BY: Finance Committee

AMENDMENTS TO HOUSE BILL NO. 12

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 2 and 3 and substitute "<u>Adult Dependent Care Programs - Criminal History Records Checks and Background Checks</u>"; and strike in their entirety lines 4 through 18, inclusive, and substitute:

"FOR the purpose of requiring criminal history records checks or private agency background checks of certain adult dependent care program potential employees; requiring disclosure of certain criminal convictions or pending criminal charges by certain potential employees of adult dependent care programs; requiring certain reference requests; authorizing certain alcohol or controlled dangerous substance tests; providing for the confidentiality of certain information under certain circumstances; establishing certain procedures for applying for a criminal history records check; providing immunity from civil and criminal liability for certain persons and agencies; requiring the Department of Public Safety and Correctional Services or a private agency to conduct criminal history records checks or background checks; requiring the Secretary of Public Safety and Correctional Services to adopt certain regulations; defining certain terms; providing for a certain penalty under certain circumstances; and generally relating to criminal history records checks and private agency background checks for adult dependent care program potential employees."

On page 2, in line 1, strike "19-1808" and substitute "19-1813"; and strike beginning with "Dependent" in line 2 down through "Records" in line 3, inclusive, and substitute "Adult Dependent Care Programs - Criminal History Records Checks and Background".

AMENDMENT NO. 2

On page 2, in lines 13 and 14, strike "<u>A CRIMINAL HISTORY RECORDS CHECK UNDER</u>"; in line 17, strike "<u>OR CRIMINAL HISTORY RECORDS CHECK</u>"; and in line 30, strike "CRIMINAL HISTORY RECORDS CHECK UNDER".

On pages 2 through 12, strike in their entirety the lines beginning with line 34 on page 2 through line 6 on page 12, inclusive, and substitute:

"SUBTITLE 18. ADULT DEPENDENT CARE PROGRAMS - CRIMINAL HISTORY RECORDS CHECKS AND BACKGROUND CHECKS

19-1801.

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

(B) "ADULT DEPENDENT CARE PROGRAM" MEANS:

- (1) AN ADULT DAY CARE FACILITY REGULATED UNDER TITLE 14, SUBTITLE 2 OF THIS ARTICLE;
- (2) A DOMICILIARY CARE FACILITY REGULATED UNDER SUBTITLE 3 OF THIS TITLE;
- (3) A GROUP HOME REGULATED UNDER TITLE 10, SUBTITLE 5 OR TITLE 7, SUBTITLE 6 OF THIS ARTICLE;
- (4) A HOME HEALTH AGENCY REGULATED UNDER SUBTITLE 4 OF THIS TITLE;
- (5) A HOSPICE FACILITY REGULATED UNDER SUBTITLE 9 OF THIS TITLE; OR
- $\underline{\text{(6) A RELATED INSTITUTION REGULATED UNDER SUBTITLE 3 OF THIS}} \\ \text{TITLE.}$
- (C) "CONVICTION" MEANS A PLEA OR VERDICT OF GUILTY, A PROBATION BEFORE JUDGMENT DISPOSITION OR A PLEA OF NOLO CONTENDERE.

- (D) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.
- (E) "DISCLOSURE STATEMENT" MEANS A SWORN STATEMENT OR AFFIRMATION OF THE EXISTENCE OF A CRIMINAL CONVICTION OR PENDING CRIMINAL CHARGES WITHOUT A FINAL DISPOSITION.
- (F) "POTENTIAL EMPLOYEE" MEANS AN INDIVIDUAL APPLYING FOR EMPLOYMENT FOR COMPENSATION AT AN ADULT DEPENDENT CARE PROGRAM AND WHOSE EMPLOYMENT WOULD INCLUDE CARING FOR OR SUPERVISING THE DEPENDENT ADULTS IN THE PROGRAM.
- (G) "PRINTED STATEMENT" MEANS A LETTER ISSUED BY THE CRIMINAL JUSTICE INFORMATION SYSTEM CITING STATE CRIMINAL CHARGES AGAINST A POTENTIAL EMPLOYEE WHO REQUESTS A CRIMINAL HISTORY RECORDS CHECK.
- (H) "PRIVATE ENTITY" MEANS ANY INDIVIDUAL OR BUSINESS WHO IS NOT AN EMPLOYER, AS DEFINED IN THIS SECTION.
- (I) "SECRETARY" MEANS THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.
- (J) "CRIMINAL HISTORY RECORDS CHECK" MEANS A CHECK OF CRIMINAL HISTORY RECORD INFORMATION, AS DEFINED IN ARTICLE 27, § 743 OF THE CODE, BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.
- (K) "BACKGROUND CHECK" MEANS A CHECK OF COURT AND OTHER RECORDS BY A PRIVATE AGENCY.

19-1802.

(A) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, BEFORE A POTENTIAL EMPLOYEE MAY BEGIN EMPLOYMENT WITH AN ADULT DEPENDENT

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CARE PROGRAM:

(1) (I) THE POTENTIAL EMPLOYEE SHALL APPLY FOR A CRIMINAL HISTORY RECORDS CHECK AT THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; OR

(II) THE ADULT DEPENDENT CARE PROGRAM SHALL REQUEST A PRIVATE AGENCY TO CONDUCT A BACKGROUND CHECK; AND

- (2) THE ADULT DEPENDENT CARE PROGRAM SHALL REQUEST A REFERENCE FROM THE POTENTIAL EMPLOYEE'S MOST RECENT EMPLOYER.
- (B) THE REFERENCE REQUEST REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION SHALL, AT A MINIMUM, SEEK INFORMATION ABOUT ANY HISTORY OF PHYSICAL ABUSE ON THE PART OF THE POTENTIAL EMPLOYEE.
- (C) AN ADULT DEPENDENT CARE PROGRAM SHALL PAY FOR A STATE CRIMINAL HISTORY RECORDS CHECK OR A PRIVATE AGENCY BACKGROUND CHECK FOR A POTENTIAL EMPLOYEE.

19-1803.

- (A) IN ADDITION TO A CRIMINAL HISTORY RECORDS CHECK, AN ADULT DEPENDENT CARE PROGRAM MAY REQUIRE AN ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCE TEST OF THE POTENTIAL EMPLOYEE.
- (B) AN ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCE TEST CONDUCTED UNDER THIS SECTION SHALL COMPLY WITH THE PROVISIONS OF § 17-214 OF THIS ARTICLE.

19-1804.

(A) BEFORE AN ADULT DEPENDENT CARE PROGRAM MAY HIRE A POTENTIAL EMPLOYEE:

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(1) THE POTENTIAL EMPLOYEE SHALL APPLY TO THE DEPARTMENT FOR A PRINTED STATEMENT; OR

- (2) THE ADULT DEPENDENT CARE PROGRAM SHALL REQUEST A PRIVATE AGENCY TO CONDUCT A BACKGROUND CHECK.
- (B) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK, A POTENTIAL EMPLOYEE SHALL SUBMIT TO THE ADULT DEPENDENT CARE PROGRAM:
- (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON FORMS SPECIFIED BY THE DIRECTOR OF THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY; AND
- (2) THE DISCLOSURE STATEMENT REQUIRED UNDER § 19-1804 OF THIS SUBTITLE.
- (C) THE ADULT DEPENDENT CARE PROGRAM SHALL SUBMIT THE FINGERPRINTS, DISCLOSURE STATEMENT, AND PAYMENT FOR THE COSTS OF THE CRIMINAL HISTORY RECORDS CHECK.
- (D) THE REQUIREMENT THAT A COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON FORMS SPECIFIED BY THE DIRECTOR OF THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY BE SUBMITTED AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK MAY BE WAIVED BY THE DEPARTMENT IF:
- (1) THE POTENTIAL EMPLOYEE HAS ATTEMPTED TO HAVE A COMPLETE SET OF FINGERPRINTS TAKEN ON AT LEAST THREE OCCASIONS;
 - (2) THE TAKING OF A COMPLETE SET OF LEGIBLE FINGERPRINTS IS NOT

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POSSIBLE BECAUSE OF A PHYSICAL OR MEDICAL CONDITION OF THE POTENTIAL EMPLOYEE'S FINGERS OR HANDS;

- (3) THE POTENTIAL EMPLOYEE SUBMITS DOCUMENTATION SATISFACTORY TO THE DEPARTMENT OF THE REQUIREMENTS OF THIS SUBSECTION; AND
- (4) THE POTENTIAL EMPLOYEE SUBMITS THE OTHER INFORMATION REQUIRED FOR A CRIMINAL HISTORY RECORDS CHECK.

19-1805.

- (A) AS PART OF THE APPLICATION PROCESS FOR A CRIMINAL HISTORY RECORDS CHECK, A POTENTIAL EMPLOYEE SHALL COMPLETE AND SIGN A DISCLOSURE STATEMENT.
- (B) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN ACKNOWLEDGED RECEIPT OF THE APPLICATION WITH A DISCLOSURE STATEMENT FROM A POTENTIAL EMPLOYEE WITHIN 3 DAYS OF THE APPLICATION TO:
- (1) THE ADULT DEPENDENT CARE PROGRAM SEEKING TO HIRE THE POTENTIAL EMPLOYEE; AND
 - (2) THE POTENTIAL EMPLOYEE.

19-1806.

- (A) IF THE ADULT DEPENDENT CARE PROGRAM REQUESTS A PRIVATE AGENCY BACKGROUND CHECK, THE PRIVATE AGENCY SHALL ISSUE A STATEMENT OF ITS FINDINGS TO THE POTENTIAL EMPLOYEE AND THE ADULT DEPENDENT CARE PROGRAM.
- (B) THE POTENTIAL EMPLOYEE SHALL HAVE AN OPPORTUNITY TO CONTEST THE FINDINGS.

<u>19-1807.</u>

(A) (1) THE DEPARTMENT SHALL CONDUCT THE CRIMINAL HISTORY RECORDS CHECK AND ISSUE THE PRINTED STATEMENT PROVIDED FOR UNDER THIS SUBTITLE.

- (2) THE DEPARTMENT SHALL UPDATE AN INITIAL CRIMINAL HISTORY RECORDS CHECK AND ISSUE A REVISED PRINTED STATEMENT, LISTING ANY OF THE CONVICTIONS OR PENDING CHARGES OCCURRING IN THE STATE AFTER THE DATE OF THE INITIAL CRIMINAL HISTORY RECORDS CHECK.
- (3) THE DEPARTMENT SHALL ADOPT REGULATIONS REQUIRING EMPLOYERS TO VERIFY PERIODICALLY THE CONTINUING EMPLOYMENT OF AN EMPLOYEE.
- (B) THE DEPARTMENT SHALL PROVIDE A PRINTED STATEMENT OF THE POTENTIAL EMPLOYEE'S STATE CRIMINAL RECORD TO THE RECIPIENTS OF THE ACKNOWLEDGMENTS SPECIFIED IN § 19-1804(B) OF THIS SUBTITLE.
- (C) INFORMATION OBTAINED FROM THE DEPARTMENT OR A PRIVATE AGENCY UNDER THIS SUBTITLE SHALL BE CONFIDENTIAL AND MAY BE DISSEMINATED ONLY TO THE POTENTIAL EMPLOYEE WHO IS THE SUBJECT OF THE CRIMINAL HISTORY RECORDS CHECK OR PRIVATE AGENCY BACKGROUND CHECK AND TO AN ADULT DEPENDENT CARE PROGRAM SEEKING TO HIRE THE POTENTIAL EMPLOYEE.
- (D) INFORMATION OBTAINED FROM THE DEPARTMENT OR A PRIVATE AGENCY UNDER THIS SUBTITLE MAY NOT:
- (1) BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS DISSEMINATED; OR
 - (2) BE REDISSEMINATED.

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- (E) INFORMATION OBTAINED FROM THE DEPARTMENT OR A PRIVATE AGENCY UNDER THIS SUBTITLE SHALL BE MAINTAINED IN A MANNER TO INSURE THE SECURITY OF THE INFORMATION.

 19-1808.
- (A) A POTENTIAL EMPLOYEE MAY CONTEST THE FINDING OF A CRIMINAL CONVICTION OR PENDING CHARGE REPORTED IN A PRINTED STATEMENT ISSUED BY THE DEPARTMENT AS PROVIDED IN THIS SECTION.
- (B) (1) IN CONTESTING THE FINDING OF A CONVICTION OR A PENDING CHARGE, THE POTENTIAL EMPLOYEE SHALL CONTACT THE OFFICE OF THE SECRETARY, OR A DESIGNEE OF THE SECRETARY, AND A HEARING SHALL BE CONVENED WITHIN 20 WORKDAYS, UNLESS SUBSEQUENTLY WAIVED BY THE POTENTIAL EMPLOYEE.
- (2) THE SECRETARY, OR A DESIGNEE OF THE SECRETARY, SHALL RENDER A DECISION REGARDING THE APPEAL WITHIN 5 WORKDAYS OF THE HEARING.
- (C) (1) FOR THE PURPOSES OF THIS SUBTITLE, THE RECORD OF A CONVICTION FOR A CRIME, OR A COPY OF THE RECORD CERTIFIED BY THE CLERK OF THE COURT OR BY A JUDGE OF THE COURT IN WHICH THE CONVICTION OCCURRED, SHALL BE CONCLUSIVE EVIDENCE OF THE CONVICTION.
- (2) IN A CASE WHERE A PENDING CHARGE IS RECORDED, DOCUMENTATION PROVIDED BY A COURT TO THE SECRETARY, OR A DESIGNEE OF THE SECRETARY, THAT A PENDING CHARGE FOR A CRIME WHICH HAS NOT BEEN FINALLY ADJUDICATED SHALL BE CONCLUSIVE EVIDENCE OF THE PENDING CHARGE.
- (D) FAILURE OF THE POTENTIAL EMPLOYEE TO APPEAR AT THE SCHEDULED HEARING SHALL BE CONSIDERED GROUNDS FOR DISMISSAL OF THE APPEAL.

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19-1809.

(A) A POTENTIAL EMPLOYEE WHO FAILS TO DISCLOSE A CONVICTION OR THE EXISTENCE OF PENDING CHARGES FOR A CRIMINAL OFFENSE OR ATTEMPTED CRIMINAL OFFENSE AS REQUIRED UNDER § 19-1804 OF THIS SUBTITLE SHALL BE GUILTY OF PERJURY AND ON CONVICTION IS SUBJECT TO THE PENALTY PROVIDED BY LAW.

(B) UNLESS OTHERWISE PROVIDED, A POTENTIAL EMPLOYEE WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

<u>19-1810.</u>

THE FOLLOWING PERSONS OR AGENCIES SHALL HAVE THE IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY DESCRIBED UNDER § 5-361 OF THE COURTS ARTICLE IN CONNECTION WITH A CRIMINAL HISTORY RECORDS CHECK UNDER THIS SUBTITLE:

(1) AN ADULT DEPENDENT CARE PROGRAM; AND

(2) A STATE AGENCY.

19-1811.

(A) AN EMPLOYER PROVIDING A REFERENCE FOR EMPLOYMENT UNDER THIS SUBTITLE AND ACTING IN GOOD FAITH MAY NOT BE HELD LIABLE FOR DISCLOSING ANY INFORMATION ABOUT THE JOB PERFORMANCE OR THE REASON FOR TERMINATION OF EMPLOYMENT OF AN EMPLOYEE OR FORMER EMPLOYEE OF THE EMPLOYER.

(B) AN EMPLOYER PROVIDING A REFERENCE UNDER THIS SUBTITLE SHALL BE

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PRESUMED TO BE ACTING IN GOOD FAITH UNLESS IT IS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE EMPLOYER:

- (1) ACTED WITH ACTUAL MALICE TOWARD THE EMPLOYEE OR FORMER EMPLOYEE; OR
- (2) INTENTIONALLY OR RECKLESSLY DISCLOSED FALSE INFORMATION ABOUT THE EMPLOYEE OR FORMER EMPLOYEE.

19-1812.

NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT AN ADULT DEPENDENT CARE PROGRAM FROM OBTAINING A CRIMINAL HISTORY RECORDS CHECK OR BACKGROUND CHECK ON ANY OTHER INDIVIDUAL APPLYING FOR A JOB OR VOLUNTEERING SERVICES IN THE PROGRAM.

19-1813.

THE SECRETARY SHALL:

- (1) PROVIDE FOR THE ADOPTION OF A SPECIFIED FORM OR FORMS TO BE USED IN APPLYING FOR THE CRIMINAL HISTORY RECORDS CHECK TO BE ISSUED BY THE DEPARTMENT, 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
- (3) ADOPT REGULATIONS NECESSARY AND REASONABLE TO ADMINISTER THIS SUBTITLE.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1996.".