
By: Delegates Gordon and Hubbard

Requested: July 11, 1995

Introduced and read first time: January 10, 1996

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 Employees of Elderly Care Facilities - Criminal Background Investigation

3 FOR the purpose of requiring criminal background investigations of employees and
4 employers of certain elderly care facilities; allowing criminal background
5 investigations for employees and volunteers at certain elderly care facilities;
6 requiring disclosure of certain criminal convictions or pending criminal charges by
7 certain employees and employers; providing for the confidentiality of certain
8 information in certain circumstances; providing for a certain procedure for applying
9 for a criminal background investigation; providing immunity from civil and criminal
10 liability for certain persons and agencies; requiring the Department of Public Safety
11 and Correctional Services to conduct the criminal background investigation and to
12 adopt certain rules and regulations; defining certain terms; providing for the
13 prospective application of this Act; providing for a certain penalty under certain
14 circumstances; and generally relating to criminal background investigations for
15 certain employees and employers.

16 BY adding to

17 Article - Health - General
18 Section 14-2A-01 through 14-2A-08, inclusive, to be under the new subtitle
19 "Subtitle 2A. Employees of Elderly Care Facilities - Criminal Background
20 Investigations"
21 Annotated Code of Maryland
22 (1994 Replacement Volume and 1995 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Health - General**

26 **SUBTITLE 2A. EMPLOYEES OF ELDERLY CARE FACILITIES - CRIMINAL**
27 **BACKGROUND INVESTIGATIONS.**

28 14-2A-01.

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

2

1 (B) "CONVICTION" MEANS A PLEA OR VERDICT OF GUILTY OR A PLEA OF
2 NOLO CONTENDERE.

3 (C) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY AND
4 CORRECTIONAL SERVICES.

5 (D) "ELDERLY" MEANS AN INDIVIDUAL WHO:

6 (1) IS 55 YEARS OLD OR OLDER;

7 (2) LIVES ALONE OR WITH A SPOUSE, RELATIVE, FRIEND, OR IN A
8 HEALTH CARE FACILITY;

9 (3) NEEDS TEMPORARY OR LONG-TERM SUPERVISION DURING A PART
10 OF A DAY OR ALL DAY IN A PROTECTIVE GROUP SETTING; AND

11 (4) HAS A DISABILITY THAT IS:

12 (I) A REASONABLY STATIC PHYSICAL IMPAIRMENT THAT
13 PREVENTS:

14 1. GAINFUL EMPLOYMENT; OR

15 2. THE ACCOMPLISHMENT OF THE ROUTINE OF NORMAL
16 DAILY ACTIVITIES WITHOUT ASSISTANCE; OR

17 (II) A PERMANENT OR RECURRENT MENTAL IMPAIRMENT.

18 (E) "EMPLOYEE" MEANS A PERSON WHO FOR COMPENSATION IS EMPLOYED
19 TO WORK IN A FACILITY IDENTIFIED IN § 14-208 OF THIS SUBTITLE AND WHO:

20 (1) CARES FOR OR SUPERVISES THE ELDERLY IN THE FACILITY; OR

21 (2) HAS ACCESS TO THE ELDERLY WHO ARE CARED FOR OR
22 SUPERVISED IN THE FACILITY.

23 (F) (1) "EMPLOYER" MEANS AN OWNER, OPERATOR, PROPRIETOR, OR
24 MANAGER OF A FACILITY IDENTIFIED IN § 14-2A-02 OF THIS SUBTITLE WHO HAS
25 FREQUENT CONTACT WITH THE ELDERLY WHO ARE CARED FOR OR SUPERVISED IN
26 THE FACILITY.

27 (2) "EMPLOYER" INCLUDES A STATE OR LOCAL AGENCY RESPONSIBLE
28 FOR THE TEMPORARY OR PERMANENT PLACEMENT OF THE ELDERLY IN A FACILITY
29 IDENTIFIED IN § 14-2A-02 OF THIS SUBTITLE.

30 (G) "SECRETARY" MEANS THE SECRETARY OF PUBLIC SAFETY AND
31 CORRECTIONAL SERVICES.

32 14-2A-02.

33 (A) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, AN
34 EMPLOYEE AND EMPLOYER IN A FACILITY IDENTIFIED IN SUBSECTION (B) OF THIS
35 SECTION AND PERSONS IDENTIFIED IN SUBSECTION (C) OF THIS SECTION SHALL
36 APPLY FOR A FEDERAL AND STATE CRIMINAL BACKGROUND INVESTIGATION AT
37 ANY DESIGNATED LAW ENFORCEMENT OFFICE IN THIS STATE.

1 (B) THE FOLLOWING FACILITIES SHALL REQUIRE EMPLOYEES AND
2 EMPLOYERS TO OBTAIN A CRIMINAL BACKGROUND INVESTIGATION UNDER THIS
3 SUBTITLE:

4 (1) A DAY CARE CENTER FOR THE ELDERLY REQUIRED TO BE
5 LICENSED UNDER SUBTITLE 2 OF THIS TITLE;

6 (2) A DOMICILIARY CARE FACILITY REQUIRED TO BE LICENSED UNDER
7 § 19-301(G)(2) OF THIS ARTICLE;

8 (3) A SHELTERED HOUSING FACILITY FOR THE ELDERLY, AS DEFINED
9 BY ARTICLE 70B, § 1 OF THE CODE, THAT IS CERTIFIED BY THE OFFICE ON AGING;

10 (4) A NURSING FACILITY AS DEFINED BY § 19-401(D) OF THIS ARTICLE;
11 AND

12 (5) A HOSPICE FACILITY AS DEFINED BY § 19-901(C) OF THIS ARTICLE.

13 (C) AN EMPLOYER OF A FACILITY UNDER SUBSECTION (B) OF THIS SECTION
14 SHALL REQUIRE AN INDIVIDUAL SEEKING EMPLOYMENT AT THE FACILITY TO
15 OBTAIN A CRIMINAL BACKGROUND INVESTIGATION UNDER THIS SUBTITLE.

16 (D) AN EMPLOYER AT A FACILITY UNDER SUBSECTION (B) OF THIS SECTION
17 MAY REQUIRE A VOLUNTEER AT THE FACILITY TO OBTAIN A CRIMINAL
18 BACKGROUND INVESTIGATION UNDER THIS SUBTITLE.

19 (E) A LOCAL DEPARTMENT OF SOCIAL SERVICES MAY REQUIRE A
20 VOLUNTEER OF THAT DEPARTMENT WHO WORKS WITH THE ELDERLY TO OBTAIN A
21 CRIMINAL BACKGROUND INVESTIGATION UNDER THIS SUBTITLE.

22 (F) AN EMPLOYER AT A FACILITY NOT IDENTIFIED IN SUBSECTION (B) OF
23 THIS SECTION WHO EMPLOYS INDIVIDUALS TO WORK WITH THE ELDERLY MAY
24 REQUIRE EMPLOYEES, INCLUDING VOLUNTEERS, TO OBTAIN A CRIMINAL
25 BACKGROUND INVESTIGATION UNDER THIS SUBTITLE.

26 (G) A PERSON WHO IS REQUIRED TO HAVE A CRIMINAL BACKGROUND
27 INVESTIGATION UNDER THIS SUBTITLE SHALL PAY FOR:

28 (1) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL
29 BUREAU OF INVESTIGATION FOR CONDUCTING THE CRIMINAL BACKGROUND
30 INVESTIGATION;

31 (2) REASONABLE ADMINISTRATIVE COSTS TO THE DEPARTMENT, NOT
32 TO EXCEED 10% OF THE PROCESSING FEE; AND

33 (3) THE FEE AUTHORIZED UNDER ARTICLE 27, § 746(B)(8) OF THE CODE
34 FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS.

35 (H) AN EMPLOYER OR OTHER PARTY MAY PAY FOR THE COSTS BORNE BY
36 THE EMPLOYEE OR OTHER INDIVIDUAL IDENTIFIED IN SUBSECTION (G) OF THIS
37 SECTION.

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1 14-2A-03.

2 (A) (1) ON OR BEFORE THE FIRST DAY OF ACTUAL EMPLOYMENT, AN
3 EMPLOYEE SHALL APPLY TO THE DEPARTMENT FOR A PRINTED STATEMENT.

4 (2) ON OR BEFORE THE FIRST DAY OF ACTUAL OPERATION OF A
5 FACILITY IDENTIFIED IN § 14-2A-02 OF THIS SUBTITLE, AN EMPLOYER SHALL APPLY
6 TO THE DEPARTMENT FOR A PRINTED STATEMENT.

7 (B) AS PART OF THE APPLICATION FOR A CRIMINAL BACKGROUND
8 INVESTIGATION, THE EMPLOYEE, EMPLOYER, AND INDIVIDUAL IDENTIFIED IN §
9 14-2A-02(C), (D), (E), OR (F) OF THIS SUBTITLE SHALL SUBMIT:

10 (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
11 COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON STANDARD FINGERPRINT
12 CARDS AT ANY DESIGNATED STATE OR LOCAL LAW ENFORCEMENT OFFICE IN THE
13 STATE OR OTHER LOCATION APPROVED BY THE DEPARTMENT;

14 (2) THE DISCLOSURE STATEMENT REQUIRED UNDER § 14-2A-04 OF THIS
15 SUBTITLE; AND

16 (3) PAYMENT FOR THE COSTS OF THE CRIMINAL BACKGROUND
17 INVESTIGATION.

18 (C) THE REQUIREMENT THAT A COMPLETE SET OF LEGIBLE FINGERPRINTS
19 TAKEN ON STANDARD FINGERPRINT CARDS BE SUBMITTED AS PART OF THE
20 APPLICATION FOR A CRIMINAL BACKGROUND INVESTIGATION MAY BE WAIVED BY
21 THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IF:

22 (1) THE APPLICATION IS SUBMITTED BY A PERSON WHO HAS
23 ATTEMPTED TO HAVE A COMPLETE SET OF FINGERPRINTS TAKEN ON AT LEAST 3
24 OCCASIONS;

25 (2) THE TAKING OF A COMPLETE SET OF LEGIBLE FINGERPRINTS IS NOT
26 POSSIBLE BECAUSE OF A PHYSICAL OR MEDICAL CONDITION OF THE PERSON'S
27 FINGERS OR HANDS;

28 (3) THE PERSON SUBMITS DOCUMENTATION SATISFACTORY TO THE
29 DEPARTMENT OF HEALTH AND MENTAL HYGIENE OF THE REQUIREMENTS OF THIS
30 SUBSECTION; AND

31 (4) THE PERSON SUBMITS THE OTHER INFORMATION REQUIRED FOR A
32 CRIMINAL BACKGROUND INVESTIGATION.

33 14-2A-04.

34 (A) AS PART OF THE APPLICATION PROCESS FOR A CRIMINAL BACKGROUND
35 INVESTIGATION, THE EMPLOYEE, EMPLOYER, AND INDIVIDUAL IDENTIFIED IN §
36 14-2A-02(C), (D), (E), OR (F) OF THIS SUBTITLE SHALL COMPLETE AND SIGN A SWORN
37 STATEMENT OR AFFIRMATION DISCLOSING THE EXISTENCE OF A CRIMINAL
38 CONVICTION OR PENDING CRIMINAL CHARGES WITHOUT A FINAL DISPOSITION.

39 (B) (1) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN
40 ACKNOWLEDGED RECEIPT OF THE APPLICATION WITH A SWORN STATEMENT OR

5

1 AFFIRMATION FROM AN EMPLOYEE TO THE EMPLOYER WITHIN 3 DAYS OF THE
2 APPLICATION.

3 (2) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN
4 ACKNOWLEDGED RECEIPT OF THE APPLICATION WITH A SWORN STATEMENT OR
5 AFFIRMATION FROM AN EMPLOYEE TO THE APPROPRIATE STATE OR LOCAL
6 LICENSING, REGISTERING, APPROVING, OR CERTIFYING AGENCY WITHIN 3 DAYS OF
7 THE APPLICATION.

8 (3) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN
9 ACKNOWLEDGED RECEIPT OF THE APPLICATION WITH A SWORN STATEMENT OR
10 AFFIRMATION FROM AN INDIVIDUAL IDENTIFIED IN § 14-2A-02(C), (D), (E), OR (F) OF
11 THIS SUBTITLE TO THE APPROPRIATE LOCAL DEPARTMENT OF SOCIAL SERVICES OR
12 REGISTERING AGENCY.

13 14-2A-05.

14 (A) (1) THE DEPARTMENT SHALL CONDUCT THE CRIMINAL BACKGROUND
15 INVESTIGATION AND ISSUE THE PRINTED STATEMENT PROVIDED FOR UNDER THIS
16 SUBTITLE.

17 (2) THE DEPARTMENT SHALL UPDATE AN INITIAL INVESTIGATION AND
18 ISSUE A REVISED PRINTED STATEMENT LISTING ANY OF THE CONVICTIONS,
19 PENDING CHARGES, OR OFFENSES OCCURRING IN THE STATE DURING THE TIME OF
20 EMPLOYMENT AFTER THE DATE OF THE INITIAL CRIMINAL BACKGROUND
21 INVESTIGATION STATEMENT.

22 (3) THE DEPARTMENT SHALL ADOPT REGULATIONS REQUIRING
23 EMPLOYERS TO VERIFY PERIODICALLY THE CONTINUING EMPLOYMENT OF AN
24 EMPLOYEE.

25 (4) THE EMPLOYEE IS NOT RESPONSIBLE FOR PAYMENT OF ANY FEE TO
26 UPDATE CRIMINAL BACKGROUND INVESTIGATIONS.

27 (B) (1) THE DEPARTMENT SHALL PROVIDE A STATEMENT OF THE
28 APPLICANT'S STATE CRIMINAL RECORD TO THE RECIPIENTS OF THE
29 ACKNOWLEDGMENTS SPECIFIED IN § 14-2A-04(B) OF THIS SUBTITLE.

30 (2) THE DEPARTMENT SHALL:

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

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

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

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1 (1) MAY NOT IDENTIFY OR DISCLOSE TO A PRIVATE ENTITY THE
2 SPECIFIC CRIME OR ATTEMPTED CRIME IN THE EMPLOYEE'S, EMPLOYER'S, OR
3 APPLICANT'S CRIMINAL HISTORY RECORD; AND

4 (2) SHALL DISCLOSE TO A PRIVATE ENTITY THE EXISTENCE OF A
5 CONVICTION OR PENDING CHARGES FOR ANY OF THE CRIMES, ATTEMPTED CRIMES,
6 OR A CRIMINAL OFFENSE THAT IS EQUIVALENT TO THOSE ENUMERATED IN THE
7 REGULATIONS ADOPTED BY THE DEPARTMENT.

8 (D) (1) UPON COMPLETION OF THE CRIMINAL BACKGROUND
9 INVESTIGATION OF AN EMPLOYEE, THE DEPARTMENT SHALL SUBMIT THE PRINTED
10 STATEMENT TO:

11 (I) THE EMPLOYEE'S CURRENT OR PROSPECTIVE EMPLOYER AT
12 THE FACILITY OR PROGRAM; AND

13 (II) THE EMPLOYEE.

14 (2) UPON COMPLETION OF THE CRIMINAL BACKGROUND
15 INVESTIGATION OF AN EMPLOYER, THE DEPARTMENT SHALL SUBMIT THE PRINTED
16 STATEMENT TO:

17 (I) THE APPROPRIATE STATE OR LOCAL AGENCY RESPONSIBLE
18 FOR THE LICENSURE, REGISTRATION, APPROVAL, OR CERTIFICATION OF THE
19 EMPLOYER'S FACILITY; AND

20 (II) THE EMPLOYER.

21 (3) UPON COMPLETION OF THE CRIMINAL BACKGROUND
22 INVESTIGATION OF AN INDIVIDUAL IDENTIFIED IN § 14-2A-02(C), (D), (E), OR (F) OF
23 THIS SUBTITLE, THE DEPARTMENT SHALL SUBMIT THE PRINTED STATEMENT TO
24 THE APPROPRIATE LOCAL DEPARTMENT OF SOCIAL SERVICES, REGISTERING
25 AGENCY, OR LICENSED PLACEMENT AGENCY.

26 (E) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS
27 SUBTITLE IS CONFIDENTIAL AND MAY BE DISSEMINATED ONLY TO THE INDIVIDUAL
28 WHO IS THE SUBJECT OF THE CRIMINAL BACKGROUND INVESTIGATION AND TO THE
29 PARTICIPANTS IN THE HIRING OR APPROVAL PROCESS.

30 (F) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS
31 SUBTITLE MAY NOT:

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

34 (2) BE REDISSEMINATED.

35 (G) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS
36 SUBTITLE SHALL BE MAINTAINED IN A MANNER TO INSURE THE SECURITY OF THE
37 INFORMATION.

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1 14-2A-06.

2 (A) IN CONFORMITY WITH THE FOLLOWING PROCEDURES, AN INDIVIDUAL
3 MAY CONTEST THE FINDING OF A CRIMINAL CONVICTION OR PENDING CHARGE
4 REPORTED IN A PRINTED STATEMENT.

5 (B) TO CONTEST THE FINDING OF A CONVICTION OR A PENDING CHARGE,
6 THE INDIVIDUAL SHALL CONTACT THE OFFICE OF THE SECRETARY, OR A DESIGNEE
7 OF THE SECRETARY, AND A HEARING SHALL BE CONVENED WITHIN 20 WORKDAYS,
8 UNLESS SUBSEQUENTLY WAIVED BY THE INDIVIDUAL. THE SECRETARY, OR A
9 DESIGNEE OF THE SECRETARY, SHALL RENDER A DECISION REGARDING THE
10 APPEAL WITHIN 5 WORKDAYS OF THE HEARING.

11 (C) (1) FOR PURPOSES OF THIS SUBTITLE, THE RECORD OF A CONVICTION
12 FOR A CRIME OR A COPY OF THE RECORD CERTIFIED BY THE CLERK OF THE COURT
13 OR BY A JUDGE OF THE COURT IN WHICH THE CONVICTION OCCURRED IS
14 CONCLUSIVE EVIDENCE OF THE CONVICTION.

15 (2) IN A CASE WHERE A PENDING CHARGE IS RECORDED,
16 DOCUMENTATION PROVIDED BY A COURT TO THE SECRETARY, OR A DESIGNEE OF
17 THE SECRETARY, THAT A PENDING CHARGE FOR A CRIME WHICH HAS NOT BEEN
18 FINALLY ADJUDICATED IS CONCLUSIVE EVIDENCE OF THE PENDING CHARGE.

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

21 14-2A-07.

22 (A) AN INDIVIDUAL WHO FAILS TO DISCLOSE A CONVICTION OR THE
23 EXISTENCE OF PENDING CHARGES FOR A CRIMINAL OFFENSE OR ATTEMPTED
24 CRIMINAL OFFENSE AS REQUIRED UNDER § 14-2A-04 OF THIS SUBTITLE IS GUILTY
25 OF PERJURY AND UPON CONVICTION IS SUBJECT TO THE PENALTY PROVIDED BY
26 LAW.

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

31 14-2A-08.

32 THE FOLLOWING PERSONS OR AGENCIES HAVE IMMUNITY FROM CIVIL OR
33 CRIMINAL LIABILITY IN CONNECTION WITH A CRIMINAL BACKGROUND
34 INVESTIGATION DESCRIBED UNDER § 14-2A-02 OF THIS SUBTITLE:

35 (1) AN EMPLOYER;

36 (2) A STATE OR LOCAL AGENCY; AND

37 (3) A LOCAL DEPARTMENT OF SOCIAL SERVICES.

38 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
39 October 1, 1996.