

BY: Finance Committee

SUBSTITUTE AMENDMENTS TO SENATE BILL NO. 253

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “Adult Dependent Care Programs - Criminal History Records Checks and Background Checks”; in line 3, strike “background investigations of nursing home” and substitute “history records checks or private agency background checks of certain adult dependent care program potential”; in line 5 strike “individuals affiliated with nursing homes” and substitute “potential employees of adult dependent care programs; requiring certain reference requests; authorizing certain alcohol or controlled dangerous substance tests”; in line 7, strike “background investigation” and substitute “history records check”; in line 9, after “Services” insert “or a private agency”; in line 10, strike “background investigations and” and substitute “history records checks or background checks; requiring the Secretary of the Department of Public Safety and Correctional Services”; in line 12, strike “background investigations for nursing home” and substitute “history records checks and private agency background checks for adult dependent care program potential”; after line 12, 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 15, strike “19-1809” and substitute “19-1813”; in line 16, strike “Employees of Nursing Homes - Criminal Background Investigations” and substitute “Adult Dependent Care Programs - Criminal History Records Checks and Background Checks”.

AMENDMENT NO. 2

On page 1, after line 20, 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 TITLE 19, SUBTITLE 18, OF THE HEALTH - GENERAL ARTICLE:

(1) An employer that in good faith relies on a criminal background investigation 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 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, strike lines 22 and 23 in their entirety and substitute “SUBTITLE 18. ADULT DEPENDENT CARE PROGRAMS - CRIMINAL HISTORY RECORDS CHECKS AND BACKGROUND CHECKS”; strike lines 27 and 28 in their entirety and substitute:

“(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

(6) A RELATED INSTITUTION REGULATED UNDER SUBTITLE 3 OF THIS TITLE.”;

and in line 29, after “GUILTY” insert “, A PROBATION BEFORE JUDGMENT DISPOSITION”.

On page 2, strike in their entirety lines 6 through 26, inclusive, and substitute:

“(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.”.

AMENDMENT NO. 4

On page 2, in lines 27, 30, and 32, strike “(J)”, “(K)”, and “(L)”, respectively, and substitute “(G)”, “(H)”, and “(I)”, respectively; in line 28, strike “FEDERAL OR”; in line 29, strike “AN APPLICANT” and substitute “A POTENTIAL EMPLOYEE”; in the same line, strike “BACKGROUND” and substitute “HISTORY RECORDS”; after line 33, insert:

“(J) “CRIMINAL HISTORY RECORDS CHECK” MEANS A CHECK OF CRIMINAL HISTORY RECORD INFORMATION, AS DEFINED IN ARTICLE 27, § 743 OF THE CODE, BY

(Over)

THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(K) “BACKGROUND CHECK” MEANS A CHECK OF COURT AND OTHER RECORDS BY A PRIVATE AGENCY.”;

and strike beginning with “AN” in line 35 down through “INVESTIGATION” in line 37 and substitute “BEFORE A POTENTIAL EMPLOYEE MAY BEGIN EMPLOYMENT WITH AN ADULT DEPENDENT CARE PROGRAM:

(1) (I) THE POTENTIAL EMPLOYEE SHALL APPLY FOR A CRIMINAL HISTORY RECORDS CHECK”.

On page 3, in line 2, after “SERVICES” insert “; 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.”;

and strike in their entirety lines 3 through 12, inclusive, and substitute:

“(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.”.

AMENDMENT NO. 5

On page 3, after line 13, insert:

“(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.”.

AMENDMENT NO. 6

On page 3, strike line 14 in its entirety and substitute:

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

(1) THE POTENTIAL EMPLOYEE”;

in line 15, strike the period and substitute “; OR

(2) THE ADULT DEPENDENT CARE PROGRAM SHALL REQUEST A PRIVATE AGENCY TO CONDUCT A BACKGROUND CHECK.”;

in lines 16 and 17, strike beginning with “BACKGROUND” in line 16 down through “APPLICANT” in line 17 and substitute “HISTORY RECORDS CHECK, A POTENTIAL EMPLOYEE”; in lines 17 and 18, strike “EMPLOYER OR PROSPECTIVE EMPLOYER” and substitute “ADULT DEPENDENT CARE PROGRAM”; in line 25, strike “EMPLOYER OR PROSPECTIVE EMPLOYER” and substitute “ADULT DEPENDENT CARE PROGRAM”; in lines 27 and 30, in each instance, strike “BACKGROUND INVESTIGATION” and substitute “HISTORY RECORDS CHECK”; in line 29, strike “STANDARD FINGERPRINT CARDS” and substitute “FORMS SPECIFIED BY THE DIRECTOR OF THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY”; in lines 32 and 37, in each instance, strike “APPLICANT” and substitute “POTENTIAL EMPLOYEE”; and in line 35, strike “PERSON’S” and substitute “POTENTIAL EMPLOYEE’S”.

(Over)

AMENDMENT NO. 7

On page 4, in line 1, strike “APPLICANT” and substitute “POTENTIAL EMPLOYEE”; in lines 2, 4 and 5, and 15 and 16, in each instance, strike “BACKGROUND INVESTIGATION” and substitute “HISTORY RECORDS CHECK”; in lines 3 and 14, strike “19-1804.” and “19-1805.”, respectively, and substitute “19-1805.” and “19-1806.”, respectively; in line 5, strike “AN APPLICANT” and substitute “A POTENTIAL EMPLOYEE”; in line 8, strike “AN” and substitute “A POTENTIAL”; strike in their entirety lines 10 through 12, inclusive, and substitute:

“(1) THE ADULT DEPENDENT CARE PROGRAM SEEKING TO HIRE THE POTENTIAL EMPLOYEE; AND”;

in line 13, strike “(3)” and substitute “(2)”; in the same line, after “THE” insert “POTENTIAL”; after line 14, insert:

“(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; AND

(B) THE POTENTIAL EMPLOYEE SHALL HAVE AN OPPORTUNITY TO CONTEST THE FINDINGS.

19-1807.”;

in line 18, strike “INVESTIGATION” and substitute “CRIMINAL HISTORY RECORDS CHECK”; in line 19, after “CONVICTIONS” strike the comma and substitute “OR”; in line 20, strike “, OR OFFENSES”; in lines 20 and 21, strike “DURING THE TIME OF EMPLOYMENT”; in lines 21 and 22, strike “BACKGROUND PRINTED STATEMENT” and substitute “HISTORY RECORDS CHECK”; in line 26, strike “(1)”; and in line 27, strike “APPLICANT’S” and substitute “POTENTIAL EMPLOYEE’S”.

On pages 4 and 5, strike in their entirety the lines beginning with line 29 on page 4 through

line 13 on page 5, inclusive.

AMENDMENT NO. 8

On page 5, in lines 14, 18, and 23, strike “(E)”, “(F)”, and “(G)”, respectively, and substitute “(C)”, “(D)”, and “(E)”, respectively; in line 14, after “DEPARTMENT” insert “OR A PRIVATE AGENCY”; in lines 16, 31, and 33, in each instance, strike “APPLICANT” and substitute “POTENTIAL EMPLOYEE”; in line 16, strike “BACKGROUND INVESTIGATION” and substitute “HISTORY RECORDS CHECK OR PRIVATE AGENCY BACKGROUND CHECK”; in line 17, strike “THE PARTICIPANTS IN THE HIRING OR APPROVAL PROCESS” and substitute “AN ADULT DEPENDENT CARE PROGRAM SEEKING TO HIRE THE POTENTIAL EMPLOYEE”; in lines 18 and 23, in each instance, after “DEPARTMENT” insert “OR A PRIVATE AGENCY”; in line 26, strike “19-1806.” and substitute “19-1808.”; in line 27, strike “AN APPLICANT” and substitute “A POTENTIAL EMPLOYEE”; and in line 28, after “STATEMENT” insert “ISSUED BY THE DEPARTMENT”.

AMENDMENT NO. 9

On page 6, in line 8, strike “APPLICANT” and substitute “POTENTIAL EMPLOYEE”; in lines 10, 20, and 27, strike “19-1807.”, “19-1808.”, and “19-1809.”, respectively, and substitute “19-1809.”, “19-1810.”, and “19-1811.”, respectively; in lines 11 and 16, in each instance, strike “AN APPLICANT” and substitute “A POTENTIAL EMPLOYEE”; in lines 23 and 24 and 30, in each instance, strike “BACKGROUND INVESTIGATION” and substitute “HISTORY RECORDS CHECK”; and in line 25, strike “AN EMPLOYER” and substitute “AN ADULT DEPENDENT CARE PROGRAM”.

AMENDMENT NO. 10

On page 6, after line 27, insert:

“(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.

(Over)

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