

2011 -- H 5665

LC01375

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO HEALTH AND SAFETY -- CRIMINAL BACKGROUND CHECKS

Introduced By: Representatives Marcello, and Hearn

Date Introduced: March 03, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings. – The general assembly hereby finds and declares that:

2 (1) Seniors and persons with disabilities who are dependent upon in-home health  
3 care/residential service workers are vulnerable to abuse, assault and/or exploitation;

4 (2) In-home health care workers may live or have lived outside of Rhode Island;

5 (3) Applicants for employment in thirty (30) occupations are required to undergo a  
6 statewide criminal background (BCI) check;

7 (4) Only applicants for employment fifteen (15) occupations are required to undergo a  
8 nationwide BCI check;

9 (5) The BCI check fee is waived for applicants and employers in six (6) occupations; and

10 (6) The system of criminal background checks should be uniform for all in-home health  
11 care/residential service workers.

12 SECTION 2. Sections 23-17-34 and 23-17-35 of the General Laws in Chapter 23-17  
13 entitled "Licensing of Health Care Facilities" are hereby amended to read as follows:

14 **23-17-34. Criminal records review -- Nursing facilities -- Home nursing care**  
15 **providers and home care providers.** -- (a) Any person seeking employment in a nursing facility,  
16 a home nursing care provider, or a home care provider which is or is required to be licensed,  
17 registered or certified with the department of health if that employment involves routine contact  
18 with a patient or resident without the presence of other employees, shall undergo a [nationwide](#)  
19 [and statewide](#) criminal background check to be initiated prior to or within one week of

1 employment. All employees hired prior to the enactment of this section shall be exempted from  
2 the requirements of this section.

3 (b) The director of the department of health may by rule identify those positions  
4 requiring criminal background checks. The identified employee, through the employer, shall  
5 apply to the bureau of criminal identification of the state police or local police department for a  
6 statewide criminal records check. Fingerprinting shall not be required. Upon the discovery of any  
7 disqualifying information as defined in section 23-17-37 and in accordance with the rule  
8 promulgated by the director of health, the bureau of criminal identification of the state police or  
9 the local police department will inform the applicant, in writing, of the nature of the disqualifying  
10 information; and, without disclosing the nature of the disqualifying information, will notify the  
11 employer, in writing, that disqualifying information has been discovered.

12 (c) An employee against whom disqualifying information has been found may request  
13 that a copy of the criminal background report be sent to the employer who shall make a judgment  
14 regarding the continued employment of the employee.

15 (d) In those situations in which no disqualifying information has been found, the bureau  
16 of criminal identification of the state police or the local police shall inform the applicant and the  
17 employer, in writing, of this fact.

18 (e) The employer shall maintain on file, subject to inspection by the department of  
19 health, evidence that criminal records checks have been initiated on all employees seeking  
20 employment after October 1, 1991, and the results of the checks. Failure to maintain that evidence  
21 would be grounds to revoke the license or registration of the employer.

22 (f) It shall be the responsibility of the bureau of criminal identification of the state police  
23 or the local police department to conduct the [nationwide and statewide](#) criminal records check to  
24 the applicant for employment without charge to either the employee or the employer.

25 **23-17-35. Prior criminal records checks.** -- If an applicant for employment has  
26 undergone a [nationwide and](#) statewide criminal records check within eighteen (18) months of an  
27 application for employment, then an employer may request from the bureau of criminal  
28 identification or local police a letter indicating if any disqualifying information was discovered.  
29 The bureau of criminal identification will respond without disclosing the nature of the  
30 disqualifying information. The letter may be maintained on file to satisfy the requirements of this  
31 chapter.

32 SECTION 3. Sections 23-17.4-5, 23-17.4-15.1.1, 23-17.4-15.2, 23-17.4-27 and 23-17.4-  
33 28 of the General Laws in Chapter 23-17.4 entitled "Assisted Living Residence Licensing Act"  
34 are hereby amended to read as follows:

1           **23-17.4-5. Application for license.** -- An application for a license shall be made to the  
2 licensing agency upon forms provided by it and shall contain any information that the licensing  
3 agency reasonably requires, which may include affirmative evidence of ability to comply with  
4 reasonable standards, rules, and regulations as are lawfully prescribed under this chapter. The  
5 licensing agency shall require [nationwide and statewide](#) criminal background checks on owners  
6 and operators of licensed assisted living residences.

7           **23-17.4-15.1.1. Administrator requirements.** -- (a) Each assisted living residence shall  
8 have an administrator who is certified by the department in accordance with regulations  
9 established pursuant to section 23-17.4-21.1 in charge of the maintenance and operation of the  
10 residence and the services to the residents. The administrator is responsible for the safe and  
11 proper operation of the residence at all times by competent and appropriate employee(s).

12           (b) The licensing agency shall perform a [nationwide and statewide](#) criminal background  
13 records check on any person applying or reapplying for certification as an administrator. If  
14 disqualifying information is found, the licensing agency shall make a judgment regarding  
15 certification for that person.

16           **23-17.4-15.2. Administrator requirements.** -- (a) Each assisted living residence shall  
17 have an administrator who is certified by the department in accordance with regulations  
18 established pursuant to section 23-17.4-21.1 in charge of the maintenance and operation of the  
19 residence and the services to the residents. The administrator is responsible for the safe and  
20 proper operation of the residence at all times by competent and appropriate employee(s).

21           (b) The licensing agency shall perform a [nationwide and statewide](#) criminal background  
22 records check on any person applying or reapplying for certification as an administrator. If  
23 disqualifying information is found, the licensing agency shall make a judgment regarding  
24 certification for that person.

25           (c) The department may suspend or revoke the certification of an administrator for cause,  
26 including but not limited to failure to maintain compliance with the qualifications stated in this  
27 section, repeated or intentional violations of this chapter or regulations, or conviction (including  
28 but not limited to a plea of nolo contendere) to charges of resident abuse under the provisions of  
29 chapter 17.8 of this title, or a conviction of a felony, or exploitation.

30           **23-17.4-27. Criminal records review.** -- (a) Any person seeking employment in any  
31 assisted living residence licensed under this act and having routine contact with a resident or  
32 having access to a resident's belongings or funds shall undergo a [nationwide and statewide](#)  
33 criminal background check to be processed prior to or within one week of employment. All  
34 employees hired prior to the enactment of this section shall be exempted from the requirements of

1 this section.

2 (b) The director of the department of health may by rule identify those positions  
3 requiring [nationwide and statewide](#) criminal background checks. The employee, through the  
4 employer, shall apply to the bureau of criminal identification of the state police or local police  
5 department for a statewide criminal records check. Fingerprinting shall not be required. Upon the  
6 discovery of any disqualifying information as defined in section 23-17.4-30 and in accordance  
7 with the rule promulgated by the director of health, the bureau of criminal identification of the  
8 state police or the local police department will inform the applicant in writing of the nature of the  
9 disqualifying information; and, without disclosing the nature of the disqualifying information,  
10 will notify the employer in writing that disqualifying information has been discovered.

11 (c) An employee against whom disqualifying information has been found may request  
12 that a copy of the criminal background report be sent to the employer. The administrator shall  
13 make a judgment regarding the continued employment of the employee.

14 (d) In those situations in which no disqualifying information has been found, the bureau  
15 of criminal identification (BCI) of the state police or the local police shall inform the applicant  
16 and the employer in writing of this fact.

17 (e) The employer shall maintain on file, subject to inspection by the department of  
18 health, evidence that criminal records checks have been initiated on all employees seeking  
19 employment after October 1, 1991, and the results of the checks. Failure to maintain that evidence  
20 would be grounds to revoke the license or registration of the employer.

21 (f) It shall be the responsibility of the bureau of criminal identification (BCI) of the state  
22 police or the local police department to conduct the criminal records check to the applicant for  
23 employment without charge to either the employee or employer.

24 **23-17.4-28. Prior criminal records checks.** -- If an applicant for employment has  
25 undergone a [nationwide and](#) statewide criminal records check within eighteen (18) months of an  
26 application for employment, then an employer may request from the bureau of criminal  
27 identification or local police a letter indicating if any disqualifying information was discovered.  
28 The bureau of criminal identification will respond without disclosing the nature of the  
29 disqualifying information. The letter may be maintained on file to satisfy the requirements of this  
30 chapter.

31 SECTION 4. Sections 23-17.7.1-17 and 23-17.7.1-18 of the General Laws in Chapter 23-  
32 17.7.1 entitled "Licensing of Nursing Service Agencies" are hereby amended to read as follows:

33 **23-17.7.1-17. Criminal records review.** -- (a) Any person seeking employment in a  
34 facility which is or is required to be licensed or registered with the department of health if that

1 employment involves routine contact with a patient or resident without the presence of other  
2 employees, shall undergo a [nationwide and statewide](#) criminal background check, which shall be  
3 initiated prior to, or within one week of, employment. All employees hired prior to the enactment  
4 of this section shall be exempted from the requirements of this section.

5 (b) The director of the department of health may, by rule, identify those positions  
6 requiring criminal background checks. The employee, through the employer, shall apply to the  
7 bureau of criminal identification of the state police or local police department for a [nationwide](#)  
8 [and](#) statewide criminal records check. Fingerprinting shall not be required. Upon the discovery of  
9 any disqualifying information as defined in section 23-17.7.1-20 and in accordance with the rule  
10 promulgated by the director of the department of health, the bureau of criminal identification of  
11 the state police or the local police department will inform the applicant, in writing, of the nature  
12 of the disqualifying information; and, without disclosing the nature of the disqualifying  
13 information, will notify the employer, in writing, that disqualifying information has been  
14 discovered.

15 (c) An employee against whom disqualifying information under section 23-17.7.1-20(b)  
16 has been found may request that a copy of the criminal background report be sent to the employer  
17 who shall make a judgment regarding the continued employment of the employee.

18 (d) In those situations in which no disqualifying information has been found, the bureau  
19 of criminal identification of the state police or the local police shall inform the applicant and the  
20 employer, in writing, of this fact.

21 (e) The employer shall maintain on file, subject to inspection by the department of  
22 health, evidence that criminal records checks have been initiated on all employees. Failure to  
23 maintain that evidence would be grounds to revoke the license or registration of the employer.

24 (f) It shall be the responsibility of the bureau of criminal identification of the state police  
25 or the local police department to conduct the criminal records check to the applicant for  
26 employment without charge to either the employee or the employer.

27 **23-17.7.1-18. Prior criminal records checks.** -- If an applicant for employment has  
28 undergone a [nationwide and](#) statewide criminal records check within eighteen (18) months of an  
29 application for employment, then an employer may request from the bureau of criminal  
30 identification or local police a letter indicating if any disqualifying information was discovered.  
31 The bureau of criminal identification will respond without disclosing the nature of the  
32 disqualifying information. The letter may be maintained on file to satisfy the requirements of this  
33 chapter.

34 SECTION 5. Section 23-17.24-2 of the General Laws in Chapter 23-17.24 entitled "The

1 Adult Supportive Care Residence Act" is hereby amended to read as follows:

2 **23-17.24-2. Licensure requirements.** -- (a) No person shall operate an adult supportive  
3 care home without first obtaining a license from the Rhode Island department of health.

4 (b) The director is authorized to promulgate regulations for the departmental licensure of  
5 adult supportive care homes including, but not limited to, minimum requirements for managers,  
6 staffing, staff training, assessments, service plan development, services to include food service  
7 and housekeeping/laundry, physical and environment standards for the home, resident rights,  
8 resident records, resident capacity for self-preservation, residency agreement/contracts and  
9 quality assurance.

10 (c) The department may adopt regulations for special care requirements beyond the  
11 personal assistance required in subdivision 23-17.23-1(5) for adult supportive care homes serving  
12 persons with dementia and/or behavioral health diagnoses.

13 (d) Nationwide and statewide criminal ~~Criminal~~ background checks of persons seeking  
14 employment at adult supportive care homes shall be conducted in accordance with the standards  
15 and procedures contained in sections 23-17.4-27, 23-17.4-28 and 23-17.4-30.

16 (e) It shall be the responsibility of the bureau of criminal identification of the state police  
17 or the local police department to conduct the criminal records check of the applicant for  
18 employment without charge to either the employee or the employer.

19 ~~(e)~~(f) An adult supportive care home shall provide a qualified on-duty staff person over  
20 the age of eighteen (18) on the premises at all times that any supportive care residents are on the  
21 premises of the home.

22 SECTION 6. Section 39-18-4.1 of the General Laws in Chapter 39-18 entitled "Rhode  
23 Island Public Transit Authority" is hereby amended to read as follows:

24 **39-18-4.1. Health and safety of passengers.** -- (a) The authority shall have the power to  
25 establish reasonable rules of conduct for passengers for the protection of the health and safety of  
26 passengers and employees of the authority. The rules shall incorporate the provisions of the  
27 Americans with Disabilities Act of 1990, 42 USC section 12101 et seq., and section 28-5.1-7,  
28 chapter 28 of title 11 and chapter 87 of title 42 and be promulgated in accordance with the  
29 provisions of chapter 35 of title 42.

30 (b) All controversies arising out of application of any provision of this section shall be  
31 determined by the general manager or his or her designated hearing officer, who shall afford a  
32 hearing to the passenger and/or his or her parent or guardian, and, after hearing, shall render a  
33 written decision. The decision of the general manager or hearing officer shall be final except that  
34 the passenger aggrieved by the decision shall have a right of appeal to the superior court, which

1 shall affirm the decision unless it is clearly erroneous or contrary to law. The hearing shall be  
2 conducted in accordance with the provisions of chapter 35 of title 42.

3 (c) Notice shall be provided to the RIdE funding agency or agencies for any hearing  
4 regarding their client/passengers on RIdE vehicles. A representative of the RIdE funding agency  
5 or agencies may attend the hearing. The general manager or hearing officer will consider the  
6 recommendation of the RIdE funding agency's representative in rendering his/her decision.

7 (d) The decision of the general manager or hearing officer may include:

8 (1) Refusing to transport a person whose violation of the rules of the authority threatens  
9 the health and safety of passengers or employees of the authority, for a period not to exceed six  
10 (6) months; and/or

11 (2) Revoking a passenger's ticket, pass, or other fare medium, regardless of the number  
12 of trips or time period for which the ticket, pass, or other fare medium is valid, if the passenger's  
13 continued presence on an authority vehicle or at an authority facility threatens the health or safety  
14 of the authority's other passengers or employees. The authority shall within a reasonable time  
15 after such a revocation, refund to the passenger the unused value of the ticket, pass, or other fare  
16 medium.

17 (e) Nothing under this section precludes any other action permitted by law.

18 (f) All RIdE buses shall be installed with passenger security cameras when federal funds  
19 become available for this purpose.

20 (g) Any person seeking employment as a RIdE bus driver shall undergo a criminal  
21 background check to be initiated prior to or within one week of employment. All employees hired  
22 prior to the enactment of this subsection shall be exempted from its requirements.

23 (1) The applicant shall apply to the bureau of criminal identification (BCI), department  
24 of attorney general, state police or local police department where he or she resides, for a  
25 nationwide and statewide criminal records check, without charge to either the employee or the  
26 employer. Fingerprinting shall not be required. Upon the discovery of any disqualifying  
27 information as defined in section 23-17-37, the bureau of criminal identification of the state  
28 police or the local police department will inform the applicant, in writing, of the nature of the  
29 disqualifying information; and, without disclosing the nature of the disqualifying information,  
30 will notify the employer, in writing, that disqualifying information has been discovered.

31 (2) An individual against whom disqualifying information has been found may request  
32 that a copy of the criminal background report be sent to the employer who shall make a judgment  
33 regarding the ability of the individual to drive a RIdE bus. In those situations in which no  
34 disqualifying information has been found, the bureau of criminal identification, state police or

1 local police department shall inform the applicant and the employer in writing of this fact.

2 (3) The criminal record check requirements of this section shall apply only to persons  
3 seeking to drive Ride buses.

4 SECTION 7. Sections 40-13.2-4.1, 40-13.2-5.1 and 40-13.2-6 of the General Laws in  
5 Chapter 40-13.2 entitled "Certification of Child Care and Youth Serving Agency Workers" are  
6 hereby amended to read as follows:

7 **40-13.2-4.1. Criminal records check -- Operators of youth serving agencies.** -- (a)

8 Any person seeking to operate a facility or program which is a youth serving agency shall apply  
9 to the bureau of criminal identification of the attorney general's office for a [nationwide and](#)  
10 [statewide](#) criminal records check. Those items of information appearing on a criminal records  
11 check, which have been determined to constitute disqualifying information by the director  
12 pursuant to section 40-13.2-4 of this chapter, shall also constitute items of disqualifying  
13 information pursuant to this section.

14 (b) Upon the discovery of any disqualifying information as defined in accordance with  
15 the rule promulgated by the director, the bureau of criminal identification of the attorney general's  
16 office will inform the applicant, in writing, of the nature of the disqualifying information. In  
17 addition, the bureau of criminal identification of the attorney general's office will inform the  
18 applicant, in writing, without disclosing the nature of the disqualifying information, that an item  
19 of disqualifying information has been discovered.

20 (c) In those situations in which no disqualifying information has been found, the bureau  
21 of criminal identification of the attorney general's office will inform the applicant, in writing, of  
22 this fact.

23 (d) The operator or proposed operator of the youth serving agency will maintain on file a  
24 document issued by the bureau of criminal identification of the attorney general's office stating  
25 that no disqualifying information has been discovered as regards the operator or proposed  
26 operator of the youth serving agency, and this document shall be made available for inspection by  
27 the parent(s)/guardian(s) of any child enrolled in the programs of the youth serving agency. The  
28 operator will also maintain on file, and make available for inspection by the parent(s)/guardian(s)  
29 of any child enrolled in the programs of the youth serving agency, evidence that criminal records  
30 checks have been obtained on all employees of the youth serving agency pursuant to section 40-  
31 13.2-5.1, and the results of the checks.

32 **40-13.2-5.1. Criminal records check -- Employee of youth serving agency.** -- (a) Any

33 person seeking employment, if that employment involves supervisory or disciplinary power over  
34 a child or children or involves routine contact with a child or children without the presence of



1 other employees, in any facility or program which is a youth serving agency shall file with the  
2 employer the affidavit required by section 40-13.2-3. Said affidavit shall be maintained on file by  
3 the employer and shall be made available for inspection by the parent(s)/guardian(s) of any child  
4 who is enrolled in the programs of the youth serving agency.

5 (b) Any person seeking employment, if that employment involves supervisory or  
6 disciplinary authority over a child or children or involves routine contact with a child or children  
7 without the presence of other employees, in any youth serving agency, shall apply to the bureau  
8 of criminal identification of the attorney general's office for a [nationwide and statewide](#) criminal  
9 records check.

10 (c) Those items of information appearing on a criminal records check which have been  
11 determined to constitute disqualifying information by the director pursuant to section 40-13.2-4  
12 of this chapter shall also be items of disqualifying information pursuant to this section.

13 (d) Upon the discovery of any disqualifying information as defined in accordance with  
14 the rule promulgated by the director, the bureau of criminal identification of the attorney general's  
15 office will inform the applicant, in writing, of the nature of the disqualifying information. In  
16 addition, the bureau of criminal identification of the attorney general's office will inform the  
17 applicant, in writing, without disclosing the nature of the disqualifying information, that an item  
18 of disqualifying information has been discovered.

19 (e) In those situations in which no disqualifying information has been found, the bureau  
20 of criminal identification of the attorney general's office will inform both the applicant and the  
21 employer, in writing, of this fact. The employer will maintain on file, and make available for  
22 inspection by the parent(s)/guardian(s) of any child enrolled in the programs of the youth serving  
23 agency, evidence that criminal records checks have been obtained on all employees of the youth  
24 serving agency pursuant to section 40-13.2-5.1, and the results of the checks. The criminal  
25 records checks will be provided to the applicant for employment without charge.

26 **40-13.2-6. Prior criminal records checks.** -- If an applicant for employment has  
27 undergone a [nationwide and statewide](#) criminal records check pursuant to section 40-13.2-4, 40-  
28 13.2-4.1, 40-13.2-5 or 40-13.2-5.1 within eighteen (18) months of an application for employment,  
29 then an employer may request from the bureau of criminal identification of the state police or the  
30 local police department or the attorney general's office for employees of youth serving agencies  
31 pursuant to sections 40-13.2-4.1 and 40-13.2-5.1 a letter indicating if any disqualifying  
32 information was discovered. The bureau of criminal identification will respond by stating if an  
33 item of disqualifying information was discovered without disclosing the nature of the  
34 disqualifying information or by stating that no disqualifying information was discovered. The

1 letter may be maintained on file to satisfy the requirements of sections 40-13.2-4, 40-13.2-4.1,  
2 40-13.2-5 or 40-13.2-5.1.

3 SECTION 8. Section 40.1-25.1-3 of the General Laws in Chapter 40.1-25.1 entitled  
4 "Employee Criminal Records Check" is hereby amended to read as follows:

5 **40.1-25.1-3. Criminal records check requirement.** -- (a) Any facility or program  
6 licensed by the department pursuant to section 40.1-24-1 et seq. and any facility or program  
7 operated by the department shall require all applicants for employment, if that employment  
8 involves routine contact with patients, residents or clients without the presence of other  
9 employees, to apply to the bureau of criminal identification of the state police or the local police  
10 department for a nationwide criminal records check. The check will conform to the applicable  
11 federal standards, including the taking of fingerprints of the applicant.

12 (b) If any disqualifying information is discovered with respect to the applicant, the  
13 bureau of criminal identification of the state police or the local police department will inform the  
14 employer, in writing, without disclosing the nature of the disqualifying information, that an item  
15 of disqualifying nature has been discovered. In addition, the bureau of criminal identification of  
16 the state police or the local police department will inform the applicant, in writing, of the nature  
17 of the disqualifying information. An applicant against whom disqualifying information has been  
18 found may request that a copy of the criminal background report be sent to the employer who  
19 shall make a judgment regarding the employment of the applicant.

20 (c) In those situations in which no disqualifying information has been found, the bureau  
21 of criminal identification of the state police or the local police department shall inform both the  
22 applicant and the employer of this fact.

23 (d) The employer will maintain on file, subject to investigation by the department,  
24 evidence that criminal records checks in accordance with this statute have been initiated on all  
25 employees seeking employment after August 1, 2001 and the results of the checks. Failure to  
26 maintain the evidence on file will be prima facie grounds to revoke the license or certification of  
27 the operator of any facility or program licensed or certified by the department.

28 (e) It shall be the responsibility of the bureau of criminal identification of the state police  
29 or the local police department to conduct the national and statewide criminal records check for  
30 the applicant, for employment without charge to either the employee or the employer.

31 SECTION 9. This act shall take effect on July 1, 2011.

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LC01375  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HEALTH AND SAFETY -- CRIMINAL BACKGROUND CHECKS

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1           This act would require nationwide criminal background checks for applicants for  
2 employment in: home nursing care providers and home care providers, assisted living residence,  
3 nursing service agencies, adult supportive care home, youth serving agency, agencies licensed by  
4 the department of behavioral health care, developmental disabilities and hospitals or as Ride bus  
5 driver.

6           This act would take effect on July 1, 2011.

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LC01375  
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