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**By: Senator Collins**

Introduced and read first time: January 24, 1996

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Homes - Criminal Background Investigations**

3 FOR the purpose of requiring criminal background investigations of nursing home  
4 employees; requiring disclosure of certain criminal convictions or pending criminal  
5 charges by certain individuals affiliated with nursing homes; providing for the  
6 confidentiality of certain information under certain circumstances; establishing  
7 certain procedures for applying for a criminal background investigation; providing  
8 immunity from civil and criminal liability for certain persons and agencies; requiring  
9 the Department of Public Safety and Correctional Services to conduct criminal  
10 background investigations and to adopt certain regulations; defining certain terms;  
11 providing for a certain penalty under certain circumstances; and generally relating  
12 to criminal background investigations for nursing home employees.

13 BY adding to

14 Article - Health - General  
15 Section 19-1801 through 19-1809, inclusive, to be under the new subtitle "Subtitle  
16 18. Employees of Nursing Homes - Criminal Background Investigations"  
17 Annotated Code of Maryland  
18 (1990 Replacement Volume and 1995 Supplement)

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

21 **Article - Health - General**

22 SUBTITLE 18. EMPLOYEES OF NURSING HOMES - CRIMINAL BACKGROUND  
23 INVESTIGATIONS.

24 19-1801.

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

27 (B) "APPLICANT" MEANS AN EMPLOYEE AT A NURSING FACILITY WHO  
28 REQUESTS A CRIMINAL BACKGROUND INVESTIGATION UNDER THIS SUBTITLE.

29 (C) "CONVICTION" MEANS A PLEA OR VERDICT OF GUILTY OR A PLEA OF  
30 NOLO CONTENDERE.

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1 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY AND  
2 CORRECTIONAL SERVICES.

3 (E) "DISCLOSURE STATEMENT" MEANS A SWORN STATEMENT OR  
4 AFFIRMATION OF THE EXISTENCE OF A CRIMINAL CONVICTION OR PENDING  
5 CRIMINAL CHARGES WITHOUT A FINAL DISPOSITION.

6 (F) "ELDERLY" MEANS AN INDIVIDUAL WHO:

7 (1) IS 55 YEARS OLD OR OLDER;

8 (2) LIVES IN A NURSING FACILITY; AND

9 (3) HAS A PHYSICAL OR MENTAL DISABILITY THAT REQUIRES  
10 LONG-TERM CARE.

11 (G) "EMPLOYEE" MEANS A PERSON WHO FOR COMPENSATION IS EMPLOYED  
12 TO WORK IN A NURSING FACILITY AND WHO:

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

14 (2) HAS ACCESS TO THE ELDERLY WHO ARE CARED FOR IN THE  
15 FACILITY.

16 (H) "EMPLOYER" MEANS AN OWNER, OPERATOR, PROPRIETOR, OR MANAGER  
17 OF A NURSING FACILITY.

18 (I) (1) "NURSING FACILITY" MEANS A FACILITY WHICH OFFERS NONACUTE  
19 INPATIENT CARE TO PATIENTS SUFFERING FROM A DISEASE, CONDITION,  
20 DISABILITY OF ADVANCED AGE, OR TERMINAL DISEASE REQUIRING MAXIMAL  
21 NURSING CARE WITHOUT CONTINUOUS HOSPITAL SERVICES AND WHO REQUIRE  
22 MEDICAL SERVICES AND NURSING SERVICES RENDERED BY OR UNDER THE  
23 SUPERVISION OF A LICENSED NURSE TOGETHER WITH CONVALESCENT SERVICES,  
24 RESTORATIVE SERVICES, OR REHABILITATIVE SERVICES.

25 (2) "NURSING FACILITY" DOES NOT INCLUDE A FACILITY OFFERING  
26 DOMICILIARY OR PERSONAL CARE AS DEFINED IN SUBTITLE 3 OF THIS TITLE.

27 (J) "PRINTED STATEMENT" MEANS A LETTER ISSUED BY THE CRIMINAL  
28 JUSTICE INFORMATION SYSTEM CITING FEDERAL OR STATE CRIMINAL CHARGES  
29 AGAINST AN APPLICANT WHO REQUESTS A CRIMINAL BACKGROUND CHECK.

30 (K) "PRIVATE ENTITY" MEANS ANY INDIVIDUAL OR BUSINESS WHO IS NOT  
31 AN EMPLOYER, AS DEFINED IN THIS SECTION.

32 (L) "SECRETARY" MEANS THE SECRETARY OF PUBLIC SAFETY AND  
33 CORRECTIONAL SERVICES.

34 19-1802.

35 (A) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, AN  
36 EMPLOYEE IN A NURSING FACILITY SHALL APPLY FOR A FEDERAL AND STATE  
37 CRIMINAL BACKGROUND INVESTIGATION AT THE CRIMINAL JUSTICE INFORMATION

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1 SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND  
2 CORRECTIONAL SERVICES.

3 (B) THE EMPLOYER OR PROSPECTIVE EMPLOYER OF AN APPLICANT WHO IS  
4 REQUIRED TO HAVE A CRIMINAL BACKGROUND INVESTIGATION UNDER THIS  
5 SUBTITLE SHALL PAY FOR:

6 (1) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL  
7 BUREAU OF INVESTIGATION FOR CONDUCTING THE CRIMINAL BACKGROUND  
8 INVESTIGATION;

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

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

13 19-1803.

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

16 (B) AS PART OF THE APPLICATION FOR A CRIMINAL BACKGROUND  
17 INVESTIGATION, AN APPLICANT SHALL SUBMIT TO THE EMPLOYER OR  
18 PROSPECTIVE EMPLOYER:

19 (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A  
20 COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON FORMS SPECIFIED BY THE  
21 DIRECTOR OF THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL  
22 REPOSITORY; AND

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

25 (C) THE EMPLOYER OR PROSPECTIVE EMPLOYER SHALL SUBMIT THE  
26 FINGERPRINTS, DISCLOSURE STATEMENT, AND PAYMENT FOR THE COSTS OF THE  
27 CRIMINAL BACKGROUND INVESTIGATION.

28 (D) THE REQUIREMENT THAT A COMPLETE SET OF LEGIBLE FINGERPRINTS  
29 TAKEN ON STANDARD FINGERPRINT CARDS BE SUBMITTED AS PART OF THE  
30 APPLICATION FOR A CRIMINAL BACKGROUND INVESTIGATION MAY BE WAIVED BY  
31 THE DEPARTMENT IF:

32 (1) THE APPLICANT HAS ATTEMPTED TO HAVE A COMPLETE SET OF  
33 FINGERPRINTS TAKEN ON AT LEAST THREE OCCASIONS;

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

37 (3) THE APPLICANT SUBMITS DOCUMENTATION SATISFACTORY TO THE  
38 DEPARTMENT OF THE REQUIREMENTS OF THIS SUBSECTION; AND

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1 (4) THE APPLICANT SUBMITS THE OTHER INFORMATION REQUIRED  
2 FOR A CRIMINAL BACKGROUND INVESTIGATION.

3 19-1804.

4 (A) AS PART OF THE APPLICATION PROCESS FOR A CRIMINAL BACKGROUND  
5 INVESTIGATION, AN APPLICANT SHALL COMPLETE AND SIGN A DISCLOSURE  
6 STATEMENT.

7 (B) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN ACKNOWLEDGED  
8 RECEIPT OF THE APPLICATION WITH A DISCLOSURE STATEMENT FROM AN  
9 EMPLOYEE WITHIN 3 DAYS OF THE APPLICATION TO:

10 (1) THE EMPLOYEE'S CURRENT OR PROSPECTIVE EMPLOYER AT THE  
11 NURSING FACILITY;

12 (2) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE; AND

13 (3) THE EMPLOYEE.

14 19-1805.

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

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

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

26 (B) (1) THE DEPARTMENT SHALL PROVIDE A PRINTED STATEMENT OF THE  
27 APPLICANT'S STATE CRIMINAL RECORD TO THE RECIPIENTS OF THE  
28 ACKNOWLEDGMENTS SPECIFIED IN § 19-1804(B) OF THIS SUBTITLE.

29 (2) THE DEPARTMENT SHALL:

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

34 (II) DISTRIBUTE THE PRINTED STATEMENT IN ACCORDANCE WITH  
35 FEDERAL LAW AND REGULATIONS ON DISSEMINATION OF FEDERAL BUREAU OF  
36 INVESTIGATION IDENTIFICATION 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 FEDERAL BUREAU OF INVESTIGATION IDENTIFICATION DIVISION:  
THE DEPARTMENT SHALL CONDUCT THE CRIMINAL BACKGROUND  
16 INVESTIGAT

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1 (1) MAY NOT IDENTIFY OR DISCLOSE TO A PRIVATE ENTITY THE  
2 SPECIFIC CRIME OR ATTEMPTED CRIME IN THE APPLICANT'S CRIMINAL HISTORY  
3 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) ON COMPLETION OF THE CRIMINAL BACKGROUND INVESTIGATION OF  
9 AN EMPLOYEE, THE DEPARTMENT SHALL SUBMIT THE PRINTED STATEMENT TO:

10 (1) THE EMPLOYEE'S CURRENT OR PROSPECTIVE EMPLOYER AT THE  
11 NURSING FACILITY;

12 (2) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE; AND

13 (3) THE EMPLOYEE.

14 (E) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS  
15 SUBTITLE SHALL BE CONFIDENTIAL AND MAY BE DISSEMINATED ONLY TO THE  
16 APPLICANT WHO IS THE SUBJECT OF THE CRIMINAL BACKGROUND INVESTIGATION  
17 AND TO THE PARTICIPANTS IN THE HIRING OR APPROVAL PROCESS.

18 (F) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS  
19 SUBTITLE MAY NOT:

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

22 (2) BE REDISSEMINATED.

23 (G) INFORMATION OBTAINED FROM THE DEPARTMENT UNDER THIS  
24 SUBTITLE SHALL BE MAINTAINED IN A MANNER TO INSURE THE SECURITY OF THE  
25 INFORMATION.

26 19-1806.

27 (A) AN APPLICANT MAY CONTEST THE FINDING OF A CRIMINAL CONVICTION  
28 OR PENDING CHARGE REPORTED IN A PRINTED STATEMENT AS PROVIDED IN THIS  
29 SECTION.

30 (B) (1) IN CONTESTING THE FINDING OF A CONVICTION OR A PENDING  
31 CHARGE, THE APPLICANT SHALL CONTACT THE OFFICE OF THE SECRETARY, OR A  
32 DESIGNEE OF THE SECRETARY, AND A HEARING SHALL BE CONVENED WITHIN 20  
33 WORKDAYS, UNLESS SUBSEQUENTLY WAIVED BY THE APPLICANT.

34 (2) THE SECRETARY, OR A DESIGNEE OF THE SECRETARY, SHALL  
35 RENDER A DECISION REGARDING THE APPEAL WITHIN 5 WORKDAYS OF THE  
36 HEARING.

37 (C) (1) FOR THE PURPOSES OF THIS SUBTITLE, THE RECORD OF A  
38 CONVICTION FOR A CRIME OR A COPY OF THE RECORD CERTIFIED BY THE CLERK

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1 OF THE COURT OR BY A JUDGE OF THE COURT IN WHICH THE CONVICTION  
2 OCCURRED, SHALL BE CONCLUSIVE EVIDENCE OF THE CONVICTION.

3 (2) IN A CASE WHERE A PENDING CHARGE IS RECORDED,  
4 DOCUMENTATION PROVIDED BY A COURT TO THE SECRETARY, OR A DESIGNEE OF  
5 THE SECRETARY, THAT A PENDING CHARGE FOR A CRIME WHICH HAS NOT BEEN  
6 FINALLY ADJUDICATED SHALL BE CONCLUSIVE EVIDENCE OF THE PENDING  
7 CHARGE.

8 (D) FAILURE OF THE APPLICANT TO APPEAR AT THE SCHEDULED HEARING  
9 SHALL BE CONSIDERED GROUNDS FOR DISMISSAL OF THE APPEAL.

10 19-1807.

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

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

20 19-1808.

21 THE FOLLOWING PERSONS OR AGENCIES SHALL HAVE THE IMMUNITY FROM  
22 CIVIL OR CRIMINAL LIABILITY DESCRIBED UNDER § 5-361 OF THE COURTS AND  
23 JUDICIAL PROCEEDINGS ARTICLE IN CONNECTION WITH A CRIMINAL BACKGROUND  
24 INVESTIGATION UNDER THIS SUBTITLE:

25 (1) AN EMPLOYER; AND

26 (2) A STATE AGENCY.

27 19-1809.

28 THE SECRETARY SHALL:

29 (1) PROVIDE FOR THE ADOPTION OF A SPECIFIED FORM OR FORMS TO  
30 BE USED IN APPLYING FOR THE CRIMINAL BACKGROUND INVESTIGATION TO BE  
31 ISSUED BY THE DEPARTMENT, INCLUDING AN APPROPRIATE DISCLOSURE  
32 STATEMENT;

33 (2) DESIGNATE THE APPROPRIATE STATE OR LOCAL LAW  
34 ENFORCEMENT OFFICES IN THE STATE, OR OTHER APPROVED LOCATIONS, WHERE  
35 FINGERPRINTS MAY BE OBTAINED; AND

36 (3) ADOPT REGULATIONS NECESSARY AND REASONABLE TO  
37 ADMINISTER THIS SUBTITLE.

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

