
By: Senator Collins

Introduced and read first time: January 24, 1996
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 13, 1996

CHAPTER _____

1 AN ACT concerning

2 ~~Nursing Homes—Criminal Background Investigations~~

3 **Adult Dependent Care Programs - Criminal History Records Checks and Background**

4 **Checks**

5 [TAG ftpo]FOR the purpose of requiring criminal ~~background investigations of nursing home~~ history
6 records checks or private agency background checks of certain adult dependent care
7 program potential employees; requiring disclosure of certain criminal convictions or
8 pending criminal charges by certain ~~individuals affiliated with nursing homes~~
9 potential employees of adult dependent care programs; requiring certain reference
10 requests; authorizing certain alcohol or controlled dangerous substancetests;
11 providing for the confidentiality of certain information under certain circumstances;
12 establishing certain procedures for applying for a criminal ~~background investigation~~
13 history records check; providing immunity from civil and criminal liability for certain
14 persons and agencies; requiring the Department of Public Safety and Correctional
15 Services or a private agency to conduct criminal ~~background investigations and~~
16 history records checks or background checks; requiring the Secretary of the
17 Department of Public Safety and Correctional Services to adopt certain regulations;
18 defining certain terms; providing for a certain penalty under certain circumstances;
19 and generally relating to criminal ~~background investigations for nursing home~~
20 history records checks and private agency background checks for adult dependent
21 care program potential employees.

22 BY repealing and reenacting, with amendments,

23 Article - Courts and Judicial Proceedings

24 Section 5-361

25 Annotated Code of Maryland

26 (1995 Replacement Volume and 1995 Supplement)

2

1 BY adding to

2 Article - Health - General

3 Section 19-1801 through ~~19-1809~~ 19-1813, inclusive, to be under the new subtitle

4 "~~Subtitle 18. Employees of Nursing Homes – Criminal Background~~

5 ~~Investigations~~ Adult Dependent Care Programs - Criminal History Records

6 Checks and Background Checks"

7 Annotated Code of Maryland

8 (1990 Replacement Volume and 1995 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article - Courts and Judicial Proceedings**

12 5-361.

13 (a) The following persons or agencies shall be immune from civil or criminal
14 liability in connection with the conducting of a criminal background investigation under
15 Title 5, Subtitle 5, Part VI of the Family Law Article OR TITLE 19, SUBTITLE 18, OF THE
16 HEALTH - GENERAL ARTICLE:

17 (1) An employer that in good faith relies on a criminal background
18 investigation to deny or terminate an individual's employment or participation in a
19 facility;

20 (2) A State or local agency that in good faith relies on a criminal
21 background investigation of an employer to grant, deny, suspend, or revoke licensure,
22 registration, approval, or certification of a facility;

23 (3) A local department of social services that in good faith relies on a
24 criminal background investigation to make a decision concerning the placement of a child
25 committed to it, including a decision to remove a child from a particular facility or home;
26 and

27 (4) A State or local agency that in good faith participates in the making of a
28 criminal background investigation of an employee or employer.

29 (b) The failure of an employer to require a criminal background investigation of
30 an individual when not required under Title 5, Subtitle 5, Part VI of the Family Law
31 Article OR TITLE 19, SUBTITLE 18, OF THE HEALTH - GENERAL ARTICLE may not give
32 rise to civil or criminal liability on the part of the employer for failure to conduct a
33 criminal background investigation.

3

1 **Article - Health - General**

2 ~~SUBTITLE 18. EMPLOYEES OF NURSING HOMES—CRIMINAL BACKGROUND~~
3 ~~INVESTIGATIONS.~~

4 SUBTITLE 18. ADULT DEPENDENT CARE PROGRAMS - CRIMINAL HISTORY
5 RECORDS CHECKS AND BACKGROUND CHECKS

6 19-1801.

7 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

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

11 (B) "ADULT DEPENDENT CARE PROGRAM" MEANS:

12 (1) AN ADULT DAY CARE FACILITY REGULATED UNDER TITLE 14,
13 SUBTITLE 2 OF THIS ARTICLE;

14 (2) A DOMICILIARY CARE FACILITY REGULATED UNDER SUBTITLE 3 OF
15 THIS TITLE;

16 (3) A GROUP HOME REGULATED UNDER TITLE 10, SUBTITLE 5 OR TITLE
17 7, SUBTITLE 6 OF THIS ARTICLE;

18 (4) A HOME HEALTH AGENCY REGULATED UNDER SUBTITLE 4 OF THIS
19 TITLE;

20 (5) A HOSPICE FACILITY REGULATED UNDER SUBTITLE 9 OF THIS
21 TITLE; OR

22 (6) A RELATED INSTITUTION REGULATED UNDER SUBTITLE 3 OF THIS
23 TITLE.

24 (C) "CONVICTION" MEANS A PLEA OR VERDICT OF GUILTY, A PROBATION
25 BEFORE JUDGMENT DISPOSITION OR A PLEA OF NOLO CONTENDERE.

26 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY AND
27 CORRECTIONAL SERVICES.

28 (E) "DISCLOSURE STATEMENT" MEANS A SWORN STATEMENT OR
29 AFFIRMATION OF THE EXISTENCE OF A CRIMINAL CONVICTION OR PENDING
30 CRIMINAL CHARGES WITHOUT A FINAL DISPOSITION.

31 ~~(F) "ELDERLY" MEANS AN INDIVIDUAL WHO:~~

32 ~~(1) IS 55 YEARS OLD OR OLDER;~~

33 ~~(2) LIVES IN A NURSING FACILITY; AND~~

34 ~~(3) HAS A PHYSICAL OR MENTAL DISABILITY THAT REQUIRES~~
35 ~~LONG-TERM CARE.~~

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

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

4 ~~(2) HAS ACCESS TO THE ELDERLY WHO ARE CARED FOR IN THE~~
5 ~~FACILITY.~~

6 ~~(H) "EMPLOYER" MEANS AN OWNER, OPERATOR, PROPRIETOR, OR MANAGER~~
7 ~~OF A NURSING FACILITY.~~

8 ~~(I) (1) "NURSING FACILITY" MEANS A FACILITY WHICH OFFERS NONACUTE~~
9 ~~INPATIENT CARE TO PATIENTS SUFFERING FROM A DISEASE, CONDITION,~~
10 ~~DISABILITY OF ADVANCED AGE, OR TERMINAL DISEASE REQUIRING MAXIMAL~~
11 ~~NURSING CARE WITHOUT CONTINUOUS HOSPITAL SERVICES AND WHO REQUIRE~~
12 ~~MEDICAL SERVICES AND NURSING SERVICES RENDERED BY OR UNDER THE~~
13 ~~SUPERVISION OF A LICENSED NURSE TOGETHER WITH CONVALESCENT SERVICES,~~
14 ~~RESTORATIVE SERVICES, OR REHABILITATIVE SERVICES.~~

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

17 (F) "POTENTIAL EMPLOYEE" MEANS AN INDIVIDUAL APPLYING FOR
18 EMPLOYMENT FOR COMPENSATION AT AN ADULT DEPENDENT CARE PROGRAM
19 AND WHOSE EMPLOYMENT WOULD INCLUDE CARING FOR OR SUPERVISING THE
20 DEPENDENT ADULTS IN THE PROGRAM.

21 ~~(G)~~ (G) "PRINTED STATEMENT" MEANS A LETTER ISSUED BY THE CRIMINAL
22 JUSTICE INFORMATION SYSTEM CITING FEDERAL OR STATE CRIMINAL CHARGES
23 AGAINST AN APPLICANT A POTENTIAL EMPLOYEE WHO REQUESTS A CRIMINAL
24 BACKGROUND HISTORY RECORDS CHECK.

25 ~~(H)~~ (H) "PRIVATE ENTITY" MEANS ANY INDIVIDUAL OR BUSINESS WHO IS
26 NOT AN EMPLOYER, AS DEFINED IN THIS SECTION.

27 ~~(I)~~ (I) "SECRETARY" MEANS THE SECRETARY OF PUBLIC SAFETY AND
28 CORRECTIONAL SERVICES.

29 (J) "CRIMINAL HISTORY RECORDS CHECK" MEANS A CHECK OF CRIMINAL
30 HISTORY RECORD INFORMATION, AS DEFINED IN ARTICLE 27, § 743 OF THE CODE, BY
31 THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

32 (K) "BACKGROUND CHECK" MEANS A CHECK OF COURT AND OTHER
33 RECORDS BY A PRIVATE AGENCY.

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 BEFORE A POTENTIAL EMPLOYEE MAY~~
38 ~~BEGIN EMPLOYMENT WITH AN ADULT DEPENDENT CARE PROGRAM:~~

39 (1) (I) THE POTENTIAL EMPLOYEE SHALL APPLY FOR A CRIMINAL
40 HISTORY RECORDS CHECK AT THE CRIMINAL JUSTICE INFORMATION SYSTEM

5

1 CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
2 CORRECTIONAL SERVICES; OR

3 (II) THE ADULT DEPENDENT CARE PROGRAM SHALL REQUEST A
4 PRIVATE AGENCY TO CONDUCT A BACKGROUND CHECK; AND

5 (2) THE ADULT DEPENDENT CARE PROGRAM SHALL REQUEST A
6 REFERENCE FROM THE POTENTIAL EMPLOYEE'S MOST RECENT EMPLOYER.

7 (B) THE REFERENCE REQUEST REQUIRED UNDER SUBSECTION (A)(2) OF THIS
8 SECTION SHALL, AT A MINIMUM, SEEK INFORMATION ABOUT ANY HISTORY OF
9 PHYSICAL ABUSE ON THE PART OF THE POTENTIAL EMPLOYEE.

10 ~~(B) THE EMPLOYER OR PROSPECTIVE EMPLOYER OF AN APPLICANT WHO IS~~
11 ~~REQUIRED TO HAVE A CRIMINAL BACKGROUND INVESTIGATION UNDER THIS~~
12 ~~SUBTITLE SHALL PAY FOR:~~

13 ~~(1) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL~~
14 ~~BUREAU OF INVESTIGATION FOR CONDUCTING THE CRIMINAL BACKGROUND~~
15 ~~INVESTIGATION;~~

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

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

20 (C) AN ADULT DEPENDENT CARE PROGRAM SHALL PAY FOR A STATE
21 CRIMINAL HISTORY RECORDS CHECK OR A PRIVATE AGENCY BACKGROUND CHECK
22 FOR A POTENTIAL EMPLOYEE.

23 19-1803.

24 (A) IN ADDITION TO A CRIMINAL HISTORY RECORDS CHECK, AN ADULT
25 DEPENDENT CARE PROGRAM MAY REQUIRE AN ALCOHOL OR CONTROLLED
26 DANGEROUS SUBSTANCE TEST OF THE POTENTIAL EMPLOYEE.

27 (B) AN ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCE TEST
28 CONDUCTED UNDER THIS SECTION SHALL COMPLY WITH THE PROVISIONS OF §
29 17-214 OF THIS ARTICLE.

30 19-1804.

31 ~~(A) ON OR BEFORE THE FIRST DAY OF ACTUAL EMPLOYMENT, AN EMPLOYEE~~

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

34 (1) THE POTENTIAL EMPLOYEE SHALL APPLY TO THE DEPARTMENT
35 FOR A PRINTED STATEMENT-; OR

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

1 (B) AS PART OF THE APPLICATION FOR A CRIMINAL ~~BACKGROUND~~
2 ~~INVESTIGATION~~, AN APPLICANT HISTORY RECORDS CHECK, A POTENTIAL
3 EMPLOYEE SHALL SUBMIT TO THE ~~EMPLOYER OR PROSPECTIVE EMPLOYER~~ ADULT
4 DEPENDENT CARE PROGRAM;

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

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

11 (C) THE ~~EMPLOYER OR PROSPECTIVE EMPLOYER~~ ADULT DEPENDENT CARE
12 PROGRAM SHALL SUBMIT THE FINGERPRINTS, DISCLOSURE STATEMENT, AND
13 PAYMENT FOR THE COSTS OF THE CRIMINAL ~~BACKGROUND INVESTIGATION~~
14 HISTORY RECORDS CHECK.

15 (D) THE REQUIREMENT THAT A COMPLETE SET OF LEGIBLE FINGERPRINTS
16 TAKEN ON ~~STANDARD FINGERPRINT CARDS~~ FORMS SPECIFIED BY THE DIRECTOR
17 OF THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY BE
18 SUBMITTED AS PART OF THE APPLICATION FOR A CRIMINAL ~~BACKGROUND~~
19 ~~INVESTIGATION~~ HISTORY RECORDS CHECK MAY BE WAIVED BY THE DEPARTMENT
20 IF:

21 (1) THE ~~APPLICANT~~ POTENTIAL EMPLOYEE HAS ATTEMPTED TO HAVE
22 A COMPLETE SET OF FINGERPRINTS TAKEN ON AT LEAST THREE OCCASIONS;

23 (2) THE TAKING OF A COMPLETE SET OF LEGIBLE FINGERPRINTS IS NOT
24 POSSIBLE BECAUSE OF A PHYSICAL OR MEDICAL CONDITION OF THE ~~PERSON'S~~
25 POTENTIAL EMPLOYEE'S FINGERS OR HANDS;

26 (3) THE ~~APPLICANT~~ POTENTIAL EMPLOYEE SUBMITS DOCUMENTATION
27 SATISFACTORY TO THE DEPARTMENT OF THE REQUIREMENTS OF THIS
28 SUBSECTION; AND

29 (4) THE ~~APPLICANT~~ POTENTIAL EMPLOYEE SUBMITS THE OTHER
30 INFORMATION REQUIRED FOR A CRIMINAL ~~BACKGROUND INVESTIGATION~~
31 HISTORY RECORDS CHECK.

32 ~~49-1804. 19-1805.~~

33 (A) AS PART OF THE APPLICATION PROCESS FOR A CRIMINAL ~~BACKGROUND~~
34 ~~INVESTIGATION~~ HISTORY RECORDS CHECK, AN APPLICANT A POTENTIAL
35 EMPLOYEE SHALL COMPLETE AND SIGN A DISCLOSURE STATEMENT.

36 (B) THE DEPARTMENT OR ITS DESIGNEE SHALL MAIL AN ACKNOWLEDGED
37 RECEIPT OF THE APPLICATION WITH A DISCLOSURE STATEMENT FROM ~~AN A~~
38 POTENTIAL EMPLOYEE WITHIN 3 DAYS OF THE APPLICATION TO:

39 ~~(1) THE EMPLOYEE'S CURRENT OR PROSPECTIVE EMPLOYER AT THE~~
40 ~~NURSING FACILITY;~~

7

1 ~~(2) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE; AND~~

2 (1) THE ADULT DEPENDENT CARE PROGRAM SEEKING TO HIRE THE
3 POTENTIAL EMPLOYEE; AND

4 ~~(3) (2) THE POTENTIAL EMPLOYEE.~~

5 ~~19-1805. 19-1806.~~

6 (A) IF THE ADULT DEPENDENT CARE PROGRAM REQUESTS A PRIVATE
7 AGENCY BACKGROUND CHECK, THE PRIVATE AGENCY SHALL ISSUE A STATEMENT
8 OF ITS FINDINGS TO THE POTENTIAL EMPLOYEE AND THE ADULT DEPENDENT CARE
9 PROGRAM; AND

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

12 ~~19-1807.~~

13 (A) (1) THE DEPARTMENT SHALL CONDUCT THE CRIMINAL ~~BACKGROUND~~
14 ~~INVESTIGATION~~ HISTORY RECORDS CHECK AND ISSUE THE PRINTED STATEMENT
15 PROVIDED FOR UNDER THIS SUBTITLE.

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

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

25 (B) ~~(4)~~ THE DEPARTMENT SHALL PROVIDE A PRINTED STATEMENT OF THE
26 ~~APPLICANT'S~~ POTENTIAL EMPLOYEE'S STATE CRIMINAL RECORD TO THE
27 RECIPIENTS OF THE ACKNOWLEDGMENTS SPECIFIED IN § 19-1804(B) OF THIS
28 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;~~

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) (C)~~ INFORMATION OBTAINED FROM THE DEPARTMENT OR A PRIVATE
15 AGENCY UNDER THIS SUBTITLE SHALL BE CONFIDENTIAL AND MAY BE
16 DISSEMINATED ONLY TO THE APPLICANT POTENTIAL EMPLOYEE WHO IS THE
17 SUBJECT OF THE CRIMINAL BACKGROUND INVESTIGATION HISTORY RECORDS
18 CHECK OR PRIVATE AGENCY BACKGROUND CHECK AND TO ~~THE PARTICIPANTS IN~~
19 ~~THE HIRING OR APPROVAL PROCESS~~ AN ADULT DEPENDENT CARE PROGRAM
20 SEEKING TO HIRE THE POTENTIAL EMPLOYEE.

21 ~~(F) (D)~~ INFORMATION OBTAINED FROM THE DEPARTMENT OR A PRIVATE
22 AGENCY UNDER THIS SUBTITLE MAY NOT:

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

25 (2) BE REDISSEMINATED.

26 ~~(G) (E)~~ INFORMATION OBTAINED FROM THE DEPARTMENT OR A PRIVATE
27 AGENCY UNDER THIS SUBTITLE SHALL BE MAINTAINED IN A MANNER TO INSURE
28 THE SECURITY OF THE INFORMATION.

29 ~~49-1806. 19-1808.~~

30 (A) ~~AN APPLICANT~~ A POTENTIAL EMPLOYEE MAY CONTEST THE FINDING OF
31 A CRIMINAL CONVICTION OR PENDING CHARGE REPORTED IN A PRINTED
32 STATEMENT ISSUED BY THE DEPARTMENT AS PROVIDED IN THIS SECTION.

33 (B) (1) IN CONTESTING THE FINDING OF A CONVICTION OR A PENDING
34 CHARGE, THE ~~APPLICANT~~ POTENTIAL EMPLOYEE SHALL CONTACT THE OFFICE OF
35 THE SECRETARY, OR A DESIGNEE OF THE SECRETARY, AND A HEARING SHALL BE
36 CONVENED WITHIN 20 WORKDAYS, UNLESS SUBSEQUENTLY WAIVED BY THE
37 ~~APPLICANT~~ POTENTIAL EMPLOYEE.

38 (2) THE SECRETARY, OR A DESIGNEE OF THE SECRETARY, SHALL
39 RENDER A DECISION REGARDING THE APPEAL WITHIN 5 WORKDAYS OF THE
40 HEARING.

9

1 (C) (1) FOR THE PURPOSES OF THIS SUBTITLE, THE RECORD OF A
2 CONVICTION FOR A CRIME OR A COPY OF THE RECORD CERTIFIED BY THE CLERK
3 OF THE COURT OR BY A JUDGE OF THE COURT IN WHICH THE CONVICTION
4 OCCURRED, SHALL BE CONCLUSIVE EVIDENCE OF THE CONVICTION.

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

10 (D) FAILURE OF THE ~~APPLICANT~~ POTENTIAL EMPLOYEE TO APPEAR AT THE
11 SCHEDULED HEARING SHALL BE CONSIDERED GROUNDS FOR DISMISSAL OF THE
12 APPEAL.

13 ~~49-4807. 19-1809.~~

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

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

23 ~~49-4808. 19-1810.~~

24 THE FOLLOWING PERSONS OR AGENCIES SHALL HAVE THE IMMUNITY FROM
25 CIVIL OR CRIMINAL LIABILITY DESCRIBED UNDER § 5-361 OF THE COURTS AND
26 JUDICIAL PROCEEDINGS ARTICLE IN CONNECTION WITH A CRIMINAL ~~BACKGROUND~~
27 ~~INVESTIGATION~~ HISTORY RECORDS CHECK UNDER THIS SUBTITLE:

28 (1) ~~AN EMPLOYER~~ AN ADULT DEPENDENT CARE PROGRAM; AND

29 (2) A STATE AGENCY.

30 ~~49-4809. 19-1811.~~

31 (A) AN EMPLOYER PROVIDING A REFERENCE FOR EMPLOYMENT UNDER
32 THIS SUBTITLE AND ACTING IN GOOD FAITH MAY NOT BE HELD LIABLE FOR
33 DISCLOSING ANY INFORMATION ABOUT THE JOB PERFORMANCE OR THE REASON
34 FOR TERMINATION OF EMPLOYMENT OF AN EMPLOYEE OR FORMER EMPLOYEE OF
35 THE EMPLOYER.

36 (B) AN EMPLOYER PROVIDING A REFERENCE UNDER THIS SUBTITLE SHALL
37 BE PRESUMED TO BE ACTING IN GOOD FAITH UNLESS IT IS SHOWN BY CLEAR AND
38 CONVINCING EVIDENCE THAT THE EMPLOYER:

39 (1) ACTED WITH ACTUAL MALICE TOWARD THE EMPLOYEE OR
40 FORMER EMPLOYEE; OR

10

1 (2) INTENTIONALLY OR RECKLESSLY DISCLOSED FALSE INFORMATION
2 ABOUT THE EMPLOYEE OR FORMER EMPLOYEE.

3 19-1812.

4 NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT AN ADULT
5 DEPENDENT CARE PROGRAM FROM OBTAINING A CRIMINAL HISTORY RECORDS
6 CHECK OR BACKGROUND CHECK ON ANY OTHER INDIVIDUAL APPLYING FOR A JOB
7 OR VOLUNTEERING SERVICES IN THE PROGRAM.

8 19-1813.

9 THE SECRETARY SHALL:

10 (1) PROVIDE FOR THE ADOPTION OF A SPECIFIED FORM OR FORMS TO
11 BE USED IN APPLYING FOR THE CRIMINAL ~~BACKGROUND INVESTIGATION HISTORY~~
12 RECORDS CHECK TO BE ISSUED BY THE DEPARTMENT, INCLUDING AN
13 APPROPRIATE DISCLOSURE STATEMENT;

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

17 (3) ADOPT REGULATIONS NECESSARY AND REASONABLE TO
18 ADMINISTER THIS SUBTITLE.

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