

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL NO. 12

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Hubbard” and substitute “, Hubbard, Hammen, and Poole”; in line 2, strike “Employees of Elderly Care Facilities” and substitute “Dependent Adult Care Entities”; in the same line, strike “Background Investigation” and substitute “History Records Checks”; in line 3, strike “background investigations” and substitute “history records checks”; in the same line, after the second “of” insert “certain”; in lines 3 and 4 and in line 15, in each instance, strike “and employers”; in line 4, strike “elderly care facilities” and substitute “dependent adult care entities”; strike beginning with “allowing” in line 4 down through “facilities;” in line 5; in line 7, strike “and employers”; in line 9, strike “background investigation” and substitute “history records check under certain circumstances”; in line 11, strike “to conduct the criminal background investigation and”; in line 13, after the semicolon insert “providing for the effective date of this Act”; in line 14, strike “background investigations” and substitute “history records checks”; after line 15, insert:

“BY repealing and reenacting, with amendments,

Article - Courts and Judicial Proceedings

Section 5-361

Annotated Code of Maryland

(1995 Replacement Volume and 1995 Supplement)”;

in line 18, strike “14-2A-01” and substitute “19-1801”; in the same line, strike “14-2A-08” and substitute “19-1808”; in line 19, strike “2A. Employees of Elderly Care Facilities” and substitute “18. Dependent Adult Care Entities”; and in lines 19 and 20, strike “Background Investigations” and substitute “History Records Checks”.

AMENDMENT NO. 2

On page 1, after line 24, insert:

(Over)

“Article - Courts and Judicial Proceedings

5-361.

(a) The following persons or agencies shall be immune from civil or criminal liability in connection with the conducting of a criminal background investigation under Title 5, Subtitle 5, Part VI of the Family Law Article OR A CRIMINAL HISTORY RECORDS CHECK UNDER TITLE 19, SUBTITLE 18 OF THE HEALTH - GENERAL ARTICLE:

(1) An employer that in good faith relies on a criminal background investigation OR CRIMINAL HISTORY RECORDS CHECK to deny or terminate an individual's employment or participation in a facility;

(2) A State or local agency that in good faith relies on a criminal background investigation of an employer to grant, deny, suspend, or revoke licensure, registration, approval, or certification of a facility;

(3) A local department of social services that in good faith relies on a criminal background investigation to make a decision concerning the placement of a child committed to it, including a decision to remove a child from a particular facility or home; and

(4) A State or local agency that in good faith participates in the making of a criminal background investigation of an employee or employer.

(b) The failure of an employer to require a criminal background investigation of an individual when not required under Title 5, Subtitle 5, Part VI of the Family Law Article OR CRIMINAL HISTORY RECORDS CHECK UNDER TITLE 19, SUBTITLE 18 OF THE HEALTH - GENERAL ARTICLE may not give rise to civil or criminal liability on the part of the employer for failure to conduct a criminal background investigation.”.

AMENDMENT NO. 3

On page 1, after line 25, insert:

“19-1801.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "CONVICTION" MEANS A:

(1) PLEA OR VERDICT OF GUILTY;

(2) PLEA OF NOLO CONTENDERE;

(3) DISPOSITION OF PROBATION BEFORE JUDGMENT; OR

(4) DISPOSITION OF NOT CRIMINALLY RESPONSIBLE.

(C) (1) "DEPENDENT ADULT CARE ENTITY" MEANS:

(I) A DOMICILIARY CARE FACILITY REQUIRED TO BE LICENSED  
OR REGISTERED UNDER SUBTITLE 3 OF THIS TITLE;

(II) SHELTERED HOUSING FOR THE ELDERLY AS DEFINED UNDER  
ARTICLE 70B, § 1 OF THE CODE ;

(III) A NURSING FACILITY AS DEFINED UNDER § 19-1401(D) OF  
THIS TITLE;

(IV) A HOME HEALTH AGENCY AS DEFINED UNDER § 19-401 OF  
THIS TITLE;

(V) A RESIDENTIAL SERVICE AGENCY AS DEFINED UNDER § 19-4A-  
01 OF THIS TITLE;

(VI) A GROUP HOME AS DEFINED UNDER § 7-101 OF THIS ARTICLE;

(VII) A PRIVATE GROUP HOME AS DEFINED UNDER § 10-514 OF  
THIS ARTICLE;

(Over)

(VIII) AN ALTERNATIVE LIVING UNIT AS DEFINED UNDER § 7-101 OF THIS ARTICLE; AND  
(IX) A HOSPICE FACILITY AS DEFINED UNDER § 19-901(C) OF THIS TITLE.

(2) “DEPENDENT ADULT CARE ENTITY” INCLUDES A PERSON THAT PROVIDES TEMPORARY OR CONTRACTUAL WORKERS FOR AN ENTITY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(D) “ELIGIBLE EMPLOYEE” MEANS AN INDIVIDUAL:

(1) WHO, FOR COMPENSATION, WORKS FOR A DEPENDENT ADULT CARE ENTITY;

(2) FOR WHOM THE DEPENDENT ADULT CARE ENTITY MUST PROVIDE WORKERS’ COMPENSATION AND UNEMPLOYMENT INSURANCE;

(3) WHO HAS ROUTINE, DIRECT ACCESS TO THE LIVING QUARTERS OF DEPENDENT ADULTS WHO ARE CARED FOR BY THE ENTITY; AND

(4) WHO IS NOT LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE.

(E) “PRINTED STATEMENT” MEANS A DOCUMENT ISSUED BY THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY IN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES IN RESPONSE TO AN APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK.

19-1802.

(A) EACH DEPENDENT ADULT CARE ENTITY SHALL, FOR EACH ELIGIBLE EMPLOYEE, APPLY FOR:

(1) A STATE CRIMINAL HISTORY RECORDS CHECK BEFORE THE ELIGIBLE EMPLOYEE MAY BEGIN WORK FOR THE DEPENDENT ADULT CARE ENTITY; AND

(2) A NATIONAL CRIMINAL HISTORY RECORDS CHECK WITHIN 1 MONTH AFTER THE ELIGIBLE EMPLOYEE BEGINS WORK AT THE DEPENDENT ADULT CARE ENTITY.

(B) THE DEPENDENT ADULT CARE ENTITY SHALL BEAR THE COSTS OF A CRIMINAL HISTORY RECORDS CHECK REQUIRED UNDER THIS SUBTITLE.

(C) A DEPENDENT ADULT CARE ENTITY MAY APPLY FOR A STATE CRIMINAL HISTORY RECORDS CHECK:

(1) AT THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; OR

(2) WITH A PRIVATE DETECTIVE AGENCY LICENSED UNDER TITLE 13 OF THE BUSINESS OCCUPATIONS ARTICLE.

(D) A DEPENDENT ADULT CARE ENTITY, FOR EACH ELIGIBLE EMPLOYEE, SHALL APPLY FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK AT THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(E) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PROHIBIT A DEPENDENT ADULT CARE ENTITY FROM:

(1) OBTAINING A CRIMINAL HISTORY RECORDS CHECK ON AN EMPLOYEE, WORKER, OR VOLUNTEER WHO IS NOT AN ELIGIBLE EMPLOYEE UNDER §19-1801 OF THIS SUBTITLE;

(2) APPLYING FOR A CRIMINAL HISTORY RECORDS CHECK EARLIER THAN REQUIRED UNDER THIS SUBTITLE; OR

(3) REQUIRING AN INDIVIDUAL TO SUBMIT TO ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCE TESTING IN ACCORDANCE WITH § 17-214 OF THIS ARTICLE.”.

AMENDMENT NO. 4

On pages 1 through 4, strike in their entirety the lines beginning with line 26 on page 1 through line 6 on page 4, inclusive.

On page 4, in line 7, strike “(B)” and substitute “19-1803.

(A)”; in the same line, after “A” insert “NATIONAL”; in lines 7 and 8, 20, 32, and 34 and 35, in each instance, strike “BACKGROUND INVESTIGATION” and substitute “HISTORY RECORDS CHECK CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES”; strike beginning with “EMPLOYEE” in line 8 down through “SUBTITLE” in line 9 and substitute “ELIGIBLE EMPLOYEE”; in line 10, strike “EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,”; in line 13, strike the semicolon and substitute “OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; AND”; in line 14, strike “§ 14-2A-04” and substitute “§19-1804”; in line 15, strike “; AND” and substitute a period; strike in their entirety lines 16 and 17; in line 18, strike “(C)” and substitute “(B)”; in line 20, after “A” insert “NATIONAL”; in lines 20 and 21, strike “BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE”; in line 27, after the semicolon, insert “AND”; strike in their entirety lines 28 through 30, inclusive; in line 31, strike “(4)” and substitute “(3)”; in line 33, strike “14-2A-04.” and substitute “19-1804.”; in line 34, strike “(A)”; and strike beginning with “EMPLOYEE” in line 35 down through “SUBTITLE” in line 36 and substitute “ELIGIBLE EMPLOYEE”.

On pages 4 and 5, strike in their entirety the lines beginning with line 39 on page 4 through line 12 on page 5, inclusive.

On page 5, in line 13, strike “14-2A-05.” and substitute “19-1805.”; in line 14, after “(1)” insert “IF”; in the same line, strike “SHALL CONDUCT THE” and substitute “OF PUBLIC SAFETY AND CORRECTIONAL SERVICES CONDUCTS A”; in lines 14 and 15, strike

“BACKGROUND INVESTIGATION” and substitute “HISTORY RECORDS CHECK”; in line 15, strike “AND” and substitute “, IT SHALL”; in the same line, strike “THE” and substitute “A”; in lines 15 and 16, strike “PROVIDED FOR UNDER THIS SUBTITLE”; in line 17, after “DEPARTMENT” insert “OF PUBLIC SAFETY AND CORRECTIONAL SERVICES”; in the same line, strike “INVESTIGATION” and substitute “CRIMINAL HISTORY RECORDS CHECK”; in line 18, strike the comma and substitute “OR”; in line 19, strike “, OR OFFENSES”; in lines 19 and 20, strike “DURING THE TIME OF EMPLOYMENT”; in lines 20 and 21, strike “BACKGROUND INVESTIGATION STATEMENT” and substitute “HISTORY RECORDS CHECK”; strike in their entirety lines 22 through 24, inclusive; in line 25, strike “(4)” and substitute “(3)”; in the same line, after “THE” insert “ELIGIBLE”; in line 26, after “UPDATE” insert “A”; in the same line, strike “BACKGROUND INVESTIGATIONS” and substitute “HISTORY RECORDS CHECK”; strike lines 27 through 30, inclusive and substitute:

“(B) (1) FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK, THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES SHALL:”;

and in line 37, strike “(C)” and substitute “(2)”.

AMENDMENT NO. 5

On page 6, in lines 1 and 4, strike “(1)” and “(2)”, respectively, and substitute “(I)” and “(II)”, respectively; in line 2, after “THE” insert “ELIGIBLE”; strike beginning with the first comma in line 2 down through “APPLICANT’S” in line 3; in lines 7 and 9, in each instance, after “DEPARTMENT” insert “OF PUBLIC SAFETY AND CORRECTIONAL SERVICES”; in line 8, strike “(D) (1)” and substitute “(C)”; in the same line, strike “THE” and substitute “A”; in lines 8 and 9 and in line 28, in each instance, strike “BACKGROUND INVESTIGATION” and substitute “HISTORY RECORDS CHECK”; in line 9, after “AN” insert “ELIGIBLE”; in lines 11 and 13, strike “(I)” and “(II)”, respectively, and substitute “(1)” and “(2)”, respectively; strike beginning with “EMPLOYEE’S” in line 11 down through “PROGRAM” in line 12 and substitute “DEPENDENT ADULT CARE ENTITY THAT HAS HIRED OR IS SEEKING TO HIRE THE ELIGIBLE EMPLOYEE”; in line 13, after “THE” insert “ELIGIBLE”; strike in their entirety lines 14 through 25, inclusive; in lines 26, 30, and 35, strike “(E)”, “(F)”, and “(G)”, respectively, and substitute

(Over)

“(D)”, “(E)”, and “(F)”, respectively; in lines 26, 30, and 35, in each instance, strike “FROM THE DEPARTMENT”; and in line 36, strike “INSURE” and substitute “ENSURE”.

On page 7, in lines 1 and 21, strike “14-2A-06.” and “14-2A-07.”, respectively, and substitute “19-1806.” and “19-1807”, respectively; in line 2, strike “IN CONFORMITY WITH THE FOLLOWING PROCEDURES” and substitute “FOR A CRIMINAL HISTORY RECORDS CHECK CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES”; in line 4, after “STATEMENT” insert “IN ACCORDANCE WITH THIS SECTION”; in lines 6, 8, and 16, in each instance, after “SECRETARY” insert “OF PUBLIC SAFETY AND CORRECTIONAL SERVICES”; and in line 24, strike “§ 14-2A-04” and substitute “§ 19-1804”.

AMENDMENT NO. 6

On page 7, strike in their entirety lines 31 through 39, inclusive, and substitute:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Health - General

SUBTITLE 18. DEPENDENT ADULT CARE ENTITIES - CRIMINAL RECORDS.

19-1808.

ON OR BEFORE JULY 1, 1997, THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES SHALL:

(1) PROVIDE FOR THE ADOPTION OF A SPECIFIED FORM OR FORMS FOR A CRIMINAL HISTORY RECORDS CHECK TO BE ISSUED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, INCLUDING AN APPROPRIATE DISCLOSURE STATEMENT;

(2) DESIGNATE THE APPROPRIATE STATE OR LOCAL LAW ENFORCEMENT OFFICES IN THE STATE, OR OTHER APPROVED LOCATIONS, WHERE FINGERPRINTS MAY BE OBTAINED AND APPLICATION FOR A CRIMINAL



BACKGROUND INVESTIGATION TO BE CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES MAY BE MADE; AND

(3) ADOPT REGULATIONS NECESSARY AND REASONABLE TO ADMINISTER THIS SUBTITLE.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 1997.

SECTION 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this Act, this Act shall take effect October 1, 1996.”.