

BY: Environmental Matters Committee

AMENDMENTS TO SENATE BILL NO. 253

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, strike “Adult Dependent Care Programs” and substitute “Dependent Adult Care Entities”; in lines 3 and 4, strike “and Background Checks”; and strike in their entirety lines 5 through 21, inclusive, and substitute:

“FOR the purpose of requiring criminal history records checks of certain employees of certain dependent adult care entities; requiring disclosure of certain criminal convictions or pending criminal charges by certain employees; providing for the confidentiality of certain information in certain circumstances; providing for a certain procedure for applying for a criminal history records check under certain circumstances; providing immunity from civil and criminal liability for certain persons and agencies; requiring the Department of Public Safety and Correctional Services to adopt certain regulations; defining certain terms; providing for the effective date of this Act; providing for a certain penalty under certain circumstances; and generally relating to criminal history records checks for certain employees.”.

On page 2, in line 3, strike “19-1813” and substitute “19-1808”; in line 5, strike “Adult Dependent Care Programs” and substitute “Dependent Adult Care Entities”; and in line 6, strike “and Background Checks”.

AMENDMENT NO. 2

On pages 2 through 10, strike in their entirety the lines beginning with line 13 on page 2 through line 20 on page 10, inclusive, and substitute:

“(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

(Over)

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 A 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.

Article - Health - General

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;

(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.

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(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.

19-1803.

(A) AS PART OF THE APPLICATION FOR A NATIONAL CRIMINAL HISTORY

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RECORDS CHECK CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, THE ELIGIBLE EMPLOYEE SHALL SUBMIT:

(1) A COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON STANDARD FINGERPRINT CARDS AT ANY DESIGNATED STATE OR LOCAL LAW ENFORCEMENT OFFICE IN THE STATE OR OTHER LOCATION APPROVED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; AND

(2) THE DISCLOSURE STATEMENT REQUIRED UNDER § 19-1804 OF THIS SUBTITLE.

(B) THE REQUIREMENT THAT A COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON STANDARD FINGERPRINT CARDS BE SUBMITTED AS PART OF THE APPLICATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES MAY BE WAIVED IF:

(1) THE APPLICATION IS SUBMITTED BY A PERSON WHO 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 POSSIBLE BECAUSE OF A PHYSICAL OR MEDICAL CONDITION OF THE PERSON'S FINGERS OR HANDS; AND

(3) THE PERSON SUBMITS THE OTHER INFORMATION REQUIRED FOR A CRIMINAL HISTORY RECORDS CHECK CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

19-1804.

AS PART OF THE APPLICATION PROCESS FOR A CRIMINAL HISTORY RECORDS CHECK CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, THE ELIGIBLE EMPLOYEE SHALL COMPLETE AND SIGN A SWORN STATEMENT OR AFFIRMATION DISCLOSING THE EXISTENCE OF A CRIMINAL

CONVICTION OR PENDING CRIMINAL CHARGES WITHOUT A FINAL DISPOSITION.

19-1805.

(A) (1) IF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES CONDUCTS A CRIMINAL HISTORY RECORDS CHECK, IT SHALL ISSUE A PRINTED STATEMENT.

(2) THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES 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 ELIGIBLE EMPLOYEE IS NOT RESPONSIBLE FOR PAYMENT OF ANY FEE TO UPDATE A CRIMINAL HISTORY RECORDS CHECK.

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

(I) RECORD ON A PRINTED STATEMENT THE EXISTENCE OF A CONVICTION OR PENDING CHARGE REPORTED IN THE CRIMINAL HISTORY RECORD INFORMATION RECEIVED FROM THE FBI IDENTIFICATION DIVISION; AND

(II) DISTRIBUTE THE PRINTED STATEMENT IN ACCORDANCE WITH FEDERAL LAW AND REGULATIONS ON DISSEMINATION OF FBI IDENTIFICATION RECORDS.

(2) THE RECORDING OF THE EXISTENCE OF A CONVICTION OR PENDING CHARGE CONTAINED IN THE CRIMINAL HISTORY RECORD INFORMATION RECEIVED FROM THE FBI IDENTIFICATION DIVISION:

(I) MAY NOT IDENTIFY OR DISCLOSE TO A PRIVATE ENTITY THE

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SPECIFIC CRIME OR ATTEMPTED CRIME IN THE ELIGIBLE EMPLOYEE'S CRIMINAL HISTORY RECORD; AND

(II) SHALL DISCLOSE TO A PRIVATE ENTITY THE EXISTENCE OF A CONVICTION OR PENDING CHARGES FOR ANY OF THE CRIMES, ATTEMPTED CRIMES, OR A CRIMINAL OFFENSE THAT IS EQUIVALENT TO THOSE ENUMERATED IN THE REGULATIONS ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(C) UPON COMPLETION OF A CRIMINAL HISTORY RECORDS CHECK OF AN ELIGIBLE EMPLOYEE, THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES SHALL SUBMIT THE PRINTED STATEMENT TO:

(1) THE DEPENDENT ADULT CARE ENTITY THAT HAS HIRED OR IS SEEKING TO HIRE THE ELIGIBLE EMPLOYEE; AND

(2) THE ELIGIBLE EMPLOYEE.

(D) INFORMATION OBTAINED UNDER THIS SUBTITLE IS CONFIDENTIAL AND MAY BE DISSEMINATED ONLY TO THE INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL HISTORY RECORDS CHECK AND TO THE PARTICIPANTS IN THE HIRING OR APPROVAL PROCESS.

(E) INFORMATION OBTAINED UNDER THIS SUBTITLE MAY NOT:

(1) BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS DISSEMINATED; OR

(2) BE REDISSEMINATED.

(F) INFORMATION OBTAINED UNDER THIS SUBTITLE SHALL BE MAINTAINED IN A MANNER TO ENSURE THE SECURITY OF THE INFORMATION.

(A) FOR A CRIMINAL HISTORY RECORDS CHECK CONDUCTED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, AN INDIVIDUAL MAY CONTEST THE EXISTENCE OF A CRIMINAL CONVICTION OR PENDING CHARGE REPORTED IN A PRINTED STATEMENT IN ACCORDANCE WITH THIS SECTION.

(B) TO CONTEST THE EXISTENCE OF A CONVICTION OR A PENDING CHARGE, THE INDIVIDUAL SHALL CONTACT THE OFFICE OF THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, OR A DESIGNEE OF THE SECRETARY, AND A HEARING SHALL BE CONVENED WITHIN 20 WORKDAYS, UNLESS SUBSEQUENTLY WAIVED BY THE INDIVIDUAL. THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, OR A DESIGNEE OF THE SECRETARY, SHALL RENDER A DECISION REGARDING THE APPEAL WITHIN 5 WORKDAYS OF THE HEARING.

(C) (1) FOR 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 IS CONCLUSIVE EVIDENCE OF THE CONVICTION.

(2) IN A CASE WHERE A PENDING CHARGE IS RECORDED, DOCUMENTATION PROVIDED BY A COURT TO THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, OR A DESIGNEE OF THE SECRETARY, THAT A PENDING CHARGE FOR A CRIME WHICH HAS NOT BEEN FINALLY ADJUDICATED IS CONCLUSIVE EVIDENCE OF THE PENDING CHARGE.

(D) FAILURE OF THE INDIVIDUAL TO APPEAR AT THE SCHEDULED HEARING IS GROUNDS FOR DISMISSAL OF THE APPEAL.

19-1807.

(A) AN INDIVIDUAL 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 IS GUILTY OF

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PERJURY AND UPON CONVICTION IS SUBJECT TO THE PENALTY PROVIDED BY LAW.

(B) UNLESS OTHERWISE PROVIDED, A PERSON 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.

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 HISTORY RECORDS CHECKS.

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.”.