

SENATE, No. 2105

STATE OF NEW JERSEY

INTRODUCED MAY 22, 1997

By Senators BUBBA 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:

6

7 1. For the purposes of sections 2 through 6 of P.L. , c.
8 (C.) (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.

23

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
31 convicted 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
19 bill). If the applicant is disqualified, the conviction or convictions
20 which constitute the basis for the disqualification shall be identified in
21 the notice to the applicant, but shall not be identified in the notice to
22 the 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
28 bill). The commissioner shall notify the applicant's employer or
29 prospective employer of the applicant's petition for a hearing within
30 five days 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.

21
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.

28
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).

34
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.

41
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 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill), unless the

1 Board of Nursing first determines, consistent with the requirements of
2 P.L. , c. (C.) (pending before the Legislature as this bill) ,
3 that no criminal history record information exists on file in the Federal
4 Bureau of Investigation, Identification Division, or in the State Bureau
5 of Identification in the Division of State Police, that would disqualify
6 that person from being certified. A person shall be disqualified from
7 certification under P.L. , c. (C.) (pending before the Legislature
8 as this bill) if that person's criminal history record background check
9 reveals a record of conviction of any of the following crimes and
10 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 P.L. , c.
30 (C.) (pending before the Legislature as this bill) on the basis of
31 any conviction disclosed by a criminal history record background
32 check performed pursuant to P.L. , c. (C.) (pending before
33 the Legislature as this bill) if the person has affirmatively demonstrated
34 to the New Jersey Board of Nursing in the Division of Consumer
35 Affairs clear and convincing evidence of the person's rehabilitation. In
36 determining whether a person has affirmatively demonstrated
37 rehabilitation, the following factors shall be considered:

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

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

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

42 (4) the date of the offense;

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

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

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

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

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

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

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

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

42 d. An applicant may be employed as a homemaker-home health
43 aide conditionally for a period not to exceed 180 days, pending
44 completion of a criminal history record background check required
45 under P.L. , c. (C.) (pending before the legislature as this
46 bill), if the person submits to the New Jersey Board of Nursing a

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

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

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

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

34

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

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43 12. In accordance with the "Administrative Procedure Act,"
44 P.L.1968, c.410 (C.52:14B-1 et seq.), the New Jersey Board of
45 Nursing in the Division of Consumer Affairs shall adopt rules and
46 regulations necessary to implement the provisions of sections 7

1 through 9 of P.L. , c. (C.) (pending before the Legislature as
2 this bill).

3
4 13. The Division of State Police in the Department of Law and
5 Public Safety shall conduct a criminal history record background check
6 including a name and fingerprint identification check of each
7 prospective employee of a facility as defined in section 1 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) or of each
9 applicant for homemaker-home health aide certification submitted to
10 the New Jersey Board of Nursing in the Division of Consumer Affairs.
11 The requirement of a criminal history record background check shall
12 apply only to a prospective employee or an applicant who is or would
13 be serving in a position which involves regular contact with a patient,
14 resident or client as the case may be, who is 60 years of age or older.

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

24
25 14. This act shall take effect on the first day of the sixth month
26 after enactment.

27 28 29 STATEMENT

30
31 This bill bars persons who have been convicted of certain disorderly
32 persons offenses or crimes from employment with certain facilities that
33 provide care for the elderly. The bill defines "facility" to mean any
34 facility or institution offering health or health related services for the
35 institutionalized elderly, and which is subject to regulation, visitation,
36 inspection, or supervision by any government agency, As defined in
37 the bill, "facility" does not mean a licensed home health agency. The
38 bill also bars the New Jersey Board of Nursing from issuing any
39 applicant for homemaker-home health aide certification a certificate
40 unless that applicant first passes a criminal background check.

41 Under the provisions of the bill, a person could not: (1) be hired by
42 a facility for a position which involves regular contact with patients or
43 clients 60 years of age or older; or (2) receive a homemaker-home
44 health aide certificate or provide home health care services to such
45 elderly individuals, until the Commissioner of Health and Senior
46 Services (in the case of a facility), or the New Jersey Board of Nursing

1 in the Division of Consumer Affairs in the Department of Law and
2 Public Safety (in the case of homemaker-home health aides),
3 determines that the person has not been convicted of any of the crimes
4 or offenses set forth in the bill.
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6
7 _____
8
9 Requires criminal history record checks of certain persons seeking to
10 provide care for the elderly.