

House Bill 608

By: Representative Houston of the 170th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 expand criminal background check requirements for applicants for employment by certain
3 facilities licensed by the Department of Community Health; to revise provisions relating to
4 criminal background checks for directors and employees of personal care homes and
5 employees of nursing homes; to amend Code Section 35-3-33 of the Official Code of
6 Georgia Annotated, relating to powers and duties of the Georgia Crime Information Center,
7 so as to authorize the retaining of certain fingerprint records for continuous monitoring; to
8 provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
12 Code Section 31-2-9, relating to records check requirement for certain facilities, definitions,
13 use of information gathered in investigation, penalties for unauthorized release or disclosure,
14 and rules and regulations, as follows:

15 "31-2-9.

16 (a) As used in this Code section, the term:

17 (1) 'Applicant' means any person seeking employment by a facility. The term shall not
18 include persons currently employed by a facility who were hired prior to July 1, 2013.

19 ~~(1)~~(2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of
20 whether an appeal of the conviction has been sought.

21 ~~(2)~~(3) 'Crime' means commission of the following offenses:

22 (A) A violation of Code Section 16-5-1, relating to murder and felony murder;

23 (B) A violation of Code Section 16-5-21, relating to aggravated assault;

24 (C) A violation of Code Section 16-5-24, relating to aggravated battery;

25 (D) A violation of Code Section 16-5-70, relating to cruelty to children;

- 26 (E) A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of
 27 age or older;
- 28 (F) A violation of Code Section 16-6-1, relating to rape;
- 29 (G) A violation of Code Section 16-6-2, relating to aggravated sodomy;
- 30 (H) A violation of Code Section 16-6-4, relating to child molestation;
- 31 (I) A violation of Code Section 16-6-5, relating to enticing a child for indecent
 32 purposes;
- 33 (J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in
 34 custody, detained persons, or patients in hospitals or other institutions;
- 35 (K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;
- 36 (L) A violation of Code Section 16-8-41, relating to armed robbery;
- 37 (M) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of
 38 a disabled adult or elder person;
- 39 (N) Any other offense committed in another jurisdiction that, if committed in this state,
 40 would be deemed to be a crime listed in this paragraph without regard to its designation
 41 elsewhere; or
- 42 (O) Any other criminal offense as determined by the department and established by
 43 rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure
 44 Act,' that would indicate the unfitness of an individual to provide care to or be in
 45 contact with persons residing in a facility.
- 46 ~~(3)~~(4) 'Criminal record' means any of the following:
- 47 (A) Conviction of a crime;
- 48 (B) Arrest, charge, and sentencing for a crime where:
- 49 (i) A plea of nolo contendere was entered to the charge;
- 50 (ii) First offender treatment without adjudication of guilt pursuant to the charge was
 51 granted; or
- 52 (iii) Adjudication or sentence was otherwise withheld or not entered on the charge;
- 53 or
- 54 (C) Arrest and being charged for a crime if the charge is pending, unless the time for
 55 prosecuting such crime has expired pursuant to Chapter 3 of Title 17.
- 56 ~~(4)~~(5) 'Facility' means a:
- 57 (A) Personal care home required to be licensed or permitted under Code Section
 58 31-7-12;
- 59 (B) Assisted living community required to be licensed under Code Section 31-7-12.2;
- 60 (C) Private home care provider required to be licensed under Article 13 of Chapter 7
 61 of this title; or

62 (D) Community living arrangement subject to licensure under paragraph (8) of
63 subsection (d) of Code Section 31-2-4;

64 (E) Nursing home subject to licensure under Chapter 7 of this title;

65 (F) Hospice subject to licensure under Article 9 of Chapter 7 of this title; or

66 (G) Home health agency subject to licensure under Article 7 of Chapter 7 of this title.

67 ~~(5)~~(6) 'GCIC' means the Georgia Crime Information Center established under Article 2
68 of Chapter 3 of Title 35.

69 ~~(6)~~(7) 'GCIC information' means criminal history record information as defined in Code
70 Section 35-3-30.

71 ~~(7)~~(8) 'License' means the document issued by the department to authorize the facility
72 to operate.

73 ~~(8)~~(9) 'Owner' means any individual or any person affiliated with a corporation,
74 partnership, or association with 10 percent or greater ownership interest in a facility
75 providing care to persons under the license of the facility in this state and who:

76 (A) Purports to or exercises authority of the owner in a facility;

77 (B) Applies to operate or operates a facility;

78 (C) Maintains an office on the premises of a facility;

79 (D) Resides at a facility;

80 (E) Has direct access to persons receiving care at a facility;

81 (F) Provides direct personal supervision of facility personnel by being immediately
82 available to provide assistance and direction during the time such facility services are
83 being provided; or

84 (G) Enters into a contract to acquire ownership of a facility.

85 ~~(9)~~(10) 'Records check application' means fingerprints in such form and of such quality
86 as prescribed by the Georgia Crime Information Center and under standards adopted by
87 the Federal Bureau of Investigation and a records search fee to be established by the
88 department by rule and regulation, payable in such form as the department may direct to
89 cover the cost of obtaining criminal background information pursuant to this Code
90 section.

91 (b) An owner with a criminal record shall not operate or hold a license to operate a facility,
92 and the department shall revoke the license of any owner operating a facility or refuse to
93 issue a license to any owner operating a facility if it determines that such owner has a
94 criminal record; provided, however, that an owner who holds a license to operate a facility
95 on or before June 30, 2007, shall not have his or her license revoked prior to a hearing
96 being held before a hearing officer pursuant to Chapter 13 of Title 50, the 'Georgia
97 Administrative Procedure Act.'

98 (c)(1)(A) Prior to approving any license for a new facility and periodically as
 99 established by the department by rule and regulation, the department shall require an
 100 owner to submit a records check application. The department may also elect to
 101 authorize the GCIC to indefinitely retain records check applications pursuant to
 102 subparagraph (a)(1)(F) of Code Section 35-3-33 for continuous monitoring of a
 103 criminal record of the owner, upon notice to the owner requesting the license. The
 104 department shall establish a uniform method of obtaining an owner's records check
 105 application.

106 (B)(i) Prior to hiring an applicant, the department shall conduct a criminal
 107 background check in accordance with department rules and regulations to determine
 108 whether the applicant has a criminal record. The department shall make a
 109 determination for each applicant for whom a criminal background check is performed.
 110 A facility shall not employ a person with an unsatisfactory determination.

111 (ii) Each application form provided by a facility to an applicant shall conspicuously
 112 state the following: 'FOR THIS TYPE OF EMPLOYMENT, STATE LAW
 113 REQUIRES A CRIMINAL BACKGROUND CHECK AS A CONDITION OF
 114 EMPLOYMENT.' The department may require additional information from the
 115 applicant on the form in accordance with rules and regulations established by the
 116 department. In the event that the department elects to authorize the GCIC to
 117 indefinitely retain applicants' fingerprints pursuant to subparagraph (a)(1)(F) of Code
 118 Section 35-3-33 for continuous monitoring of a criminal record of the applicant, the
 119 form shall so indicate that the applicant's fingerprints may be retained indefinitely by
 120 the GCIC for such purposes.

121 (2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph,
 122 the department shall transmit to the GCIC the fingerprints and records search fee from
 123 each fingerprint records check application in accordance with Code Section 35-3-35.
 124 Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal
 125 Bureau of Investigation for a search of bureau records and an appropriate report and
 126 shall promptly conduct a search of its records and records to which it has access.
 127 Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the
 128 GCIC shall notify the department in writing of any criminal record or if there is no such
 129 finding. After a search of Federal Bureau of Investigation records and fingerprints and
 130 upon receipt of the bureau's report, the department shall make a determination about an
 131 owner's or applicant's criminal record and shall notify the owner in writing or applicant
 132 as to the department's determination as to whether ~~the owner~~ he or she has or does not
 133 have a criminal record.

134 (B) The department may either perform criminal background checks under agreement
135 with the GCIC or contract with the GCIC and appropriate law enforcement agencies
136 which have access to GCIC information and Federal Bureau of Investigation
137 information to have those agencies perform for the department criminal background
138 checks for owners and applicants. The department or the appropriate law enforcement
139 agencies may charge reasonable fees for performing criminal background checks.

140 (3)(A) The department's determination regarding an owner's or applicant's criminal
141 record, or any action by the department revoking or refusing to grant a license based on
142 such determination, shall constitute a contested case for purposes of Chapter 13 of Title
143 50, the 'Georgia Administrative Procedure Act,' except that any hearing required to be
144 held pursuant thereto may be held reasonably expeditiously after such determination
145 or action by the department.

146 (B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b)
147 of this Code section, the hearing officer shall consider in mitigation the length of time
148 since the crime was committed, the absence of additional criminal charges, the
149 circumstances surrounding the commission of the crime, other indicia of rehabilitation,
150 the facility's history of compliance with the regulations, and the owner's or applicant's
151 involvement with the licensed facility in arriving at a decision as to whether the
152 criminal record requires the denial or revocation of the license to operate the facility.
153 Where a hearing is required, at least 30 days prior to such hearing, the hearing officer
154 shall notify the office of the prosecuting attorney who initiated the prosecution of the
155 crime in question in order to allow the prosecutor to object to a possible determination
156 that the conviction would not be a bar for the grant granting or continuation of a license
157 as contemplated within this Code section. If objections are made, the hearing officer
158 shall take such objections into consideration in considering the case.

159 (4) Neither the GCIC, the department, any law enforcement agency, nor the employees
160 of any such entities shall be responsible for the accuracy of information nor have any
161 liability for defamation, invasion of privacy, negligence, or any other claim in connection
162 with any dissemination of information or determination based thereon pursuant to this
163 Code section.

164 (d) All information received from the Federal Bureau of Investigation or the GCIC shall
165 be for the exclusive purpose of approving or denying the granting of a license to a new
166 facility, ~~or~~ the revision of a license of an existing facility when a new owner is proposed,
167 or the suitability of an applicant for employment and shall not be released or otherwise
168 disclosed to any other person or agency. All such information collected by the department
169 shall be maintained by the department pursuant to laws regarding and the rules or
170 regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties

171 for the unauthorized release or disclosure of any such information shall be as prescribed
 172 pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation
 173 and the GCIC, as is applicable.

174 (e) The requirements of this Code section are supplemental to any requirements for a
 175 license imposed by Article 3 of Chapter 5 of Title 49 or Article 11 or 14 of Chapter 7 of
 176 this title.

177 (f) The department shall promulgate written rules and regulations to implement the
 178 provisions of this Code section.

179 (g) This Code section shall not apply to individuals subject to records checks pursuant to
 180 Article 11 or 14 of Chapter 7 of this title."

181 **SECTION 2.**

182 Said title is further amended in Code Section 31-7-250, relating to definitions relative to
 183 facility licensing and employee records checks for personal care homes, by revising
 184 paragraphs (7), (16), and (18) as follows:

185 "(7) 'Fingerprint records check determination' means a satisfactory or unsatisfactory
 186 determination made in accordance with department rules and regulations ~~by the~~
 187 ~~department based upon a records check comparison of GCIC information with~~
 188 ~~fingerprints and other information in a records check application."~~

189 "(16) 'Satisfactory determination' means a ~~written~~ determination by the department that
 190 a person for whom a records criminal background check was performed was found to
 191 have no criminal record."

192 "(18) 'Unsatisfactory determination' means a ~~written~~ determination by the department
 193 that a person for whom a records criminal background check was performed has a
 194 criminal record."

195 **SECTION 3.**

196 Said title is further amended by revising Code Section 31-7-252, relating to director records
 197 check applications and employee preliminary records check applications, as follows:

198 "31-7-252.

199 Accompanying any application for a new license for a facility, the applicant shall furnish
 200 to the department a records check application and a preliminary records check application
 201 for the director of such facility. In lieu of such records check applications, the applicant
 202 may submit evidence, satisfactory to the department, that within the immediately preceding
 203 12 months, the director received a satisfactory fingerprint records check determination.
 204 The department shall contract either with the GCIC or other appropriate law enforcement
 205 agencies which have access to GCIC information to perform itself or have those agencies

206 perform for the department a preliminary records check for each records check application
207 submitted thereto by the department; and the department shall make a ~~written~~
208 determination based upon that records check."

209 **SECTION 4.**

210 Said title is further amended by revising Code Section 31-7-253, relating to written
211 determination as to department's preliminary records check determinations, as follows:

212 "31-7-253.

213 After being furnished the required records check applications under Code Section
214 31-7-252, the department shall notify ~~in writing~~ the license applicant as to each person for
215 whom an application was received regarding whether the department's determination as
216 to that person's preliminary records check was satisfactory or unsatisfactory. If the
217 preliminary records check determination was satisfactory as to the director of the facility,
218 that applicant may be issued a temporary license for that facility if the applicant otherwise
219 qualifies for a license under Article 1 of this chapter. If the determination was
220 unsatisfactory as to the director of the facility, the applicant shall designate another director
221 for that facility after receiving notification of the determination and proceed under Code
222 Section 31-7-252 and this Code section to obtain a preliminary records check for that
223 newly designated director. The applicant may not be issued a temporary license for that
224 facility until the department has determined under the procedures of Code Section
225 31-7-252 and this Code section that the director has a satisfactory preliminary records
226 check determination."

227 **SECTION 5.**

228 Said title is further amended by revising Code Section 31-7-255, relating to issuance of
229 regular licenses, as follows:

230 "31-7-255.

231 After receiving a GCIC notification regarding a director's fingerprint records check under
232 Code Section 31-7-254, the department shall make a determination based thereon and
233 notify ~~in writing~~ the license applicant as to whether that records check was satisfactory or
234 unsatisfactory. If the fingerprint records check determination was satisfactory as to the
235 director of the facility, that applicant may be issued a regular license for that facility. If
236 the fingerprint records check determination was unsatisfactory as to the director of the
237 facility, after receiving notification of that determination, that applicant shall designate
238 another director for such facility, for which director the applicant has not received or made
239 an unsatisfactory preliminary or fingerprint records check determination, and proceed
240 under the requirements of Code Sections 31-7-252 through 31-7-254 and this Code section

241 to obtain a preliminary records check and fingerprint records check determination for the
 242 newly designated director. The applicant may not be issued a regular license for that
 243 facility until the director has a satisfactory fingerprint records check determination."

244 **SECTION 6.**

245 Said title is further amended by revising subsection (a) of Code Section 31-7-258, relating
 246 to change of facility director, as follows:

247 "(a) If the director of a facility which has been issued a regular license ceases to be the
 248 director of that facility, the licensee shall thereupon designate a new director. After such
 249 change, the licensee of that facility shall notify the department of such change and of any
 250 additional information the department may require regarding the newly designated director
 251 of that facility. Such information shall include, but not be limited to, any information the
 252 licensee may have regarding preliminary or fingerprint records check determinations
 253 regarding that director. After receiving a change of director notification, the department
 254 shall make a ~~written~~ determination from the information furnished with such notification
 255 and the department's own records as to whether a satisfactory or unsatisfactory preliminary
 256 or fingerprint records check determination has ever been made for the newly designated
 257 director. If the department determines that such director within 12 months prior thereto has
 258 had a satisfactory fingerprint records check determination, such determination shall be
 259 deemed to be a satisfactory fingerprint records check determination as to that director. The
 260 license of that facility shall not be adversely affected by that change in director, and the
 261 licensee shall be so notified."

262 **SECTION 7.**

263 Said title is further amended by revising Code Section 31-7-259, relating to preliminary
 264 records check determinations, suspension or revocation of licenses, refusal to issue regular
 265 licenses, fingerprint checks, employment history, director's criminal liability, exempt
 266 employees, mitigating factors in criminal records checks, and civil penalties, as follows:

267 "31-7-259.

268 (a) Before a person may become a director of any facility that has received either a
 269 temporary license or regular license, that facility shall require that person to furnish to the
 270 department a preliminary records check application and a records check application and the
 271 department shall, under the procedures of Code Sections 31-7-252 and 31-7-253, make a
 272 preliminary records check determination and send notice thereof to the facility and director
 273 prior to the director beginning work. If the preliminary records check is unsatisfactory, the
 274 facility shall not hire the director. If the subsequent fingerprint records check

275 determination is unsatisfactory, the facility shall take such steps as are necessary so that
276 such person is no longer the director of the facility.

277 (b) Before a person may become an employee of a facility, ~~each potential employee of a~~
278 ~~facility shall request a criminal record check from a local law enforcement agency and~~
279 ~~submit the results of the criminal record check to the facility. The personal care home shall~~
280 ~~be authorized to rely on written information received from a local law enforcement agency,~~
281 ~~GCIC, or other official agency to determine whether the applicant for employment has a~~
282 ~~criminal record~~ the department shall conduct a criminal background check in accordance
283 with rules and regulations of the department to determine whether the applicant has a
284 criminal record. A personal care home shall not employ a person with an unsatisfactory
285 determination.

286 (c) ~~In addition, where an applicant for employment at a personal care home has not been~~
287 ~~a resident of the state for a period of three years preceding the date of application for~~
288 ~~employment, the personal care home shall attempt to obtain a criminal record check from~~
289 ~~the local law enforcement agency of the applicant's previous state of residence. If the local~~
290 ~~criminal record check from either the applicant's previous state of residence or this state~~
291 ~~indicates multistate offender status, the personal care home shall not employ the applicant~~
292 ~~until a determination is made as to whether the applicant has a criminal record. If the~~
293 ~~personal care home elects to determine the nature of the criminal activity, the personal care~~
294 ~~home shall transmit the preliminary records check application and the records check~~
295 ~~application on behalf of the potential employee to the department for processing through~~
296 ~~the GCIC. A personal care home shall not employ a person with an unsatisfactory~~
297 ~~determination.~~

298 (d) ~~If the personal care home is unable to obtain a criminal record check from the local law~~
299 ~~enforcement agency of the applicant's previous state of residence, it shall transmit a records~~
300 ~~check application to the department which shall process the application through the GCIC.~~
301 ~~A personal care home shall not employ a person with an unsatisfactory determination.~~

302 (e) ~~The fee for a criminal records check under this Code section shall be no greater than~~
303 ~~the actual cost of processing the request and shall be paid by the personal care home or by~~
304 ~~the applicant for employment. The law enforcement agency of this state receiving the~~
305 ~~request shall perform a criminal record check for a personal care home within a reasonable~~
306 ~~time but in any event within a period not to exceed three days of receiving the request.~~

307 (f)(c) Each application form provided by the employer to the applicant for employment
308 shall conspicuously state the following: 'FOR THIS TYPE OF EMPLOYMENT, STATE
309 LAW REQUIRES A CRIMINAL RECORD BACKGROUND CHECK AS A
310 CONDITION OF EMPLOYMENT.' The department may require additional information
311 from the applicant on the form in accordance with rules and regulations established by the

312 department. In the event that the department elects to authorize the GCIC to indefinitely
 313 retain applicants' fingerprints pursuant to subparagraph (a)(1)(F) of Code Section 35-3-33
 314 for continuous monitoring of a criminal record of the applicant, the form shall so indicate
 315 that the applicant's fingerprints may be retained indefinitely by the GCIC for such
 316 purposes.

317 ~~(g)~~(d) Both temporary licenses and regular licenses are subject to suspension or revocation
 318 or the department may refuse to issue a regular license if a person becomes a director or
 319 employee subsequent to the granting of a license and that person does not undergo the
 320 records checks applicable to that director or employee and receive a satisfactory
 321 determination.

322 ~~(h)~~(e) After the issuance of a regular license or temporary license, the department may
 323 require a fingerprint records check on any director or employee to confirm identification
 324 for records search purposes; or when, subsequent to a preliminary records check, the
 325 department has reason to believe that the director or employee has a criminal record. The
 326 department may require a fingerprints ~~record~~ records check on any director or employee
 327 during the course of an abuse investigation involving the director or employee. In such
 328 instances, the department shall require the director or employee to furnish two full sets of
 329 fingerprints which the department shall submit to the GCIC together with appropriate fees
 330 collected from the director or employee or personal care home. Upon receipt thereof, the
 331 GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation
 332 for a search of bureau records and an appropriate report and retain the other set and
 333 promptly conduct a search of its records and records to which it has access. The GCIC
 334 shall notify the department in writing of any derogatory finding, including, but not limited
 335 to, any criminal record obtained through the fingerprint ~~record~~ records check, or if there
 336 is no such finding. Where the department determines that the director or employee has a
 337 criminal record, the department shall notify the facility of the unsatisfactory determination,
 338 and the facility shall take such steps as are necessary so that such person is no longer the
 339 director or an employee of the facility.

340 ~~(i)~~(f) No personal care home may have any person as an employee after July 1, 2002,
 341 unless there is on file in the personal care home an employment history for that person and
 342 a satisfactory determination that the person does not have a criminal record.

343 ~~(j)~~(g) Except as provided in subsection ~~(h)~~(i) of this Code section, a director of a facility
 344 having an employee whom that director knows or should reasonably know to have a
 345 criminal record, ~~as defined in Code Section 31-7-250~~, shall be guilty of a misdemeanor.

346 ~~(k)~~(h) The provisions of this Code section shall not apply to a member of the
 347 administrative staff or an applicant for an administrative staff position of a personal care

348 home whose duties do not include management of resident funds or personal contact
 349 between that person and any paying resident of ~~the~~ such home.

350 ~~(h)~~(i) Where a personal care home determines that an applicant for employment has a
 351 criminal record but there are matters in mitigation of the criminal record, no physical harm
 352 was done to the victim, and the personal care home would like to hire the applicant, the
 353 personal care home may submit ~~an application for~~ a preliminary records check application
 354 to the department on behalf of the potential employee on forms provided by the
 355 department. The personal care home shall not hire the potential employee to work in the
 356 home until the personal care home receives notification from the department that the
 357 applicant either has a satisfactory criminal ~~record~~ background check or an administrative
 358 law judge has determined that the applicant is authorized to work in a personal care home.

359 ~~(m)~~(j) Except as provided in subsection ~~(h)~~(i) of this Code section, a personal care home
 360 that hires an applicant for employment with a criminal record is in violation of licensing
 361 requirements, and the department is authorized to impose a civil penalty pursuant to the
 362 authority granted it under the rules and regulations for the enforcement of licensing
 363 requirements."

364 SECTION 8.

365 Said title is further amended by revising Code Section 31-7-350, relating to definitions
 366 relative to nursing homes employee records checks, as follows:

367 "31-7-350.

368 As used in this article, the term:

369 (1) 'Applicant' means any person seeking employment by a nursing home. This term
 370 shall not include persons currently employed by the nursing home who were hired prior
 371 to July 1, 2013.

372 ~~(h)~~(2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of
 373 whether an appeal of the conviction has been sought.

374 ~~(2)~~(3) 'Crime' means commission of an offense which constitutes a felony with respect
 375 to the following:

- 376 (A) A violation of Code Section 16-5-21, relating to aggravated assault;
- 377 (B) A violation of Code Section 16-5-24, relating to aggravated battery;
- 378 (C) A violation of Code Section 16-6-1, relating to rape;
- 379 (D) A violation of Code Section 16-8-2, relating to theft by taking;
- 380 (E) A violation of Code Section 16-8-3, relating to theft by deception;
- 381 (F) A violation of Code Section 16-8-4, relating to theft by conversion;
- 382 (G) A violation of Code Section 16-5-1, relating to murder and felony murder;

- 383 (H) A violation of Code Section 16-4-1, relating to criminal attempt as it concerns
 384 attempted murder;
- 385 (I) A violation of Code Section 16-8-40, relating to robbery;
- 386 (J) A violation of Code Section 16-8-41, relating to armed robbery;
- 387 (K) A felony violation of Code Section 16-9-1;
- 388 (L) A violation of Chapter 13 of Title 16, relating to controlled substances; or
- 389 (M) Any other criminal offense as determined by the department and established by
 390 rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure
 391 Act,' that would indicate the unfitness of an applicant or employee to provide care to
 392 or be in contact with persons residing in a nursing home; or
- 393 (N) Any other offense committed in another jurisdiction which, if committed in this
 394 state, would be deemed to be such a crime without regard to its designation elsewhere.
- 395 ~~(3)~~(4) 'Criminal record' means any of the following ~~which have reached final disposition~~
 396 ~~within ten years of the date the criminal record check is conducted:~~
- 397 (A) Conviction of a crime;
- 398 (B) Arrest, charge, and sentencing for a crime where:
- 399 (i) A plea of nolo contendere was entered to the charge;
- 400 (ii) First offender treatment without adjudication of guilt pursuant to the charge was
 401 granted; or
- 402 (iii) Adjudication or sentence was otherwise withheld or not entered on the charge;
- 403 or
- 404 (C) Arrest and charges for a crime if the charge is pending, unless the time for
 405 prosecuting such crime has expired pursuant to Chapter 3 of Title 17.
- 406 Criminal record does not include offenses by applicants for employment for which at
 407 least ten years have elapsed since final disposition of their sentence, including, but not
 408 be limited to, release from incarceration, completion of probation, or both, from the date
 409 of the criminal background check.
- 410 ~~(4) 'Employment applicant' means any person seeking employment by a nursing home.~~
 411 ~~This term shall not include persons employed by the nursing home prior to July 1, 1995.~~
- 412 (5) 'GCIC' means the Georgia Crime Information Center established under Article 2 of
 413 Chapter 3 of Title 35.
- 414 (6) 'Nursing home' or 'home' means a home required to be licensed or permitted as a
 415 nursing home under the provisions of this chapter.
- 416 (7) 'Satisfactory determination' means a ~~written~~ determination by ~~a nursing home~~ the
 417 department that a person for whom a ~~record~~ criminal background check was performed
 418 was found to have no criminal record.

419 (8) 'Unsatisfactory determination' means a ~~written~~ determination by a ~~nursing home~~ the
 420 department that a person for whom a ~~record~~ criminal background check was performed
 421 was found to have a criminal record."

422 **SECTION 9.**

423 Said title is further amended by revising Code Section 31-7-351, relating to requests for
 424 criminal records checks for nursing homes employees, as follows:

425 "31-7-351.

426 (a) Prior to hiring an ~~employment~~ applicant, ~~each nursing home~~ the department shall
 427 conduct request a criminal ~~record~~ background check ~~from GCIC~~ in accordance with
 428 department rules and regulations to determine whether the applicant has a criminal record.
 429 ~~A nursing home~~ The department shall make a ~~written~~ determination for each applicant for
 430 whom a criminal ~~record~~ background check is performed. A nursing home shall not employ
 431 a person with an unsatisfactory determination.

432 (b) ~~Any request for a criminal record check under this Code section shall be on a form~~
 433 ~~approved by GCIC and submitted in person, by mail, or by facsimile request to any county~~
 434 ~~sheriff or municipal law enforcement agency having access to GCIC information. The fee~~
 435 ~~shall be no greater than the actual cost of processing the request. The law enforcement~~
 436 ~~agency receiving the request shall perform a criminal record check for a nursing home~~
 437 ~~within a reasonable time but in any event within a period not to exceed three days of~~
 438 ~~receiving the request.~~

439 (c) Each application form provided by the employer to the employment applicant shall
 440 conspicuously state the following: 'FOR THIS TYPE OF EMPLOYMENT, STATE LAW
 441 REQUIRES A CRIMINAL ~~RECORD~~ BACKGROUND CHECK AS A CONDITION OF
 442 EMPLOYMENT.' The department may require additional information from the applicant
 443 on the form in accordance with rules and regulations established by the department. In the
 444 event that the department elects to authorize the GCIC to indefinitely retain applicants'
 445 fingerprints pursuant to subparagraph (a)(1)(F) of Code Section 35-3-33 for continuous
 446 monitoring of a criminal record of the applicant, the form shall so indicate that the
 447 applicant's fingerprints may be retained indefinitely by the GCIC for such purposes."

448 **SECTION 10.**

449 Code Section 35-3-33 of the Official Code of Georgia Annotated, relating to powers and
 450 duties of the Georgia Crime Information Center, is amended by revising paragraph (1) of
 451 subsection (a) as follows:

452 "(a) The center shall:

453 (1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent
454 identifying data on persons who:

455 (A) Have been or are hereafter arrested or taken into custody in this state:

456 (i) For an offense which is a felony;

457 (ii) For an offense which is a misdemeanor or a violation of an ordinance involving
458 burglary tools, commercial gambling, dealing in gambling devices, contributing to the
459 delinquency of a child, dealing in stolen property, dangerous drugs, marijuana,
460 narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex
461 offenses where children are victims, or worthless checks;

462 (iii) For an offense charged as disorderly conduct but which relates to an act
463 connected with one or more of the offenses under division (ii) of this subparagraph;

464 (iv) As a fugitive from justice; or

465 (v) For any other offense designated by the Attorney General;

466 (B) Are or become career criminals, well-known offenders, or habitual offenders;

467 (C) Are currently or become confined to any prison, penitentiary, or other penal
468 institution;

469 (D) Are unidentified human corpses found in this state; or

470 (E) Are children who are charged with an offense that if committed by an adult would
471 be a felony or are children whose cases are transferred from a juvenile court to another
472 court for prosecution; or

473 (F) Are applicants, employees, or other persons for whom fingerprint criminal
474 background checks are performed pursuant to Georgia or federal law for purposes of
475 determining suitability or fitness for employment or placement or for the issuance of
476 a permit or license; provided, however, that the entity that submitted such fingerprints
477 has requested that the center retain such fingerprints; and provided, further, that such
478 fingerprints shall be retained only for purposes of providing continuous and ongoing
479 information on any such individual's continued suitability or fitness for employment or
480 placement or for the issuance of a permit or license;"

481 **SECTION 11.**

482 All laws and parts of laws in conflict with this Act are repealed.