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HEALTH Nursing Homes Employee Record Checks: Change Certain Definitions; Define Additional Terms; Change the Provisions Relating to Request for a Criminal Record Check with Respect to an Applicant for Employment in a Nursing Home; Provide That a Nursing Home Shall Make a Written Determination for Each Applicant for Whom a Criminal Record Check Is Performed; Provide That a Nursing Home Shall Not Employ a Person with an Unsatisfactory Determination; Provide That a Nursing Home That Hires an Applicant for Employment with a Criminal Record Shall Be Subject to Civil Penalties;

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HEALTH

Nursing Homes Employee Record Checks: Change Certain Definitions; Define Additional Terms; Change the Provisions Relating to Request for a Criminal Record Check with Respect to an Applicant for Employment in a Nursing Home; Provide That a Nursing Home Shall Make a Written Determination for Each Applicant for Whom a Criminal Record Check Is Performed; Provide That a Nursing Home Shall Not Employ a Person with an Unsatisfactory Determination; Provide That a Nursing Home That Hires an Applicant for Employment with a Criminal Record Shall Be Subject to Civil Penalties; Provide for the Amount of Civil Penalties and Conditions for the Assessment of Such Penalties

CODE SECTIONS: O.C.G.A. §§ 31-7-350, -351 (amended), 31-7-353 (new)
BILL NUMBER: HB 263
ACT NUMBER: 255
GEORGIA LAWS: 2001 Ga. Laws 806
SUMMARY: The Act requires that nursing homes perform a criminal records check before hiring any new employee. The Act also prohibits a nursing home from hiring anyone with an unsatisfactory determination and provides for penalties of \$500 per day for each day that the nursing home employs anyone with a criminal record.
EFFECTIVE DATE: July 1, 2001

History

In response to the rising incidence of elder abuse in nursing homes, the Georgia General Assembly passed a law in 1995 requiring nursing homes to conduct a criminal background check on all potential employees.¹ The law, however, did not provide for any penalties for

1. See *Review of Selected 1995 Georgia Legislation*, 12 GA. ST. U. L. REV. 252 (1995) [hereinafter *Review of Legislation*]; see also Electronic Mail Interview with Becky Kurtz, State Long-Term Care Ombudsman (Mar. 26, 2001) [hereinafter *Kurtz Interview*]; Electronic Mail Interview with Gayle Sexton, Director, Georgia Nursing Home Association (Mar. 26, 2001) [hereinafter *Sexton Interview*].

hiring someone with a criminal record.² Although there is little public opposition to the many other industries that employ staff with a criminal record, the nursing home setting is of particular concern due to the vulnerability of nursing home residents.³ Advocates, although cognizant of the staffing shortage in nursing homes, were concerned that nursing homes were not being penalized for hiring someone with a criminal record.⁴ “When the media raised the question, [the nursing home] industry was sensitive to the issue of terminating good people who have rehabilitated themselves and have become invaluable to [their] residents.”⁵ Thus, the nursing home industry worked to “grandfather these people out” of the proposed bill; the Georgia Nursing Home Association accordingly backed the proposed legislation as a solution to the perceived dilemma.⁶

HB 263

Introduction

HB 263 was introduced in the House on January 26, 2001.⁷ The House assigned the bill to its Human Relations and Aging Committee, which favorably reported the bill on January 31, 2001, without changes.⁸ The House adopted and passed the bill unanimously on February 2, 2001, without changes.⁹ On February 5, 2001, the Senate assigned HB 263 to its Special Judiciary Committee, which favorably reported the bill, as substituted, on February 21, 2001.¹⁰ The Senate adopted the Committee substitute, along with a floor amendment, and unanimously passed the bill on March 13, 2001.¹¹ The House disagreed with the Senate’s version and a Conference Committee was appointed on

2. See *Review of Legislation*, *supra* note 1, at 254; see also Kurtz Interview, *supra* note 1; Sexton Interview, *supra* note 1.

3. See Kurtz Interview, *supra* note 1; Sexton Interview, *supra* note 1.

4. See Kurtz Interview, *supra* note 1.

5. Sexton Interview, *supra* note 1.

6. See *id.*

7. See State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

8. *Id.*

9. See Georgia House of Representatives Voting Record, HB 263 (Feb. 2, 2001); State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

10. See State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

11. See HB 263 (SCSFA), 2001 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

March 21, 2001.¹² Both the House and the Senate adopted the Conference Committee report on March 21, 2001.¹³ The General Assembly forwarded the bill to Governor Roy Barnes, who signed HB 263 into law on April 27, 2001.¹⁴

Consideration by the House

After introduction, the House assigned the bill to its Human Relations and Aging Committee, which favorably reported the bill without alteration on January 31, 2001.¹⁵ The House unanimously passed HB 263 on February 2, 2001.¹⁶ The bill was referred to the Senate Special Judiciary Committee on February 5, 2001.¹⁷

Consideration by the Senate

After referral, the Senate Special Judiciary Committee favorably reported HB 263, as substituted, on February 21, 2001.¹⁸ The Committee substitute changed language in proposed new Code section 31-7-353, to provide that instead of fines running from the time that the facility was informed of a violation, penalties should accrue from the time the nursing home knew or should have known that it was employing an individual with a criminal record.¹⁹

Senator Thomas Price of the 56th District proposed a floor amendment to HB 263, providing that Code section 31-39-4 be amended to exempt any staff member of an assisted living facility or personal care home from liability for not carrying out a “do not resuscitate” (DNR) order.²⁰ The Senate adopted the committee substitute and unanimously passed the bill, with the floor amendment, on March 13, 2001.²¹

12. See State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001; Audio Recording of House Proceedings, HB 263, Mar. 21, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> (initiation of Conference Committee proceedings).

13. See Georgia House of Representatives Voting Record, HB 263 (Mar. 21, 2001); Georgia Senate Voting Record, HB 263 (Mar. 21, 2001).

14. See 2001 Ga. Laws 806, § 4, at 808.

15. See State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

16. See Georgia House of Representatives Voting Record, HB 263 (Feb. 2, 2001); State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

17. See State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

18. *Id.*

19. Compare HB 263, as introduced, 2001 Ga. Gen. Assem., with HB 263 (SCS), 2001 Ga. Gen. Assem.

20. Compare HB 263 (SCS), 2001 Ga. Gen. Assem., with HB 263 (SCSFA), 2001 Ga. Gen. Assem.

21. See Georgia Senate Voting Record, HB 263 (Mar. 13, 2001); State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

House of Representatives Conference Committee

The House rejected the Senate version of the bill on March 19, 2001.²² The bill was referred to a Conference Committee on March 21, 2001.²³ The Conference Committee dropped the floor amendment and recommended HB 263 as amended by the Senate Special Judiciary Committee.²⁴ The House and the Senate adopted the Conference Committee report on March 21, 2001.²⁵

The Act

The Act amends Code section 31-7-350, by limiting the definition of “crime” to newly enumerated felonies only, and by providing that a criminal record is one that has reached final disposition within ten years of the date of the criminal records check.²⁶ The Act also amends Code section 31-7-351 to require that nursing homes make a written determination for each applicant for whom a record check is performed; it also prohibits a nursing home from hiring anyone with an unsatisfactory determination.²⁷ In addition, the Act creates a new Code section, 31-7-353, which mandates penalties of \$500 per day for each day on which the nursing home employs someone that the nursing home administrator knew or should have known had a criminal record.²⁸

Opposition to HB 263

Advocates were concerned that by limiting the criminal background check to a ten year window, it would be possible for an individual who had served a ten year prison sentence to be hired as a nursing home employee immediately upon release from prison.²⁹ Advocates also initially expressed concerns to senators that no misdemeanors were included in the enumerated crimes, and that the penalties section was

22. See State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

23. See *id.*

24. Compare HB 263 (SCSFA), 2001 Ga. Gen. Assem., with HB 263 (CCS), 2001 Ga. Gen. Assem.; see also HB 263 (SCS), 2001 Ga. Gen. Assem.

25. See State of Georgia Final Composite Status Sheet, HB 263, Mar. 21, 2001.

26. Compare 1995 Ga. Laws 570, § 1, at 570 (formerly found at O.C.G.A. § 31-7-350 (1996)), with O.C.G.A. § 31-7-350 (2001).

27. Compare 1995 Ga. Laws 570, § 1, at 570 (formerly found at O.C.G.A. § 31-7-351 (1996)), with O.C.G.A. § 31-7-351 (2001).

28. See O.C.G.A. § 31-7-353 (2001).

29. See Kurtz Interview, *supra* note 1.

weak.³⁰ In particular, theft crimes are common in nursing facilities, and advocates felt that individuals with a history of even misdemeanor theft crimes should be prohibited from employment in nursing homes.³¹ The penalties section was ultimately strengthened to provide for civil liability for hiring anyone the nursing home administrator knew or should have known had a criminal record.³²

Senator Price's floor amendment also stirred some controversy.³³ There were concerns that the amendment "would have allowed individuals with little or no training in health care . . . to make life-or-death decisions about whether to intervene."³⁴ In addition, although the Ombudsman Program acknowledges the necessity of carrying out a patient's wishes in a DNR order, the amendment did not propose consistent changes throughout DNR law nor did it provide any safeguards as to who may be qualified to make the decisions.³⁵ Consequently, Senator Price agreed to drop his amendment and work together with other concerned parties on the issue for the next session.³⁶

Anne-Marie Motto

30. *Id.*

31. *Id.*

32. Compare 1995 Ga. Laws 570, § 1, at 570 (formerly found at O.C.G.A. § 31-7-350 (1996)), with O.C.G.A. § 31-7-350 (2001). See also Electronic Mail Correspondence with Gayle Sexton, Director, Georgia Nursing Home Association, Oct. 16, 2001 (on file with the *Georgia State University Law Review*) (noting that the penalties were strengthened in order to give the administrators an incentive to comply with the law).

33. See HB 263 (SCSFA), 2001 Ga. Gen. Assem.

34. Kurtz Interview, *supra* note 1.

35. *Id.*

36. See Electronic Mail Interview with Sen. Thomas Price, Senate District No. 56 (Apr. 4, 2001); Kurtz Interview, *supra* note 1.