
By: Charles County Delegation

Introduced and read first time: February 8, 1996

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Charles County - Employees of Long-Term Care and Adult Day Care Facilities -**
3 **Criminal Background Investigations**

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

17 BY adding to

18 The Public Local Laws of Charles County
19 Section 37-2
20 Article 9 - Public Local Laws of Maryland
21 (1994 Edition, as amended)

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

24 **Article 9 - Charles County**

25 37-2.

26 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (2) "CONVICTION" MEANS A PLEA OR VERDICT OF GUILTY OR A PLEA
29 OF NOLO CONTENDERE.

30 (3) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF PUBLIC
31 SAFETY AND CORRECTIONAL SERVICES.

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1 (4) "ELDERLY" MEANS AN INDIVIDUAL WHO:

2 (I) IS 55 YEARS OLD OR OLDER;

3 (II) LIVES ALONE OR WITH A SPOUSE, RELATIVE, FRIEND, OR IN A
4 LONG-TERM CARE FACILITY;

5 (III) NEEDS TEMPORARY OR LONG-TERM SUPERVISION DURING A
6 PART OF A DAY OR ALL DAY IN A PROTECTIVE GROUP SETTING; AND

7 (IV) HAS A DISABILITY THAT IS:

8 1. A REASONABLY STATIC PHYSICAL IMPAIRMENT THAT
9 PREVENTS GAINFUL EMPLOYMENT OR THE ACCOMPLISHMENT OF THE ROUTINE OF
10 NORMAL DAILY ACTIVITIES WITHOUT ASSISTANCE; OR

11 2. A PERMANENT OR RECURRENT MENTAL IMPAIRMENT.

12 (5) "EMPLOYEE" MEANS A PERSON WHO FOR COMPENSATION IS
13 EMPLOYED TO WORK IN A FACILITY IDENTIFIED IN SUBSECTION (B) OF THIS
14 SECTION AND WHO:

15 (I) CARES FOR OR SUPERVISES THE ELDERLY IN THE FACILITY;
16 OR

17 (II) HAS ACCESS TO THE ELDERLY WHO ARE CARED FOR OR
18 SUPERVISED IN THE FACILITY.

19 (6) (I) "EMPLOYER" MEANS AN OWNER, OPERATOR, PROPRIETOR, OR
20 MANAGER OF A LONG-TERM CARE FACILITY IDENTIFIED IN SUBSECTION (B) OF
21 THIS SECTION WHO HAS FREQUENT CONTACT WITH THE ELDERLY WHO ARE CARED
22 FOR OR SUPERVISED IN THE FACILITY.

23 (II) "EMPLOYER" INCLUDES A STATE OR LOCAL AGENCY
24 RESPONSIBLE FOR THE TEMPORARY OR PERMANENT PLACEMENT OF THE ELDERLY
25 IN A LONG-TERM CARE FACILITY IDENTIFIED IN SUBSECTION (B) OF THIS SECTION.

26 (7) "PRINTED STATEMENT" MEANS A DOCUMENT ISSUED BY THE
27 CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY IN THE
28 DEPARTMENT IN RESPONSE TO AN APPLICATION FOR A CRIMINAL BACKGROUND
29 CHECK.

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

32 (B) (1) NOTWITHSTANDING ANY PROVISION OF LAW, AN EMPLOYEE AND
33 EMPLOYER IN A FACILITY IDENTIFIED IN PARAGRAPH (2) OF THIS SUBSECTION AND
34 INDIVIDUALS IDENTIFIED IN PARAGRAPH (3) OF THIS SUBSECTION SHALL APPLY
35 FOR A FEDERAL AND STATE CRIMINAL BACKGROUND INVESTIGATION AT ANY
36 DESIGNATED LAW ENFORCEMENT OFFICE IN THE STATE.

37 (2) THE FOLLOWING LONG-TERM CARE FACILITIES IN CHARLES
38 COUNTY SHALL REQUIRE EMPLOYEES AND EMPLOYERS TO OBTAIN A CRIMINAL
39 BACKGROUND INVESTIGATION UNDER THIS SECTION:

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1 (I) A DAY CARE CENTER FOR THE ELDERLY REQUIRED TO BE
2 LICENSED UNDER § 14-201 OF THE HEALTH - GENERAL ARTICLE OF THE CODE;

3 (II) A DOMICILIARY CARE FACILITY REQUIRED TO BE LICENSED
4 UNDER § 19-301(F)(2) OF THE HEALTH - GENERAL ARTICLE;

5 (III) A SHELTERED HOUSING FACILITY FOR THE ELDERLY, AS
6 DEFINED BY ARTICLE 70B, § 1 OF THE CODE, THAT IS CERTIFIED BY THE OFFICE ON
7 AGING;

8 (IV) A NURSING FACILITY AS DEFINED BY § 19-1401(D) OF THE
9 HEALTH - GENERAL ARTICLE; AND

10 (V) A HOSPICE FACILITY AS DEFINED BY § 19-901(C) OF THE
11 HEALTH - GENERAL ARTICLE.

12 (3) AN EMPLOYER OF A FACILITY UNDER PARAGRAPH (2) OF THIS
13 SUBSECTION SHALL REQUIRE AN INDIVIDUAL SEEKING EMPLOYMENT AT THE
14 FACILITY TO OBTAIN A CRIMINAL BACKGROUND INVESTIGATION UNDER THIS
15 SECTION.

16 (4) AN EMPLOYER AT A FACILITY UNDER PARAGRAPH (2) OF THIS
17 SUBSECTION MAY REQUIRE A VOLUNTEER AT THE FACILITY TO OBTAIN A
18 CRIMINAL BACKGROUND INVESTIGATION UNDER THIS SECTION.

19 (5) THE CHARLES COUNTY DEPARTMENT OF SOCIAL SERVICES AND
20 THE OFFICE ON AGING MAY REQUIRE A VOLUNTEER OF THAT DEPARTMENT WHO
21 WORKS WITH THE ELDERLY TO OBTAIN A CRIMINAL BACKGROUND INVESTIGATION
22 UNDER THIS SECTION.

23 (6) AN EMPLOYER AT A FACILITY NOT IDENTIFIED IN PARAGRAPH (2)
24 OF THIS SECTION WHO EMPLOYS INDIVIDUALS TO WORK WITH THE ELDERLY MAY
25 REQUIRE EMPLOYEES, INCLUDING VOLUNTEERS, TO OBTAIN A CRIMINAL
26 BACKGROUND INVESTIGATION UNDER THIS SECTION.

27 (7) AN INDIVIDUAL WHO IS REQUIRED TO HAVE A CRIMINAL
28 BACKGROUND INVESTIGATION UNDER THIS SECTION SHALL PAY FOR:

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

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

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

36 (8) AN EMPLOYER OR OTHER PARTY MAY PAY FOR THE COSTS BORNE
37 BY THE EMPLOYEE OR OTHER INDIVIDUAL IDENTIFIED IN PARAGRAPH (7) OF THIS
38 SUBSECTION.

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

3 (2) ON OR BEFORE THE 1ST DAY OF ACTUAL OPERATION OF A FACILITY
4 IDENTIFIED IN SUBSECTION (B)(2) OF THIS SECTION, AN EMPLOYER SHALL APPLY TO
5 THE DEPARTMENT FOR A PRINTED STATEMENT.

6 (3) AS PART OF THE APPLICATION FOR A CRIMINAL BACKGROUND
7 INVESTIGATION, THE EMPLOYEE, EMPLOYER, AND INDIVIDUAL IDENTIFIED IN
8 SUBSECTION (B)(3), (4), (5), OR (6) OF THIS SECTION SHALL SUBMIT:

9 (I) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION,
10 A COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON STANDARD FINGERPRINT
11 CARDS AT ANY DESIGNATED STATE OR LOCAL LAW ENFORCEMENT OFFICE IN THE
12 STATE OR OTHER LOCATION APPROVED BY THE DEPARTMENT;

13 (II) THE DISCLOSURE STATEMENT REQUIRED UNDER SUBSECTION
14 (D) OF THIS SECTION; AND

15 (III) PAYMENT FOR THE COSTS OF THE CRIMINAL BACKGROUND
16 INVESTIGATION.

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

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

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

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

30 (IV) THE PERSON SUBMITS THE OTHER INFORMATION REQUIRED
31 FOR A CRIMINAL BACKGROUND INVESTIGATION.

32 (D) (1) AS PART OF THE APPLICATION PROCESS FOR A CRIMINAL
33 BACKGROUND INVESTIGATION, THE EMPLOYEE, EMPLOYER, AND INDIVIDUAL
34 IDENTIFIED IN SUBSECTION (B)(3), (4), (5), OR (6) OF THIS SECTION SHALL COMPLETE
35 AND SIGN A SWORN STATEMENT OR AFFIRMATION DISCLOSING THE EXISTENCE OF
36 A CRIMINAL CONVICTION OR PENDING CRIMINAL CHARGES WITHOUT A FINAL
37 DISPOSITION.

38 (2) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN
39 ACKNOWLEDGED RECEIPT OF THE APPLICATION WITH A SWORN STATEMENT OR
40 AFFIRMATION FROM AN EMPLOYEE TO THE EMPLOYER WITHIN 3 DAYS OF THE
41 APPLICATION.

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

6 (4) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN
7 ACKNOWLEDGED RECEIPT OF THE APPLICATION WITH A SWORN STATEMENT OR
8 AFFIRMATION FROM AN INDIVIDUAL IDENTIFIED IN SUBSECTION (B)(3), (4), (5), OR
9 (6) OF THIS SECTION TO THE CHARLES COUNTY DEPARTMENT OF SOCIAL SERVICES
10 OR REGISTERING AGENCY.

11 (E) (1) THE DEPARTMENT SHALL CONDUCT THE CRIMINAL BACKGROUND
12 INVESTIGATION AND ISSUE THE PRINTED STATEMENT PROVIDED FOR UNDER THIS
13 SECTION.

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

19 (3) THE DEPARTMENT SHALL ADOPT REGULATIONS REQUIRING
20 EMPLOYERS TO VERIFY PERIODICALLY THE CONTINUING EMPLOYMENT OF AN
21 EMPLOYEE.

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

24 (5) THE DEPARTMENT SHALL PROVIDE A STATEMENT OF THE
25 APPLICANT'S STATE CRIMINAL RECORD TO THE RECIPIENTS OF THE
26 ACKNOWLEDGMENTS SPECIFIED IN SUBSECTION (D) OF THIS SECTION.

27 (6) THE DEPARTMENT SHALL:

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

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

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

37 (I) MAY NOT IDENTIFY OR DISCLOSE TO A PRIVATE ENTITY THE
38 SPECIFIC CRIME OR ATTEMPTED CRIME IN THE EMPLOYEE'S, EMPLOYER'S, OR
39 APPLICANT'S CRIMINAL HISTORY RECORD; AND

40 (II) SHALL DISCLOSE TO A PRIVATE ENTITY THE EXISTENCE OF A
41 CONVICTION OR PENDING CHARGES FOR ANY OF THE CRIMES, ATTEMPTED CRIMES,

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1 OR A CRIMINAL OFFENSE THAT IS EQUIVALENT TO THOSE ENUMERATED IN THE
2 REGULATIONS ADOPTED BY THE DEPARTMENT.

3 (8) (I) ON COMPLETION OF THE CRIMINAL BACKGROUND
4 INVESTIGATION OF AN EMPLOYEE, THE DEPARTMENT SHALL SUBMIT THE PRINTED
5 STATEMENT TO:

6 1. THE EMPLOYEE'S CURRENT OR PROSPECTIVE EMPLOYER
7 AT THE FACILITY OR PROGRAM; AND

8 2. THE EMPLOYEE.

9 (II) ON COMPLETION OF THE CRIMINAL BACKGROUND
10 INVESTIGATION OF AN EMPLOYER, THE DEPARTMENT SHALL SUBMIT THE PRINTED
11 STATEMENT TO:

12 1. THE APPROPRIATE STATE OR LOCAL AGENCY
13 RESPONSIBLE FOR THE LICENSURE, REGISTRATION, APPROVAL, OR CERTIFICATION
14 OF THE EMPLOYER'S FACILITY; AND

15 2. THE EMPLOYER.

16 (III) ON COMPLETION OF THE CRIMINAL BACKGROUND
17 INVESTIGATION OF AN INDIVIDUAL IDENTIFIED IN SUBSECTION (B)(3), (4), (5), OR (6)
18 OF THIS SECTION, THE DEPARTMENT SHALL SUBMIT THE PRINTED STATEMENT TO
19 THE CHARLES COUNTY DEPARTMENT OF SOCIAL SERVICES, REGISTERING AGENCY,
20 OR LICENSED PLACEMENT AGENCY.

21 (9) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS
22 SECTION SHALL BE CONFIDENTIAL AND MAY BE DISSEMINATED ONLY TO THE
23 INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL BACKGROUND INVESTIGATION
24 AND TO THE PARTICIPANTS IN THE HIRING OR APPROVAL PROCESS.

25 (10) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS
26 SECTION MAY NOT:

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

29 (II) BE REDISSEMINATED.

30 (11) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS
31 SECTION SHALL BE MAINTAINED IN A MANNER TO INSURE THE SECURITY OF THE
32 INFORMATION.

33 (F) (1) IN CONFORMITY WITH THE FOLLOWING PROCEDURES, AN
34 INDIVIDUAL MAY CONTEST THE FINDING OF A CRIMINAL CONVICTION OR PENDING
35 CHARGE REPORTED IN A PRINTED STATEMENT.

36 (2) IN CONTESTING THE FINDING OF A CONVICTION OR A PENDING
37 CHARGE, THE INDIVIDUAL SHALL CONTACT THE OFFICE OF THE SECRETARY, OR A
38 DESIGNEE OF THE SECRETARY, AND A HEARING SHALL BE CONVENED WITHIN 20
39 WORKDAYS, UNLESS SUBSEQUENTLY WAIVED BY THE INDIVIDUAL. THE

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1 SECRETARY, OR A DESIGNEE OF THE SECRETARY, SHALL RENDER A DECISION
2 REGARDING THE APPEAL WITHIN 5 WORKDAYS OF THE HEARING.

3 (3) FOR PURPOSES OF THIS SECTION, THE RECORD OF A CONVICTION
4 FOR A CRIME OR A COPY THEREOF CERTIFIED BY THE CLERK OF THE COURT OR BY
5 A JUDGE OF THE COURT IN WHICH THE CONVICTION OCCURRED SHALL BE
6 CONCLUSIVE EVIDENCE OF THE CONVICTION. IN A CASE WHERE A PENDING
7 CHARGE IS RECORDED, DOCUMENTATION PROVIDED BY A COURT TO THE
8 SECRETARY, OR A DESIGNEE OF THE SECRETARY, THAT A PENDING CHARGE FOR A
9 CRIME WHICH HAS NOT BEEN FINALLY ADJUDICATED SHALL BE CONCLUSIVE
10 EVIDENCE OF THE PENDING CHARGE.

11 (4) FAILURE OF THE INDIVIDUAL TO APPEAR AT THE SCHEDULED
12 HEARING SHALL BE CONSIDERED GROUNDS FOR DISMISSAL OF THE APPEAL.

13 (G) (1) AN INDIVIDUAL WHO FAILS TO DISCLOSE A CONVICTION OR THE
14 EXISTENCE OF PENDING CHARGES FOR A CRIMINAL OFFENSE OR ATTEMPTED
15 CRIMINAL OFFENSE AS REQUIRED UNDER SUBSECTION (D)(1) OF THIS SECTION
16 SHALL BE GUILTY OF PERJURY AND UPON CONVICTION IS SUBJECT TO THE
17 PENALTY PROVIDED BY LAW.

18 (2) UNLESS OTHERWISE PROVIDED, A PERSON WHO VIOLATES ANY
19 PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION
20 IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING
21 YEAR OR BOTH.

22 (H) THE FOLLOWING PERSONS OR AGENCIES SHALL HAVE IMMUNITY FROM
23 CIVIL OR CRIMINAL LIABILITY IN CONNECTION WITH A CRIMINAL BACKGROUND
24 INVESTIGATION CONDUCTED UNDER THIS SECTION:

25 (1) AN EMPLOYER;

26 (2) A STATE OR LOCAL AGENCY;

27 (3) THE CHARLES COUNTY DEPARTMENT OF SOCIAL SERVICES; AND

28 (4) THE CHARLES COUNTY DEPARTMENT OF COMMUNITY SERVICES.

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