[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 206**

# STATE OF NEW JERSEY

ADOPTED JANUARY 14, 1997

**Sponsored by Senators CONNORS, BUBBA, Inverso, Scott, Kosco, Matheussen, Sinagra and LaRossa**

**AN ACT** concerning [1]criminal history record background checks for certain persons who care for[1] the elderly and supplementing Title 26, Title 45, and Title 53 of the Revised Statutes.

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

1. [1]**[**As used in**]** For the purposes of[1] sections [1]**[**1**]** 2[1] through [1]**[**4 and section 12**]** 6[1] of [1]**[**this act**]** P.L. , c. (C. )(pending before the Legislature as this bill)[1] :

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

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

2. a. A facility for the institutionalized elderly, as defined in

**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] Senate SBA committee amendments adopted January 27, 1997.**

section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill)[1],[1] shall not hire any unlicensed person serving in a position which involves regular contact with a patient, resident or client as the case may be, except on a conditional basis as provided for in section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), unless the Commissioner of Health first determines, consistent with the requirements of [1][this act P.L. ,c . (C. )(pending before the Legislature as this bill)[1], that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being employed or utilized in such capacity or position. A person shall be disqualified from employment under [1][this act] P.L. , c. (C. ) (pending before the Legislature as this bill)[1] if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

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

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

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

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

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

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

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from employment under [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1] on the basis of any conviction disclosed by a criminal history record background check performed pursuant to [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1] if the person has affirmatively demonstrated to the Commissioner of Health clear and convincing evidence of [1][his] the person's[1] rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

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

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

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

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

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

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

c. If a person subject to the provisions of [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1] refuses to consent to, or cooperate in, the securing of a criminal history record background check, the commissioner shall direct the principal administrator of the facility not to consider the person for employment.

3. a. An applicant for employment at a facility shall submit to the Commissioner of Health [1][his] the applicant's[1] name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by P.L. , c. (C. ) (pending before the Legislature as this bill).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the commissioner shall immediately notify the applicant [1]and the applicant's employer or prospective employer[1], in writing, of the person's qualification or disqualification for employment under [1][this act] P.L. , c. )(C. )(pending before the Legislature as this bill)[1]. If the applicant is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified [1][therein] in the notice to the applicant, but shall not be identified in the notice to the applicant's employe or prospective employer[1].

c. The applicant shall have 30 days from the date of the written notice of disqualification to petition the commissioner for a hearing on the accuracy of [1][his] the applicant's [1] criminal history record information or to establish [1][his] the applicant's[1] rehabilitation under subsection b. of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill). [1]The commissioner shall notify the applicant's employer or prospective employer of the applicant's petition for a hearing within five days following the receipt of the petition from the

applicant.[1]

d. A facility may employ a person conditionally for a period not to exceed 180 days, pending completion of a criminal history record background check required under [1][ this act] P.L. , c. (C. ) (pending before the Legislature as this bill)[1], if the person submits to the commissioner a sworn statement attesting that [1][he] the person[1] has not been convicted of any crime or disorderly persons offense as described in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill). A person who submits a false sworn statement shall be disqualified from employment by any facility, [1][agency or registry] home health care agency, nurses' registry, employment agency, or temporary help agency[1], and shall not have an opportunity to establish [1][his][1] rehabilitation pursuant to subsection b. of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill). A conditionally employed person who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed at the facility until the commissioner rules on the applicant's petition but, pending the commissioner's ruling, the facility shall not permit the applicant to have unsupervised contact with elderly patients, residents or clients, as the case may be.

A person who is to be employed in any substitute capacity or position, who is rehired annually, shall only be required to undergo a criminal history record check upon initial employment. [1]A person who has been qualified for employment as a result of a criminal history record background check pursuant to P.L. , c. (C. )(pending before the Legislature as this bill) may use that qualification to obtain employment with a simultaneous or subsequent employer without having to undergo another check required by P.L. , c. (C. ) (pending before the Legislature as this bill) for a period of 12 months from the date of the initial notice of qualifiation from the commissioner. The person may request and the commissioner shall send a notice of qualification upon request to simultaneous or subsequent employers within 12 months following the date of the initial qualification notice.[1]

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

4. The prospective employer may assume the cost of all criminal history record background checks conducted on prospective employees pursuant to [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1] ; or the prospective employer may require the prospective employee to pay the cost of the criminal history record background checks.

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

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

7. a. A home health care agency, nurses' registry, employment agency, or temporary help agency which is licensed or regulated by the Division of Consumer Affairs in the Department of Law and Public Safety, shall not hire a home health aide or other health care employee [1]to serve in a position which involves regular contact with a patient or client who is 60 years of age or older[1], except on a conditional basis as provided for in section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill), unless the director first determines, consistent with the requirements of [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1], that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being employed or utilized in such capacity or position. A person shall be disqualified from employment under P.L. , c. (C. ) (pending before the Legislature as this bill) if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

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

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

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

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

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

(2) In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or

disorderly persons offenses described in paragraph (1) of this subsection.

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from employment under [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1] on the basis of any conviction disclosed by a criminal history record background check performed pursuant to [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1] if the person has affirmatively demonstrated to the Director of the Division of Consumer Affairs clear and convincing evidence of [1][his] the person's[1] rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

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

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

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

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

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

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

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

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

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the director shall immediately notify the applicant [1]and the applicant's employer or prospective employer[1], in writing, of the person's qualification or disqualification for employment under P.L. , c. (C. ) (pending before the Legislature as this bill). If the applicant is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified [1][therein] in the notice to the applicant, but shall not be identified in the notice to the applicant's employer or prospective employer[1].

c. The applicant shall have 30 days from the date of the written notice of disqualification to petition the director for a hearing on the accuracy of [1][his] the applicant's[1] criminal history record information or to establish [1][his] the applicant's[1] rehabilitation under subsection b. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill). [1]The director shall notify the applicant's employer or prospective employer of the applicant's petition for a hearing within five days following receipt of the petition from the applicant.[1]

d. A home health care agency, nurses' registry, employment agency, or temporary help agency may employ a home health aide or other health care employee conditionally for a period not to exceed 180 days, pending completion of a criminal history record background check required under [1][this act] P.L. , c. (C. )(pending before the Legislature as this bill)[1], if the person submits to the director a sworn statement attesting that [1][he] the person's[1] has not been convicted of any crime or disorderly persons offense as described in section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill). A person who submits a false sworn statement shall be disqualified from employment by any facility [1]as defined in section 1 of P.L. , c. (C. )(pending before the legislature as this bill)[1], agency or registry, and shall not have an opportunity to establish [1][his][1] rehabilitation pursuant to subsection b. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill). A conditionally employed person who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed by the employing agency or registry until the director rules on the applicant's petition but, pending the director's ruling, the employing agency or registry shall not permit the applicant to have unsupervised contact with [1][elderly][1] patients or clients [1]who are 60 years of age or older[1].

A person who is to be employed in any substitute capacity or position, who is rehired annually, shall only be required to undergo a criminal history record check upon initial employment. [1]A home health aide or other health care employee who has been qualified for employment as a result of a criminal history record background check

pursuant to P.L. , c. (C. )(pending before the Legislature as this bill) may use that qualification to obtain employment with a simultaneous or subsequent employer without having to undergo another check required by P.L. , c. (C. )(pending before the Legislature as this bill) for a period of 12 months from the date of the initial notice of qualifiation from the director. The aide or employee may request and the director shall send a notice of qualification upon request to simultaneous or subsequent employers within 12 months following the date of the initial qualification notice.[1]

9. The home health care agency, nurses' registry, employment agency, or temporary help agency may assume the cost of all criminal history record background checks conducted on prospective employees pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill); or it may require the prospective employee to pay the cost of the criminal history record background checks.

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

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

12. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the Division of Consumer Affairs shall adopt rules and regulations necessary to implement the provisions of sections 7 through 9 [1]and section 13[1] of P.L. , c. (C. ) (pending before the Legislature as this bill).

13. Any employer subject to the provisions of sections 7 through [1][10] 9 and section 12[1] of P.L. , c. (C. ) (pending before the Legislature as this bill) who fails to comply with those provisions or any person submitting a false sworn statement pursuant to section 8 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be subject to a fine of not more than $1,000.

14. The Division of State Police in the Department of Law and Public Safety shall conduct a criminal history record background check including a name and fingerprint identification check of each

prospective employee of a facility as defined in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill) or of a home health care agency, nurses' registry, employment agency, or temporary help agency licensed or regulated by the Director of the Division of Consumer Affairs. The requirement of a criminal history record background check shall apply only to a prospective employee who is or would be serving in a position which involves regular contact with a patient, resident or client as the case may be, who is 60 years of age or older.

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

15. This act shall take effect on the first day of the sixth month after enactment.

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