may require the applicant to pay the cost of the criminal history  
28 record background checks.

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

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

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45 12. In accordance with the "Administrative Procedure Act,"  
46 P.L.1968, c.410 (C.52:14B-1 et seq.), the New Jersey Board of

1 Nursing in the Division of Consumer Affairs shall adopt rules and  
2 regulations necessary to implement the provisions of sections 7  
3 through 9 of P.L. , c. (C. ) (pending before the Legislature as  
4 this bill).

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6 13. The Division of State Police in the Department of Law and  
7 Public Safety shall conduct a criminal history record background check  
8 including a name and fingerprint identification check of each  
9 prospective employee of a facility as defined in section 1 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill) or of  
11 each applicant for homemaker-home health aide certification submitted  
12 to the New Jersey Board of Nursing in the Division of Consumer  
13 Affairs. The requirement of a criminal history record background  
14 check shall apply only to a prospective employee or an applicant who  
15 is or would be serving in a position which involves regular contact  
16 with a patient, resident or client as the case may be, who is 60 years  
17 of age or older.

18 For the purpose of conducting the criminal history record  
19 background check, the Division of State Police shall examine its own  
20 files and arrange for a similar examination by federal authorities. The  
21 division shall immediately forward the information obtained as a result  
22 of conducting the check to the Commissioner of Health and Senior  
23 Services, in the case of a facility, and to the Board of Nursing in the  
24 Division of Consumer Affairs in the Department of Law and Public  
25 Safety, in the case of an applicant for homemaker-home health aide  
26 certification.

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28 14. This act shall take effect on the first day of the sixth month  
29 after enactment.

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32 STATEMENT

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34 This bill bars persons who have been convicted of certain disorderly  
35 persons offenses or crimes from employment with certain facilities that  
36 provide care for the elderly. The bill defines "facility" to mean any  
37 facility or institution offering health or health related services for the  
38 institutionalized elderly, and which is subject to regulation, visitation,  
39 inspection, or supervision by any government agency, As defined in  
40 the bill, "facility" does not mean a licensed home health agency. The  
41 bill also bars the New Jersey Board of Nursing from issuing any  
42 applicant for homemaker-home health aide certification a certificate  
43 unless that applicant first passes a criminal background check.

44 Under the provisions of the bill, a person could not: (1) be hired by  
45 a facility for a position which involves regular contact with patients or  
46 clients 60 years of age or older; or (2) receive a homemaker-home

1 health aide certificate or provide home health care services to such  
2 elderly individuals, until the Commissioner of Health and Senior  
3 Services (in the case of a facility), or the New Jersey Board of Nursing  
4 in the Division of Consumer Affairs in the Department of Law and  
5 Public Safety (in the case of homemaker-home health aides),  
6 determines that the person has not been convicted of any of the crimes  
7 or offenses set forth in the bill.

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12 Requires criminal history record checks of certain persons seeking to  
13 provide care for the elderly.