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## HEALTH Regulation and Construction of Hospitals and Other Health Care Facilities: Require Nursing Homes to Perform Criminal Record Checks on Applicants for Employment

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## HEALTH

### *Regulation and Construction of Hospitals and Other Health Care Facilities: Require Nursing Homes to Perform Criminal Record Checks on Applicants for Employment*

CODE SECTIONS: O.C.G.A. §§ 31-7-350 to -352 (new)  
BILL NUMBER: HB 318  
ACT NUMBER: 320  
GEORGIA LAWS: 1995 Ga. Laws 570  
SUMMARY: The Act provides for criminal record checks of all persons who wish to become employed by nursing home facilities. It also provides that the Georgia Crime Information Center (GCIC) is immune from liability for faulty reporting. Additionally, the Act immunizes nursing homes from liability for certain claims an employee or employment applicant may have based on a GCIC report to the nursing home facility.  
EFFECTIVE DATE: July 1, 1995

#### *History*

The media have recently focused their attention on a problem of growing concern across the United States—nursing home employees' mistreatment of their patients.<sup>1</sup> Abuses of the elderly

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1. *The Predators* (ABC 20/20 television broadcast, Jan. 20, 1995) (transcript copy available in Georgia State University College of Law Library); Darren M. Allen, *Carroll Murder Brings Nursing Aide Scrutiny*, BALTIMORE MORNING SUN, Apr. 2, 1995, at C14; Peter Eisler, *Pressure Mounts For a New Standard on Screening Aides*, USA TODAY, Apr. 4, 1994, at A8; John Hechinger, *Home Fired 2 in Past Over Abuse; Matthews Center Official Says Mistreatment Claims Brought Swift Action*, CHARLOTTE OBSERVER, Apr. 13, 1995, at A1; Jim Ragsdale, *Background Checks Politically Popular, But May Do Little Good*, ST. PAUL PIONEER PRESS, Apr. 16, 1995, at B3; Chip Wilson, *Complaints Led to Arrest: Nursing Home Fires Aide Accused of Abuse*, CHARLOTTE OBSERVER, Apr. 13, 1995, at 1.

in nursing home facilities range from rape,<sup>2</sup> beatings,<sup>3</sup> intimidation,<sup>4</sup> neglect,<sup>5</sup> and theft<sup>6</sup> to murder.<sup>7</sup> Nursing homes in the United States routinely hire incompetent and unfit individuals to care for their elderly residents without performing background checks.<sup>8</sup> While background checks will not solve all the problems faced by nursing homes entirely, they are a move in the right direction.<sup>9</sup> The federal government and many state legislatures have taken steps towards resolving this growing problem.<sup>10</sup> Georgia recently joined these states by passing HB 318 to ensure greater protection for those who are most vulnerable in our community.<sup>11</sup>

The Act is similar to legislation already in place for other industries.<sup>12</sup> For example, the new legislation is analogous to the hiring requirements for day-care center workers in Georgia.<sup>13</sup> Representative William C. "Billy" Randall and others supported HB 318 because of the mistreatment the elderly were suffering at the hands of nursing home workers who were employed to aid them, not abuse them.<sup>14</sup> The Act attempts to

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2. Linda Fullerton, *Vulnerable Adults Get the Attention of Lawmakers: Bill Designed to Make Nursing Homes Safer*, ST. PAUL PIONEER PRESS, Feb. 28, 1995, at B1.

3. Peter Eisler, *For Many, The Sin is Omission*, USA TODAY, Feb. 21, 1994, at A5.

4. *Id.*

5. Peter Eisler, *Nursing Home System Lax on Bad Aides*, USA TODAY, Feb. 21, 1994, at A1.

6. *Id.*

7. Allen, *supra* note 1.

8. *The Predators*, *supra* note 1.

9. Foon Rhee, *Records Checking Tangled: Legislators Face Lots of Questions*, CHARLOTTE OBSERVER, June 12, 1994, at B1.

10. *Nursing Home Aide Screening Considered*, SACRAMENTO BEE, Apr. 3, 1994, at A3.

11. Telephone Interview with Rep. William C. "Billy" Randall, House District No. 127 (Apr. 25, 1995) [hereinafter Randall Interview]. Rep. Randall was the main sponsor of HB 318. *Id.* The nursing home industry approached Rep. Randall to sponsor this bill because of his previous involvement in, and intimate knowledge of, the industry. *Id.*

12. *Id.*

13. See 1984 Ga. Laws 1397 (codified at O.C.G.A. §§ 49-5-60 to -74 (1994)).

14. Randall Interview, *supra* note 11.

prevent potential problems by requiring criminal record checks before employment actually begins.<sup>15</sup>

### *HB 318*

#### *Criminal Record Checks Mandated*

The Act creates Code section 31-7-351, which requires all nursing homes to request a criminal record check on any employment applicant.<sup>16</sup> However, a nursing home is not automatically prohibited from employing a person with a criminal record.<sup>17</sup> While the Act screens out those persons with a propensity to do harm, it makes clear that nursing homes are not precluded from hiring persons with prior criminal records.<sup>18</sup>

Nursing homes must use forms approved by the GCIC when requesting the criminal record checks and must submit these forms to local law enforcement authorities for processing.<sup>19</sup>

One potential problem the Act fails to address is that the required criminal records check only reflects statewide criminal convictions.<sup>20</sup> The records check required by the Act will not disclose a past history of criminal activity in another state.<sup>21</sup> Therefore, persons with criminal histories crossing state lines and seeking employment in Georgia nursing homes may not be detected.

#### *Fees*

As originally introduced, HB 318 provided that the fee for each criminal record check performed by any law enforcement agency "shall be no greater than the actual cost of processing the request and shall in no event exceed \$4.00 per application."<sup>22</sup> The House

15. Randall Interview, *supra* note 11.

16. O.C.G.A. § 31-7-351(a) (Supp. 1995).

17. *Id.*

18. *Id.*; Randall Interview, *supra* note 11.

19. O.C.G.A. § 31-7-351(b) (Supp. 1995).

20. Interview with Irene Munn, Director of Public Affairs, Georgia Sheriff's Association, in Atlanta, Georgia (Apr. 28, 1995) [hereinafter Munn Interview].

21. *Id.* See generally *Keep Out the Criminals: Most Other States Already Require Criminal Checks to Protect Children and the Elderly. What's the Problem Here?*, CHARLOTTE OBSERVER, June 19, 1994, at C2; *Shameful Delay In Ending Nursing-Home Abuses*, USA TODAY, Feb. 21, 1994, at A10.

22. HB 318, as introduced, 1995 Ga. Gen. Assem.

Special Judiciary Committee amended the original bill to provide that the fee shall be no "greater than the actual cost of processing the request."<sup>23</sup> The change was requested because the language "not to exceed \$4.00" was considered problematic.<sup>24</sup>

The Georgia Sheriff's Association was unsure of the exact cost of processing requests of this type, but believed that it would be unfair to expect the taxpayers to absorb the charges in excess of \$4.00, if the costs exceeded this amount.<sup>25</sup> Additionally, a separate bill, HB 314, was introduced by Representative Curtis S. Jenkins, of the 110th District, which also allowed for GCIC checks.<sup>26</sup> That bill had a maximum \$20.00 processing fee in its language.<sup>27</sup> The Sheriff's Association wanted to make sure that the dollar amount in HB 318 was consistent with other laws.<sup>28</sup>

Although lobbyists did not agree with this proposed maximum amount, they did agree to language of "no greater than the actual cost of processing the request."<sup>29</sup> While some sheriffs in small counties might not charge a fee for this service, sheriffs in other counties might charge more than the \$4.00 limit the nursing home lobbyists sought.<sup>30</sup> A compromise was struck.<sup>31</sup> The Act limits the fee to "no greater than the actual cost of processing the request."<sup>32</sup>

### *Notice to Applicants & Disclaimer of Liability*

Code section 31-7-351 requires that nursing homes plainly and boldly state on their employment applications that, as a matter of law, all applicants for employment are subject to criminal record checks.<sup>33</sup> The GCIC is not liable to potential employees of nursing homes for the accuracy of the report.<sup>34</sup> Nursing homes are not liable to persons they refuse to employ or to current

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23. HB 318 (HCA), 1995 Ga. Gen. Assem.

24. Munn Interview, *supra* note 20.

25. Munn Interview, *supra* note 20.

26. HB 314, as introduced, 1995 Ga. Gen. Assem.

27. *Id.*

28. Munn Interview, *supra* note 20.

29. Munn Interview, *supra* note 20.

30. Munn Interview, *supra* note 20.

31. Munn Interview, *supra* note 20.

32. O.C.G.A. § 31-7-351(b) (Supp. 1995).

33. *Id.* § 31-7-351(c).

34. *Id.* § 31-7-352(a).

employees for acting on erroneous information provided to them by the GCIC.<sup>35</sup>

### *Definitions*

The Act adds article 14 to chapter 7 of title 31,<sup>36</sup> providing definitions of terms used in the Act.<sup>37</sup> "Nursing home" is defined as any nursing facility required by law to be licensed or as otherwise permitted under chapter 7 of title 31.<sup>38</sup> Code section 31-7-350(1) provides that a "conviction" includes "a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought."<sup>39</sup> The bill, as introduced, included in its definition of "crime" only crimes against the person and theft crimes.<sup>40</sup> These were the only specific offenses included because nursing home patients are most often victims of these types of crimes.<sup>41</sup> The Senate Committee on Youth, Aging, and Human Ecology offered an amendment to the original bill that included in the definition of "crime" felony violations relating to controlled substances.<sup>42</sup> Drug-related convictions were added to the list of crimes because the Committee believed that it would be important to know whether potential employees might still have substance abuse problems.<sup>43</sup> The Committee also believed that persons with substance abuse problems might be more prone to steal than others to support their habits.<sup>44</sup> Adding this felony to the list of crimes helps to further screen out those persons with the potential to abuse.<sup>45</sup> Both the House and Senate adopted this amendment.<sup>46</sup>

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35. *Id.* § 31-7-352(b).

36. *Id.* §§ 31-7-350 to -352.

37. *Id.* § 31-7-350.

38. *Id.* § 31-7-350(6).

39. *Id.* § 31-7-350(1).

40. HB 318, as introduced, 1995 Ga. Gen. Assem.

41. Randall Interview, *supra* note 11.

42. HB 318 (SCA), 1995 Ga. Gen. Assem.

43. Randall Interview, *supra* note 11.

44. Randall Interview, *supra* note 11.

45. Randall Interview, *supra* note 11.

46. O.C.G.A. § 31-7-350(2) (Supp. 1995).

“Criminal record” is defined to include a criminal conviction;<sup>47</sup> an “[a]rrest, charge, and sentencing for a crime”;<sup>48</sup> or an arrest or charges for a crime which has not yet been prosecuted.<sup>49</sup> The GCIC criminal record report, when processed, would reflect all arrests, convictions, and other dispositions.<sup>50</sup> Therefore, if the bill had included a narrower definition of criminal record, law enforcement agencies would have been required to redact all portions of the report that did not comport with the narrow definition of criminal record.<sup>51</sup> This would have entailed an error-prone, time-consuming process.<sup>52</sup>

Code section 31-7-350 defines “employment applicant” as “any person seeking employment by a nursing home” and specifically excludes anyone employed by a nursing home prior to July 1, 1995.<sup>53</sup> The definition of employment applicant does not encompass independent contractors; it encompasses only applicants who would be on the employment payroll of the nursing home facility.<sup>54</sup> In many instances, nursing home facilities employ independent contractors for an extended period of time, such as maintenance staff workers.<sup>55</sup> Thus, this screening process may be undermined if criminal record checks are not required of all types of nursing home workers, including independent contractors not generally considered to be employees.<sup>56</sup>

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47. *Id.* § 31-7-350(3)(A).

48. *Id.* § 31-7-350(3)(B).

49. *Id.* § 31-7-350(3)(C).

50. Munn Interview, *supra* note 20.

51. Munn Interview, *supra* note 20.

52. Munn Interview, *supra* note 20.

53. O.C.G.A. § 31-7-350(4) (Supp. 1995).

54. Randall Interview, *supra* note 11.

55. Randall Interview, *supra* note 11.

56. Munn Interview, *supra* note 20.