

HOUSE AMENDMENT 6 TO hb1108.

deleting on lines 10 and 11 of page 1 the phrase "STATEWIDE AND NATIONWIDE";

AND

by deleting on lines 17 and 18 of page 1 the phrase "STATEWIDE AND NATIONWIDE";

AND

by deleting sections 1 through 15 of the bill and substituting the following:

"SECTION 1. Definitions.

As used in this act:

(1) Bureau means the Identification Bureau of the Department of the Arkansas State Police.

(2) Care means treatment, services, assistance, education, training, instruction, or supervision for which the care-giving person or entity is reimbursed either directly to or by arrangement with a qualified entity.

(3) Determination means a licensing agency's determination that an applicant or employee is or is not disqualified from employment or that a qualified entity is disqualified from licensure based on the criminal history of the operator.

(4) Elderly means persons aged 65 or older.

(5) Employee means any person who provides care to the elderly or to individuals with disabilities or both on behalf of, under the supervision of, or by arrangement with a qualified entity or any person employed by a qualified entity, unless the person is a family member, a volunteer or works in an administrative capacity.

(6) Individuals with disabilities means persons with a mental or physical impairment who require assistance to perform one or more of the following tasks of daily living: feeding, mobility, toileting, or medication.

(7) Index means the database, maintained by the Bureau, of criminal records checks that have been conducted on applicants for employment with and employees of qualified entities.

(8) Licensing agency means the government agency charged with licensing the operator or qualified entity to provide care to the elderly or to individuals with disabilities or both.

(9) National criminal history check means a review of national criminal records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods.

(10) Operator means a person responsible for signing an application for an initial or renewal license to operate a qualified entity.

(11) Qualified entity means a long-term care facility as defined by A.C.A. §§ 20-10-101 or A.C.A. 20-10-702, a home health care service as defined by A.C.A. § 20-10-801, and a hospice service as defined by A.C.A. § 20-7-117 whether or not the

entity has applied for or possesses any license necessary for operation.

(12) Report means a statement of the criminal history of an applicant, employee, or operator issued by the Bureau.

(13) State criminal history check means a review of state criminal records conducted by the Bureau.

SECTION 2. Mandatory criminal records checks for operators.

(a) When an operator applies for a license to operate a qualified entity, the operator shall complete a criminal history check form and shall request the Bureau to conduct a state criminal history check criminal history check and a national criminal history check on the operator. The operator shall attach evidence of the request for a criminal history check to the application for licensure of the qualified entity. The Bureau shall conduct a state criminal history check and a national criminal history check on the operator, and upon completion of the criminal history check, the Bureau shall issue a report to the licensing agency of the qualified entity. The licensing agency shall determine whether the qualified entity is disqualified from licensure based on the report of the operator's criminal history and forward its determination to the qualified entity seeking licensure.

(b) This section shall only apply to the first application signed by an operator provided that the operator has served continuously in a position as an operator with not more than a sixty (60) day interruption in such service.

SECTION 3. Mandatory criminal records checks for applicants and employees.

(a) When a person applies for a position as an employee of a qualified entity and if the qualified entity intends to make an offer of employment to the applicant, the applicant shall complete a criminal history check form obtained from the qualified entity and shall submit the form to the qualified entity as part of the application process. If the qualified entity intends to make an offer of employment to the applicant, the qualified entity shall, within five (5) days of such decision, forward the criminal history check form to the Bureau accompanied by appropriate payment and request the Bureau to review the Bureau's index of criminal history checks on persons caring for the elderly or individuals with disabilities. Within three (3) days of the receipt of a request to review the index, the Bureau shall notify the qualified entity, if the index contains any criminal history records on the applicant. A qualified entity may make an offer of temporary employment to an applicant pending receipt of notification from the Bureau after checking the database of the licensing agency.

(1) If no criminal history records regarding the applicant are found in the index, then the qualified entity may continue to temporarily employ the applicant while the Bureau completes a criminal history check and the licensing agency determines whether the applicant is disqualified from employment with the qualified entity.

(2) If a criminal history record regarding the applicant is found in the Bureau's index, then the applicant is temporarily disqualified from employment until the licensing agency issues a determination. If the licensing agency issues a determination that the applicant is not disqualified, then the qualified entity may temporarily employ the applicant while the Bureau completes a criminal history check.

(b)(1) Except as provided in subsection (b)(2), the Bureau shall conduct a state criminal history check and a national criminal history check on an applicant or an employee upon receiving a criminal history check request from a qualified entity.

(2) If the qualified entity can verify that the applicant has been employed within the State of Arkansas to provide care to the elderly or individuals with disabilities or both within sixty (60) days before the application or has lived continuously in the State of Arkansas for the past five (5) years, the Bureau shall conduct only a state criminal history check on the applicant.

(c) Upon completion of a criminal history check on an applicant or employee, the Bureau shall issue a report to the licensing agency of the qualified entity. The licensing agency shall determine whether the applicant or employee is disqualified from employment with the qualified entity and forward its determination to the qualified entity. If the licensing agency determines that an applicant or employee is disqualified from employment then the qualified entity shall terminate the employment of the employee or shall deny employment to the applicant subject to the waiver provisions of Section 5(d).

(d) Before making a temporary or permanent offer of employment, a qualified entity shall inform applicants and employees that continued employment is contingent upon the results of periodic criminal records check and that the applicant or employee has the right to obtain a copy of the report from the Bureau.

SECTION 4. Each qualified entity shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Bureau, or the licensing agency, evidence that criminal records checks have been initiated on all operators and employees and a copy of each determination received from the licensing agency.

SECTION 5. (a) Except as provided in subsection (c):

(1) A licensing agency shall issue a forty-five (45) day provisional license to a qualified entity whose operator has been found guilty or has pled guilty or nolo contendere to any of the offenses listed in subsection (b);

(2) A licensing agency shall issue a determination that a person is disqualified from employment with a qualified entity if the person has been found guilty or plead guilty or nolo contendere to any of the offenses listed in subsection (b); and

(3) A qualified entity shall not knowingly employ a person who has been found guilty or has pled guilty or nolo contendere to any of the offenses listed in subsection (b).

- (b) (1) Capital murder, as prohibited in A.C.A. § 5-10-101;
- (2) Murder in the first degree and second degree, as prohibited in A.C.A. §§ 5-10-102 and 5-10-103;
- (3) Manslaughter, as prohibited in A.C.A. § 5-10-104;
- (4) Negligent homicide, as prohibited in A.C.A. § 5-10-105;
- (5) Kidnapping, as prohibited in A.C.A. § 5-11-102;
- (6) False imprisonment in the first degree, as prohibited in A.C.A. § 5-11-103;
- (7) Permanent detention or restraint, as prohibited in A.C.A. § 5-11-106;
- (8) Robbery, as prohibited in A.C.A. § 5-12-102;
- (9) Aggravated robbery, as prohibited in A.C.A. § 5-12-103;
- (10) Battery in the first degree, as prohibited in A.C.A. § 5-13-201;
- (11) Aggravated assault, as prohibited in A.C.A. § 5-13-204;
- (12) Introduction of controlled substance into body of another person, as prohibited in A.C.A. § 5-13-210;
- (13) Terroristic threatening in the first degree, as prohibited in A.C.A. § 5-13-301;
- (14) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;
- (15) Sexual abuse in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
- (16) Sexual solicitation of a child, as prohibited in A.C.A. § 5-14-110;
- (17) Violation of a minor in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;
- (18) Incest, as prohibited in A.C.A. § 5-26-202;
- (19) Offenses against the family, as prohibited in A.C.A. §§ 5-26-303 - 5-26-306
- (20) Endangering the welfare of incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201;
- (21) Endangering the welfare of a minor in the first degree, as prohibited in A.C.A. § 5-27-203;
- (22) Permitting child abuse, as prohibited in subdivisions (a) (1) and (a) (3) of A.C.A. § 5-27-221;
- (23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
- (24) Felony adult abuse, as prohibited by A.C.A. § 5-28-103;

- (25) Theft of property, as prohibited in A.C.A. § 5-36-103;
- (26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;
- (27) Arson, as prohibited in A.C.A. § 5-38-301;
- (28) Burglary, as prohibited in A.C.A. § 5-39-201;
- (29) Felony violation of the Uniform Controlled Substances Act, as prohibited in A.C.A. § 5-64-401;
- (30) Promotion of prostitution in the first degree, as prohibited in A.C.A. § 5-70-104;
- (31) Stalking, as prohibited in A.C.A. § 5-71-229; and
- (32) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

(c) A qualified entity that is issued a provisional license based on the criminal history of the operator may resubmit the application for licensure with a new operator. If the qualified entity does not resubmit the application within fifteen (15) days of the issuance of the provisional license, then the qualified entity's license shall be immediately denied or revoked.

(d) The provisions of this section may be waived by the licensing agency upon request by the person who is the subject of the criminal history check. Factors to be considered before granting a waiver shall include, but not be limited to:

- (1) the age at which the crime was committed;
- (2) the circumstances surrounding the crime;
- (3) the length of time since the adjudication of guilt;
- (4) the person's subsequent work history;
- (5) the person's employment references;
- (6) the person's character references;
- (7) the nurse aide registry records; and
- (8) any other evidence demonstrating that the person does not pose a threat to the health or safety of persons to be cared for.

(e) (1) A qualified entity shall not be disqualified from licensure when the operator has been found guilty of or has pled guilty or nolo contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(2) An applicant or employee shall not be disqualified from permanent employment when the applicant or employee has been found guilty of or has pled guilty or nolo contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(f) If an operator or qualified entity fails or refuses to cooperate in obtaining criminal records checks, such circumstances shall be grounds to deny or revoke the qualified entity's license or other operating authority, provided that the process of

obtaining criminal records checks shall not delay the process of the application for a license or other operational authority.

(g) Any unlicensed qualified entity violating this act shall be guilty of a Class A misdemeanor for each violation.

SECTION 6. (a) A request for a state criminal history records check on a person shall include a completed statement that:

(1) contains the name, address, and date of birth appearing on a valid identification document issued by a government entity to the person who is the subject of the check;

(2) indicates whether the person has been found guilty of or pled guilty or nolo contendere to a crime, and if so, includes description of the crime and the particulars of the finding of guilt or the plea;

(3) notifies the person that qualified entities may request reports of state criminal history checks;

(4) consents to disclosure of reports and determinations as provided by this act;

(5) notifies the person that prior to the completion of a state criminal history check, the qualified entity may choose to deny the employee unsupervised access to a person to whom the qualified entity provides care;

(6) informs the person how to object the content of reports; and

(7) contains the notarized signature of the person who is the subject of the check.

(b) Each request for a national criminal history check shall conform to the requirements for a state criminal history check and shall include a complete set of fingerprints.

SECTION 7. (a) After receipt of a request for a criminal history check, the Bureau shall make reasonable efforts to respond to requests for state criminal history checks within twenty (20) calendar days and to respond to requests for national criminal history checks within ten (10) calendar days after the receipt of a national criminal history check from the Federal Bureau of Investigation.

(b) Upon completion of a criminal records check, the Bureau shall forward all information obtained concerning the applicant or employee to the Arkansas Crime Information Center.

(c) The Bureau shall maintain an index of the results of each operator's, employee's or applicant's criminal history check. The Bureau shall furnish a report to the licensing agency upon completion of each criminal history check and upon request of the licensing agency.

(d) The Bureau shall develop forms to be used for criminal history checks conducted

under this act.

(e) Each licensing agency shall develop and maintain a database of determinations regarding applicants for employment with and employees of qualified entities that are within the purview of the licensing agency. The database may be accessed by telephone.

SECTION 8. (a) The Arkansas Crime Information Center, the Bureau, and each licensing agency shall cooperate to prepare forms and promulgate consistent regulations as necessary to implement this act.

(b) Each licensing agency shall establish remedies to be imposed on the qualified entities licensed by the respective agencies for failure to comply with this act.

(c) Each licensing agency shall establish a procedure for operator, applicants, employees, and qualified entities to challenge determinations.

(d) A person may challenge the completeness or accuracy of criminal history information pursuant to A.C.A. 12-12-1013.

SECTION 9. Confidentiality.

All reports obtained under this act are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Bureau, the licensing agency, and the person who is the subject of the report. The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and are specifically exempt from disclosure under the Arkansas Freedom of Information Act, A.C.A. § 25-19-101, et seq., except that the licensing agency is authorized and directed to furnish determinations to qualified entities.

SECTION 10. Immunity.

Individuals and qualified entities are immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by this act.

SECTION 11. (a) This act shall not apply to persons who render care subject to professional licenses obtained pursuant to:

- (1) A.C.A. § 17-27-101, et seq., regarding licensed professional counselors;
- (2) A.C.A. § 17-46-101, et seq., regarding social workers;
- (3) A.C.A. § 17-82-101, et seq., regarding dentists;
- (4) A.C.A. § 17-87-101, et seq., regarding nurses;
- (5) A.C.A. § 17-88-101, et seq., regarding occupational therapists;
- (6) A.C.A. § 17-92-101, et seq., regarding pharmacists;
- (7) A.C.A. § 17-93-301, et seq. regarding physical therapists;
- (8) A.C.A. § 17-95-201, et seq., regarding physicians and surgeons;
- (9) A.C.A. § 17-96-101, et seq., regarding podiatrists;

(10) A.C.A. § 17-97-101, et seq., regarding psychologists and psychological examiners;

(11) A.C.A. § 17-100-101, et seq., regarding speech-language pathologists and audiologists; or

(12) A.C.A. § 20-10-401, et seq., regarding nursing home administrators.

(b) The term professional license shall not include certification. Certified persons include, but are not limited to, certified nursing assistants and certified home health aides.

(c) Any person who submits evidence of having maintained employment in the state of Arkansas for the past twelve (12) months and of successfully completing a criminal history check within the last twelve (12) months or in accordance with that person's professional license shall not be required to apply for a criminal history check under this act.

SECTION 12. (a) Operators licensed and employees hired on and after the effective date of this act shall apply for criminal records checks.

(b) Criminal history checks shall be obtained for all operators and employees by October 1, 2000 and each licensing agency shall promulgate a rule that prescribes how criminal history checks for incumbent operators and employees will be phased-in during the period prior to October 1, 2000. The rule shall require:

(1) Operators to apply for criminal history checks in conjunction with the deadline for the operator to seek renewal of the qualified entity's license from the licensing agency; and

(2) Incumbent employees to apply for criminal history checks in the same manner as applicants for employment in conjunction with the employee's anniversary of employment or any time before that date.1";

AND

by deleting line 4 of page 12 and substituting the following:

"October 1, 1997."