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Title 45.
Chapter 1.
Article 3. (New)
Record Background
Checks for Health
Care Professionals
§§1-4,6 -
C.45:1-28 to
45:1-32
§7 - Repealer
§8 - Note

P.L. 2002, CHAPTER 104, *approved November 22, 2002*
Assembly, No. 2264 (*Second Reprint*)

1 **AN ACT** requiring criminal history record background checks for
2 health care professionals, supplementing Title 45 of the Revised
3 Statutes, amending P.L.1997, c.100 and repealing section 18 of
4 P.L.1997, c.331.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) As used in this act:

10 "Applicant" means an applicant for licensure or other authorization
11 to engage in a health care profession.

12 "Board" means a professional and occupational licensing board
13 within the Division of Consumer Affairs in the Department of Law and
14 Public Safety.

15 "Director" means the Director of the Division of Consumer Affairs
16 in the Department of Law and Public Safety.

17 "Division" means the Division of Consumer Affairs in the
18 Department of Law and Public Safety.

19 "Health care professional" means a health care professional who is
20 licensed or otherwise authorized, pursuant to Title 45 or Title 52 of
21 the Revised Statutes, to practice a health care profession that is
22 regulated by one of the following boards or by the Director of the
23 Division of Consumer Affairs: the State Board of Medical Examiners,
24 the New Jersey Board of Nursing, the New Jersey State Board of
25 Dentistry, the New Jersey State Board of Optometrists, the Board of
26 Pharmacy of the State of New Jersey, the State Board of Chiropractic
27 Examiners, the Acupuncture Examining Board, the State Board of
28 Physical Therapy, the State Board of Respiratory Care, the Orthotics
29 and Prosthetics Board of Examiners, the State Board of Psychological
30 Examiners, the State Board of Social Work Examiners, the State

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASI committee amendments adopted May 13, 2002.

² Assembly amendments adopted in accordance with Governor's recommendations September 19, 2002.

1 Board of Veterinary Medical Examiners, the State Board of Examiners
2 of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology
3 and Speech-Language Pathology Advisory Committee, ²[or]² the
4 State Board of Marriage and Family Therapy Examiners ²the
5 Occupational Therapy Advisory Council or the Certified
6 Psychoanalysts Advisory Committee².

7 Health care professional shall not include a nurse aide or personal
8 care assistant who is required to undergo a criminal history record
9 background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-
10 83) or a homemaker-home health aide who is required to undergo a
11 criminal history record background check pursuant to section 7 of
12 P.L.1997, c.100 (C.45:11-24.3).

13

14 2. (New section) a. A professional and occupational licensing
15 board within the Division of Consumer Affairs in the Department of
16 Law and Public Safety or the director who regulates the practice of a
17 health care professional, as applicable, shall not issue an initial license
18 or other authorization to practice a health care profession that is
19 regulated by that board or the director to any applicant therefor unless
20 the board or director, as applicable, first determines, consistent with
21 ²[the requirements of this act]section 8 of P.L.1978, c.73 (C.45:1-
22 21)², that no criminal history record information exists on file in the
23 Federal Bureau of Investigation, Identification Division, or in the State
24 Bureau of Identification in the Division of State Police, which
25 ²[would]may² disqualify the applicant from being licensed or
26 otherwise authorized to practice as a health care professional.

27 ²[An applicant shall be disqualified from licensure or other
28 authorization to practice as a health care professional if the applicant's
29 criminal history record background check reveals a record of
30 conviction of any of the following crimes and offenses:

31 (1) In New Jersey, any crime or disorderly persons offense:

32 (a) involving danger to the person, meaning those crimes and
33 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
34 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
35 N.J.S.2C:15-1 et seq.;

36 (b) against the family, children or incompetents, meaning those
37 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
38 seq.;

39 (c) involving theft as set forth in chapter 20 of Title 2C of the New
40 Jersey Statutes , or fraud relating to any health care plan or program
41 as set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1), sections
42 2 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3), P.L.1999,
43 c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413 (C.30:4D-17);
44 or

45 (d) involving any controlled dangerous substance or controlled
46 substance analog as set forth in chapter 35 of Title 2C of the New

1 Jersey Statutes except paragraph (4) of subsection a. of
2 N.J.S.2C:35-10.

3 (2) In any other state or jurisdiction, of conduct which, if
4 committed in New Jersey, would constitute any of the crimes or
5 disorderly persons offenses described in paragraph (1) of this
6 subsection.

7 b. Notwithstanding the provisions of subsection a. of this section
8 to the contrary, no applicant shall be disqualified from licensure or
9 other authorization on the basis of any conviction disclosed by a
10 criminal history record background check performed pursuant to this
11 act if the applicant has affirmatively demonstrated to the board or
12 director, as applicable, clear and convincing evidence of the applicant's
13 rehabilitation. In determining whether an applicant has affirmatively
14 demonstrated rehabilitation, the following factors shall be considered:

15 (1) the nature and responsibility of the position which the applicant
16 would hold, has held or currently holds, as the case may be;

17 (2) the nature and seriousness of the offense;

18 (3) the circumstances under which the offense occurred;

19 (4) the date of the offense;

20 (5) the age of the applicant when the offense was committed;

21 (6) whether the offense was an isolated or repeated incident;

22 (7) any social conditions which may have contributed to the
23 offense; and

24 (8) any evidence of rehabilitation, including good conduct in prison
25 or in the community, counseling or psychiatric treatment received,
26 acquisition of additional academic or vocational schooling, successful
27 participation in correctional work-release programs, or the
28 recommendation of those who have had the applicant under their
29 supervision.

30 c. If an applicant refuses to consent to, or cooperate in, the
31 securing of a criminal history record background check, the board or
32 director, as applicable, shall not issue a license or other authorization
33 to the applicant and shall notify the applicant of that denial.]]²
34

35 3. (New section) a. An applicant who is required to undergo a
36 criminal history record background check pursuant to section 2 of this
37 act shall submit to the director that individual's name, address and
38 fingerprints taken on standard fingerprint cards by a State or municipal
39 law enforcement agency ²or by a private entity under contract with
40 the State². The director is authorized to exchange fingerprint data
41 with and receive criminal history record information from the Federal
42 Bureau of Investigation and the Division of State Police for use in
43 making the determinations required pursuant to this act.

44 b. Upon receipt of the criminal history record information for an
45 applicant from the Federal Bureau of Investigation or the Division of
46 State Police, the director shall immediately notify the board, as

1 applicable ²[, who shall immediately notify the applicant in writing.
2 If the applicant is disqualified, the conviction or convictions that
3 constitute the basis for the disqualification shall be identified in the
4 notice to the applicant]².

5 c. ²[The applicant shall have 30 days from the date of the written
6 notice of disqualification to petition the board or director, as
7 applicable, for a hearing on the accuracy of the applicant's criminal
8 history record information or to establish the applicant's rehabilitation
9 under subsection b. of section 2 of this act. Upon the issuance of a
10 final decision on a petition to the board or director, as applicable,
11 pursuant to this subsection, the board or director, as applicable, shall
12 notify the applicant as to whether the applicant remains disqualified]
13 If an applicant refuses to consent to, or cooperate in, the securing of
14 a criminal history record background check, the board or director, as
15 applicable, shall not issue a license or other authorization to the
16 applicant and shall notify the applicant of that denial².

17

18 4. (New section) An applicant shall be required to assume the cost
19 of the criminal history record background check conducted pursuant
20 to sections 1 through 3 of this act and section 14 of P.L.1997, c.100
21 (C.53:1-20.9a), in accordance with procedures determined by
22 regulation of the director.

23

24 5. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to
25 read as follows:

26 14. a. In accordance with the provisions of sections 2 through 6
27 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through 87
28 and C.45:11-24.3 through 24.9) and P.L. , c. (C.)(pending
29 before the Legislature as this bill), the Division of State Police in the
30 Department of Law and Public Safety shall conduct a criminal history
31 record background check, including a name and fingerprint
32 identification check, of:

33 (1) each applicant for nurse aide or personal care assistant
34 certification submitted to the Department of Health and Senior
35 Services and of each applicant for homemaker-home health aide
36 certification submitted to the New Jersey Board of Nursing in the
37 Division of Consumer Affairs; [and]

38 (2) each nurse aide or personal care assistant certified by the
39 Department of Health and Senior Services and each homemaker-home
40 health aide certified by the New Jersey Board of Nursing, as required
41 pursuant to P.L.1997, c.100 (C.26:2H-83 et al.); and

42 (3) each applicant for licensure or other authorization to engage in
43 a health care profession who is required to undergo a criminal history
44 record background check pursuant to P.L. ,c. (C.)(pending
45 before the Legislature as this bill).

46 b. For the purpose of conducting a criminal history record

1 background check pursuant to subsection a. of this section, the
 2 Division of State Police shall examine its own files and arrange for a
 3 similar examination by federal authorities. The division shall
 4 immediately forward the information obtained as a result of conducting
 5 the check to: the Commissioner of Health and Senior Services, in the
 6 case of an applicant for nurse aide or personal care assistant
 7 certification[, and to] or a certified nurse aide or personal care
 8 assistant; the New Jersey Board of Nursing in the Division of
 9 Consumer Affairs in the Department of Law and Public Safety, in the
 10 case of an applicant for homemaker-home health aide certification or
 11 a certified homemaker-home health aide; and the Director of the
 12 Division of Consumer Affairs in the Department of Law and Public
 13 Safety, in the case of an applicant for licensure or other authorization
 14 to practice as a health care professional as defined in section 1 of
 15 P.L. _____, c. (C. _____)(pending before the Legislature as this bill).
 16 (cf: P.L.2000, c.20, s.8)

17

18 6. The Director of the Division of Consumer Affairs in the
 19 Department of Law and Public Safety, pursuant to the "Administrative
 20 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
 21 rules and regulations to effectuate the purposes of this act.

22

23 7. Section 18 of P.L.1997, c.331 (C.45:2D-18) is repealed.

24

25 8. This act shall take effect on the ¹[120th] ²[180th¹]365th² day
 26 after enactment, but the Director of the Division of Consumer Affairs
 27 in the Department of Law and Public Safety may take such
 28 anticipatory administrative action in advance as shall be necessary for
 29 the implementation of the act.

30

31

32

33

34 Requires criminal history record background checks for health care
 35 professionals as condition of initial licensure.

ASSEMBLY, No. 2264

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MAY 9, 2002

Sponsored by:

Assemblyman CRAIG A. STANLEY

District 28 (Essex)

Assemblyman PETER C. EAGLER

District 34 (Essex and Passaic)

SYNOPSIS

Requires criminal history record background checks for health care professionals as condition of initial licensure.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/21/2002)

1 AN ACT requiring criminal history record background checks for
2 health care professionals, supplementing Title 45 of the Revised
3 Statutes, amending P.L.1997, c.100 and repealing section 18 of
4 P.L.1997, c.331.

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6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. (New section) As used in this act:

10 "Applicant" means an applicant for licensure or other authorization
11 to engage in a health care profession.

12 "Board" means a professional and occupational licensing board
13 within the Division of Consumer Affairs in the Department of Law and
14 Public Safety.

15 "Director" means the Director of the Division of Consumer Affairs
16 in the Department of Law and Public Safety.

17 "Division" means the Division of Consumer Affairs in the
18 Department of Law and Public Safety.

19 "Health care professional" means a health care professional who is
20 licensed or otherwise authorized, pursuant to Title 45 or Title 52 of
21 the Revised Statutes, to practice a health care profession that is
22 regulated by one of the following boards or by the Director of the
23 Division of Consumer Affairs: the State Board of Medical Examiners,
24 the New Jersey Board of Nursing, the New Jersey State Board of
25 Dentistry, the New Jersey State Board of Optometrists, the Board of
26 Pharmacy of the State of New Jersey, the State Board of Chiropractic
27 Examiners, the Acupuncture Examining Board, the State Board of
28 Physical Therapy, the State Board of Respiratory Care, the Orthotics
29 and Prosthetics Board of Examiners, the State Board of Psychological
30 Examiners, the State Board of Social Work Examiners, the State
31 Board of Veterinary Medical Examiners, the State Board of Examiners
32 of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology
33 and Speech-Language Pathology Advisory Committee, or the State
34 Board of Marriage and Family Therapy Examiners.

35 Health care professional shall not include a nurse aide or personal
36 care assistant who is required to undergo a criminal history record
37 background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-
38 83) or a homemaker-home health aide who is required to undergo a
39 criminal history record background check pursuant to section 7 of
40 P.L.1997, c.100 (C.45:11-24.3).

41
42 2. (New section) a. A professional and occupational licensing
43 board within the Division of Consumer Affairs in the Department of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 Law and Public Safety or the director who regulates the practice of a
2 health care professional, as applicable, shall not issue an initial license
3 or other authorization to practice a health care profession that is
4 regulated by that board or the director to any applicant therefor unless
5 the board or director, as applicable, first determines, consistent with
6 the requirements of this act, that no criminal history record
7 information exists on file in the Federal Bureau of Investigation,
8 Identification Division, or in the State Bureau of Identification in the
9 Division of State Police, which would disqualify the applicant from
10 being licensed or otherwise authorized to practice as a health care
11 professional.

12 An applicant shall be disqualified from licensure or other
13 authorization to practice as a health care professional if the applicant's
14 criminal history record background check reveals a record of
15 conviction of any of the following crimes and offenses:

16 (1) In New Jersey, any crime or disorderly persons offense:

17 (a) involving danger to the person, meaning those crimes and
18 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
19 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
20 N.J.S.2C:15-1 et seq.;

21 (b) against the family, children or incompetents, meaning those
22 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
23 seq.;

24 (c) involving theft as set forth in chapter 20 of Title 2C of the New
25 Jersey Statutes , or fraud relating to any health care plan or program
26 as set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1), sections
27 2 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3), P.L.1999,
28 c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413 (C.30:4D-17);
29 or

30 (d) involving any controlled dangerous substance or controlled
31 substance analog as set forth in chapter 35 of Title 2C of the New
32 Jersey Statutes except paragraph (4) of subsection a. of
33 N.J.S.2C:35-10.

34 (2) In any other state or jurisdiction, of conduct which, if
35 committed in New Jersey, would constitute any of the crimes or
36 disorderly persons offenses described in paragraph (1) of this
37 subsection.

38 b. Notwithstanding the provisions of subsection a. of this section
39 to the contrary, no applicant shall be disqualified from licensure or
40 other authorization on the basis of any conviction disclosed by a
41 criminal history record background check performed pursuant to this
42 act if the applicant has affirmatively demonstrated to the board or
43 director, as applicable, clear and convincing evidence of the applicant's
44 rehabilitation. In determining whether an applicant has affirmatively
45 demonstrated rehabilitation, the following factors shall be considered:

46 (1) the nature and responsibility of the position which the applicant

1 would hold, has held or currently holds, as the case may be;
2 (2) the nature and seriousness of the offense;
3 (3) the circumstances under which the offense occurred;
4 (4) the date of the offense;
5 (5) the age of the applicant when the offense was committed;
6 (6) whether the offense was an isolated or repeated incident;
7 (7) any social conditions which may have contributed to the
8 offense; and
9 (8) any evidence of rehabilitation, including good conduct in prison
10 or in the community, counseling or psychiatric treatment received,
11 acquisition of additional academic or vocational schooling, successful
12 participation in correctional work-release programs, or the
13 recommendation of those who have had the applicant under their
14 supervision.

15 c. If an applicant refuses to consent to, or cooperate in, the
16 securing of a criminal history record background check, the board or
17 director, as applicable, shall not issue a license or other authorization
18 to the applicant and shall notify the applicant of that denial.

19
20 3. (New section) a. An applicant who is required to undergo a
21 criminal history record background check pursuant to section 2 of this
22 act shall submit to the director that individual's name, address and
23 fingerprints taken on standard fingerprint cards by a State or municipal
24 law enforcement agency. The director is authorized to exchange
25 fingerprint data with and receive criminal history record information
26 from the Federal Bureau of Investigation and the Division of State
27 Police for use in making the determinations required pursuant to this
28 act.

29 b. Upon receipt of the criminal history record information for an
30 applicant from the Federal Bureau of Investigation or the Division of
31 State Police, the director shall immediately notify the board, as
32 applicable, who shall immediately notify the applicant in writing. If the
33 applicant is disqualified, the conviction or convictions that constitute
34 the basis for the disqualification shall be identified in the notice to the
35 applicant.

36 c. The applicant shall have 30 days from the date of the written
37 notice of disqualification to petition the board or director, as
38 applicable, for a hearing on the accuracy of the applicant's criminal
39 history record information or to establish the applicant's rehabilitation
40 under subsection b. of section 2 of this act. Upon the issuance of a
41 final decision on a petition to the board or director, as applicable,
42 pursuant to this subsection, the board or director, as applicable, shall
43 notify the applicant as to whether the applicant remains disqualified.
44

45 4. (New section) An applicant shall be required to assume the cost
46 of the criminal history record background check conducted pursuant

1 to sections 1 through 3 of this act and section 14 of P.L.1997, c.100
2 (C.53:1-20.9a), in accordance with procedures determined by
3 regulation of the director.

4

5 5. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to
6 read as follows:

7 14. a. In accordance with the provisions of sections 2 through 6
8 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through 87
9 and C.45:11-24.3 through 24.9) and P.L. , c. (C.)(pending
10 before the Legislature as this bill), the Division of State Police in the
11 Department of Law and Public Safety shall conduct a criminal history
12 record background check, including a name and fingerprint
13 identification check, of:

14 (1) each applicant for nurse aide or personal care assistant
15 certification submitted to the Department of Health and Senior
16 Services and of each applicant for homemaker-home health aide
17 certification submitted to the New Jersey Board of Nursing in the
18 Division of Consumer Affairs; **[and]**

19 (2) each nurse aide or personal care assistant certified by the
20 Department of Health and Senior Services and each homemaker-home
21 health aide certified by the New Jersey Board of Nursing, as required
22 pursuant to P.L.1997, c.100 (C.26:2H-83 et al.); and

23 (3) each applicant for licensure or other authorization to engage in
24 a health care profession who is required to undergo a criminal history
25 record background check pursuant to P.L. ,c. (C.)(pending
26 before the Legislature as this bill).

27 b. For the purpose of conducting a criminal history record
28 background check pursuant to subsection a. of this section, the
29 Division of State Police shall examine its own files and arrange for a
30 similar examination by federal authorities. The division shall
31 immediately forward the information obtained as a result of conducting
32 the check to: the Commissioner of Health and Senior Services, in the
33 case of an applicant for nurse aide or personal care assistant
34 certification**[, and to] or a certified nurse aide or personal care**
35 **assistant;** the New Jersey Board of Nursing in the Division of
36 Consumer Affairs in the Department of Law and Public Safety, in the
37 case of an applicant for homemaker-home health aide certification or
38 a certified homemaker-home health aide; and the Director of the
39 Division of Consumer Affairs in the Department of Law and Public
40 Safety, in the case of an applicant for licensure or other authorization
41 to practice as a health care professional as defined in section 1 of
42 P.L. , c. (C.)(pending before the Legislature as this bill).

43 (cf: P.L.2000, c.20, s.8)

44

45 6. The Director of the Division of Consumer Affairs in the
46 Department of Law and Public Safety, pursuant to the "Administrative

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
2 rules and regulations to effectuate the purposes of this act.

3

4 7. Section 18 of P.L.1997, c.331 (C.45:2D-18) is repealed.

5

6 8. This act shall take effect on the 120th day after enactment, but
7 the Director of the Division of Consumer Affairs in the Department of
8 Law and Public Safety may take such anticipatory administrative
9 action in advance as shall be necessary for the implementation of the
10 act.

11

12

13

STATEMENT

14

15 This bill requires that a professional and occupational licensing
16 board within the Division of Consumer Affairs in the Department of
17 Law and Public Safety, or the Director of the Division of Consumer
18 Affairs, as applicable, who regulates the practice of a health care
19 professional shall not issue an initial license or other authorization to
20 practice a health care profession that is regulated by that board or the
21 director to any applicant therefor unless the board or director, as
22 applicable, first determines, consistent with the requirements of the
23 bill, that no criminal history record information exists on file in the
24 Federal Bureau of Investigation (FBI), Identification Division, or in
25 the State Bureau of Identification in the Division of State Police,
26 which would disqualify that person from being licensed or otherwise
27 authorized to practice as a health care professional.

28 The bill would apply to applicants for licensure or other
29 authorization to practice a health care profession that is regulated
30 under Titles 45 or 52 of the Revised Statutes by one of the following
31 boards or committees or by the Director of the Division of Consumer
32 Affairs:

- 33 -- the State Board of Medical Examiners;
- 34 -- the New Jersey Board of Nursing;
- 35 -- the New Jersey State Board of Dentistry;
- 36 -- the New Jersey State Board of Optometrists;
- 37 -- the Board of Pharmacy of the State of New Jersey;
- 38 -- the State Board of Chiropractic Examiners;
- 39 -- the Acupuncture Examining Board;
- 40 -- the State Board of Physical Therapy;
- 41 -- the State Board of Respiratory Care;
- 42 -- the Orthotics and Prosthetics Board of Examiners;
- 43 -- the State Board of Psychological Examiners;
- 44 -- the State Board of Social Work Examiners;
- 45 -- the State Board of Veterinary Medical Examiners;
- 46 -- the State Board of Examiners of Ophthalmic Dispensers and

1 Ophthalmic Technicians;

2 --the Audiology and Speech-Language Pathology Advisory
3 Committee; or

4 --the State Board of Marriage and Family Therapy Examiners.

5 The bill would not apply to nurse aides, personal care assistants or
6 homemaker-home health aides who are already required to undergo a
7 criminal history record background check pursuant to State law.

8 Specifically, the bill provides that:

9 C A person shall be disqualified from licensure or other authorization
10 to practice as a health care professional if that person's criminal
11 history record background check reveals a record of conviction of
12 any crime or disorderly persons offense in New Jersey or another
13 state or jurisdiction:

14 -involving danger to the person, meaning those crimes and
15 disorderly persons offenses set forth in N.J.S.A.2C:11-1 et seq.,
16 N.J.S.A.2C:12-1 et seq., N.J.S.A.2C:13-1 et seq., N.J.S.A.2C:14-1 et
17 seq. or N.J.S.A.2C:15-1 et seq.;

18 -against the family, children or incompetents, meaning those crimes
19 and disorderly persons offenses set forth in N.J.S.A.2C:24-1 et seq.;

20 -involving theft as set forth in chapter 20 of Title 2C of the New
21 Jersey Statutes, or fraud relating to any health care plan or program as
22 set forth in N.J.S.A.2C:21-4.1, 2C:21-4.2, 2C:21-4.3, 2C:21-22.1 or
23 30:4D-17; or

24 -involving any controlled dangerous substance or controlled
25 substance analog as set forth in chapter 35 of Title 2C of the New
26 Jersey Statutes except paragraph (4) of subsection a. of
27 N.J.S.A.2C:35-10.

28 C No applicant shall be disqualified from licensure or other
29 authorization on the basis of any conviction disclosed by a criminal
30 history record background check if the applicant has affirmatively
31 demonstrated to the board or director, as applicable, clear and
32 convincing evidence of the applicant's rehabilitation. In determining
33 whether the applicant has affirmatively demonstrated rehabilitation,
34 the following factors shall be considered:

35 -- the nature and responsibility of the position which the applicant
36 would hold, has held or currently holds, as the case may be;

37 -- the nature and seriousness of the offense;

38 -- the circumstances under which the offense occurred;

39 -- the date of the offense;

40 -- the age of the applicant when the offense was committed;

41 -- whether the offense was an isolated or repeated incident;

42 -- any social conditions which may have contributed to the offense;

43 and

44 -- any evidence of rehabilitation, including good conduct in prison
45 or in the community, counseling or psychiatric treatment received,
46 acquisition of additional academic or vocational schooling, successful

- 1 participation in correctional work-release programs, or the
2 recommendation of those who have had the applicant under their
3 supervision.
- 4 C If an applicant refuses to consent to, or cooperate in, the securing
5 of a criminal history record background check, the board or
6 director, as applicable, shall not issue a license or other
7 authorization to the applicant and the board or director shall notify
8 the applicant of that denial.
- 9 C An applicant who is required to undergo a criminal history record
10 background check shall submit to the director that individual's
11 name, address and fingerprints taken on standard fingerprint cards
12 by a State or municipal law enforcement agency. The director is
13 authorized to exchange fingerprint data with and receive criminal
14 history record information from the FBI and the State Police for
15 use in making the determinations required pursuant to the bill.
- 16 C Upon receipt of the criminal history record information for an
17 applicant from the FBI or the State Police, the board or director, as
18 applicable, shall immediately notify the applicant in writing. If the
19 applicant is disqualified, the conviction or convictions that
20 constitute the basis for the disqualification shall be identified in the
21 notice to the applicant.
- 22 C The applicant shall have 30 days from the date of the written notice
23 of disqualification to petition the board or director, as applicable,
24 for a hearing on the accuracy of the applicant's criminal history
25 record information or to establish the applicant's rehabilitation.
26 Upon the issuance of a final decision on a petition to the board or
27 director, the board or director shall notify the applicant as to
28 whether the applicant remains disqualified.
- 29 C An applicant shall be required to assume the cost of the criminal
30 history record background check, in accordance with procedures
31 determined by regulation of the director.
- 32 The bill takes effect on the 120th day after enactment, but
33 authorizes the Director of the Division of Consumer Affairs to take
34 anticipatory administrative action in advance as necessary for its
35 implementation.

ASSEMBLY SENIOR ISSUES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2264

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2002

The Assembly Senior Issues Committee reports favorably and with committee amendments Assembly Bill No. 2264.

As amended by the committee, this bill requires that a professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety, or the Director of the Division of Consumer Affairs, as applicable, who regulates the practice of a health care professional shall not issue an initial license or other authorization to practice a health care profession that is regulated by that board or the director to any applicant therefor unless the board or director, as applicable, first determines, consistent with the requirements of the bill, that no criminal history record information exists on file in the Federal Bureau of Investigation (FBI), Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being licensed or otherwise authorized to practice as a health care professional.

The bill would apply to applicants for licensure or other authorization to practice a health care profession that is regulated under Titles 45 or 52 of the Revised Statutes by one of the following boards or committees or by the Director of the Division of Consumer Affairs:

- the State Board of Medical Examiners;
- the New Jersey Board of Nursing;
- the New Jersey State Board of Dentistry;
- the New Jersey State Board of Optometrists;
- the Board of Pharmacy of the State of New Jersey;
- the State Board of Chiropractic Examiners;
- the Acupuncture Examining Board;
- the State Board of Physical Therapy;
- the State Board of Respiratory Care;
- the Orthotics and Prosthetics Board of Examiners;
- the State Board of Psychological Examiners;
- the State Board of Social Work Examiners;
- the State Board of Veterinary Medical Examiners;

-- the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians;

-- the Audiology and Speech-Language Pathology Advisory Committee; or

-- the State Board of Marriage and Family Therapy Examiners.

The bill would not apply to nurse aides, personal care assistants or homemaker-home health aides who are already required to undergo a criminal history record background check pursuant to State law.

Specifically, the bill provides that:

C A person shall be disqualified from licensure or other authorization to practice as a health care professional if that person's criminal history record background check reveals a record of conviction of any crime or disorderly persons offense in New Jersey or another state or jurisdiction:

- involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A.2C:11-1 et seq., N.J.S.A.2C:12-1 et seq., N.J.S.A.2C:13-1 et seq., N.J.S.A.2C:14-1 et seq. or N.J.S.A.2C:15-1 et seq.;

- against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A.2C:24-1 et seq.;

- involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or fraud relating to any health care plan or program as set forth in N.J.S.A.2C:21-4.1, 2C:21-4.2, 2C:21-4.3, 2C:21-22.1 or 30:4D-17; or

- involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.A.2C:35-10.

C No applicant shall be disqualified from licensure or other authorization on the basis of any conviction disclosed by a criminal history record background check if the applicant has affirmatively demonstrated to the board or director, as applicable, clear and convincing evidence of the applicant's rehabilitation. In determining whether the applicant has affirmatively demonstrated rehabilitation, the following factors shall be considered:

-- the nature and responsibility of the position which the applicant would hold, has held or currently holds, as the case may be;

-- the nature and seriousness of the offense;

-- the circumstances under which the offense occurred;

-- the date of the offense;

-- the age of the applicant when the offense was committed;

-- whether the offense was an isolated or repeated incident;

-- any social conditions which may have contributed to the offense;

and

-- any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful

participation in correctional work-release programs, or the recommendation of those who have had the applicant under their supervision.

- C If an applicant refuses to consent to, or cooperate in, the securing of a criminal history record background check, the board or director, as applicable, shall not issue a license or other authorization to the applicant and the board or director shall notify the applicant of that denial.
- C An applicant who is required to undergo a criminal history record background check shall submit to the director that individual's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The director is authorized to exchange fingerprint data with and receive criminal history record information from the FBI and the State Police for use in making the determinations required pursuant to the bill.
- C Upon receipt of the criminal history record information for an applicant from the FBI or the State Police, the board or director, as applicable, shall immediately notify the applicant in writing. If the applicant is disqualified, the conviction or convictions that constitute the basis for the disqualification shall be identified in the notice to the applicant.
- C The applicant shall have 30 days from the date of the written notice of disqualification to petition the board or director, as applicable, for a hearing on the accuracy of the applicant's criminal history record information or to establish the applicant's rehabilitation. Upon the issuance of a final decision on a petition to the board or director, the board or director shall notify the applicant as to whether the applicant remains disqualified.
- C An applicant shall be required to assume the cost of the criminal history record background check, in accordance with procedures determined by regulation of the director.

The bill takes effect on the 180th day after enactment, but authorizes the Director of the Division of Consumer Affairs to take anticipatory administrative action in advance as necessary for its implementation.

COMMITTEE AMENDMENT:

The amendment changes the bill's effective date from 120 to 180 days after enactment.

As amended, this bill is identical to S-970 (Singer), which is pending before the Senate.

SENATE, No. 970

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

Senators Cafiero, Palaia, Matheussen and Allen

SYNOPSIS

Requires criminal history record background checks for health care professionals as condition of initial licensure.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/21/2002)

1 AN ACT requiring criminal history record background checks for
2 health care professionals, supplementing Title 45 of the Revised
3 Statutes, amending P.L.1997, c.100 and repealing section 18 of
4 P.L.1997, c.331.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. (New section) As used in this act:

10 "Applicant" means an applicant for licensure or other authorization
11 to engage in a health care profession.

12 "Board" means a professional and occupational licensing board
13 within the Division of Consumer Affairs in the Department of Law and
14 Public Safety.

15 "Director" means the Director of the Division of Consumer Affairs
16 in the Department of Law and Public Safety.

17 "Division" means the Division of Consumer Affairs in the
18 Department of Law and Public Safety.

19 "Health care professional" means a health care professional who is
20 licensed or otherwise authorized, pursuant to Title 45 or Title 52 of
21 the Revised Statutes, to practice a health care profession that is
22 regulated by one of the following boards or by the Director of the
23 Division of Consumer Affairs: the State Board of Medical Examiners,
24 the New Jersey Board of Nursing, the New Jersey State Board of
25 Dentistry, the New Jersey State Board of Optometrists, the Board of
26 Pharmacy of the State of New Jersey, the State Board of Chiropractic
27 Examiners, the Acupuncture Examining Board, the State Board of
28 Physical Therapy, the State Board of Respiratory Care, the Orthotics
29 and Prosthetics Board of Examiners, the State Board of Psychological
30 Examiners, the State Board of Social Work Examiners, the State
31 Board of Veterinary Medical Examiners, the State Board of Examiners
32 of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology
33 and Speech-Language Pathology Advisory Committee, or the State
34 Board of Marriage and Family Therapy Examiners.

35 Health care professional shall not include a nurse aide or personal
36 care assistant who is required to undergo a criminal history record
37 background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-
38 83) or a homemaker-home health aide who is required to undergo a
39 criminal history record background check pursuant to section 7 of
40 P.L.1997, c.100 (C.45:11-24.3).

41
42 2. (New section) a. A professional and occupational licensing
43 board within the Division of Consumer Affairs in the Department of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 Law and Public Safety or the director who regulates the practice of a
2 health care professional, as applicable, shall not issue an initial license
3 or other authorization to practice a health care profession that is
4 regulated by that board or the director to any applicant therefor unless
5 the board or director, as applicable, first determines, consistent with
6 the requirements of this act, that no criminal history record
7 information exists on file in the Federal Bureau of Investigation,
8 Identification Division, or in the State Bureau of Identification in the
9 Division of State Police, which would disqualify the applicant from
10 being licensed or otherwise authorized to practice as a health care
11 professional.

12 An applicant shall be disqualified from licensure or other
13 authorization to practice as a health care professional if the applicant's
14 criminal history record background check reveals a record of
15 conviction of any of the following crimes and offenses:

16 (1) In New Jersey, any crime or disorderly persons offense:

17 (a) involving danger to the person, meaning those crimes and
18 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
19 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
20 N.J.S.2C:15-1 et seq.;

21 (b) against the family, children or incompetents, meaning those
22 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
23 seq.;

24 (c) involving theft as set forth in chapter 20 of Title 2C of the New
25 Jersey Statutes , or fraud relating to any health care plan or program
26 as set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1), sections
27 2 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3), P.L.1999,
28 c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413 (C.30:4D-17);
29 or

30 (d) involving any controlled dangerous substance or controlled
31 substance analog as set forth in chapter 35 of Title 2C of the New
32 Jersey Statutes except paragraph (4) of subsection a. of
33 N.J.S.2C:35-10.

34 (2) In any other state or jurisdiction, of conduct which, if
35 committed in New Jersey, would constitute any of the crimes or
36 disorderly persons offenses described in paragraph (1) of this
37 subsection.

38 b. Notwithstanding the provisions of subsection a. of this section
39 to the contrary, no applicant shall be disqualified from licensure or
40 other authorization on the basis of any conviction disclosed by a
41 criminal history record background check performed pursuant to this
42 act if the applicant has affirmatively demonstrated to the board or
43 director, as applicable, clear and convincing evidence of the applicant's
44 rehabilitation. In determining whether an applicant has affirmatively
45 demonstrated rehabilitation, the following factors shall be considered:

- 1 (1) the nature and responsibility of the position which the applicant
 - 2 would hold, has held or currently holds, as the case may be;
 - 3 (2) the nature and seriousness of the offense;
 - 4 (3) the circumstances under which the offense occurred;
 - 5 (4) the date of the offense;
 - 6 (5) the age of the applicant when the offense was committed;
 - 7 (6) whether the offense was an isolated or repeated incident;
 - 8 (7) any social conditions which may have contributed to the
 - 9 offense; and
 - 10 (8) any evidence of rehabilitation, including good conduct in prison
 - 11 or in the community, counseling or psychiatric treatment received,
 - 12 acquisition of additional academic or vocational schooling, successful
 - 13 participation in correctional work-release programs, or the
 - 14 recommendation of those who have had the applicant under their
 - 15 supervision.
- 16 c. If an applicant refuses to consent to, or cooperate in, the
- 17 securing of a criminal history record background check, the board or
- 18 director, as applicable, shall not issue a license or other authorization
- 19 to the applicant and shall notify the applicant of that denial.
- 20
- 21 3. (New section) a. An applicant who is required to undergo a
- 22 criminal history record background check pursuant to section 2 of this
- 23 act shall submit to the director that individual's name, address and
- 24 fingerprints taken on standard fingerprint cards by a State or municipal
- 25 law enforcement agency. The director is authorized to exchange
- 26 fingerprint data with and receive criminal history record information
- 27 from the Federal Bureau of Investigation and the Division of State
- 28 Police for use in making the determinations required pursuant to this
- 29 act.
- 30 b. Upon receipt of the criminal history record information for an
- 31 applicant from the Federal Bureau of Investigation or the Division of
- 32 State Police, the director shall immediately notify the board, as
- 33 applicable, who shall immediately notify the applicant in writing. If the
- 34 applicant is disqualified, the conviction or convictions that constitute
- 35 the basis for the disqualification shall be identified in the notice to the
- 36 applicant.
- 37 c. The applicant shall have 30 days from the date of the written
- 38 notice of disqualification to petition the board or director, as
- 39 applicable, for a hearing on the accuracy of the applicant's criminal
- 40 history record information or to establish the applicant's rehabilitation
- 41 under subsection b. of section 2 of this act. Upon the issuance of a
- 42 final decision on a petition to the board or director, as applicable,
- 43 pursuant to this subsection, the board or director, as applicable, shall
- 44 notify the applicant as to whether the applicant remains disqualified.

1 4. (New section) An applicant shall be required to assume the cost
2 of the criminal history record background check conducted pursuant
3 to sections 1 through 3 of this act and section 14 of P.L.1997, c.100
4 (C.53:1-20.9a), in accordance with procedures determined by
5 regulation of the director.

6
7 5. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to
8 read as follows:

9 14. a. In accordance with the provisions of sections 2 through 6
10 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through 87
11 and C.45:11-24.3 through 24.9) and P.L. , c. (C.)(pending
12 before the Legislature as this bill), the Division of State Police in the
13 Department of Law and Public Safety shall conduct a criminal history
14 record background check, including a name and fingerprint
15 identification check, of:

16 (1) each applicant for nurse aide or personal care assistant
17 certification submitted to the Department of Health and Senior
18 Services and of each applicant for homemaker-home health aide
19 certification submitted to the New Jersey Board of Nursing in the
20 Division of Consumer Affairs; **[and]**

21 (2) each nurse aide or personal care assistant certified by the
22 Department of Health and Senior Services and each homemaker-home
23 health aide certified by the New Jersey Board of Nursing, as required
24 pursuant to P.L.1997, c.100 (C.26:2H-83 et al.); and

25 (3) each applicant for licensure or other authorization to engage in
26 a health care profession who is required to undergo a criminal history
27 record background check pursuant to P.L. ,c. (C.)(pending
28 before the Legislature as this bill).

29 b. For the purpose of conducting a criminal history record
30 background check pursuant to subsection a. of this section, the
31 Division of State Police shall examine its own files and arrange for a
32 similar examination by federal authorities. The division shall
33 immediately forward the information obtained as a result of conducting
34 the check to: the Commissioner of Health and Senior Services, in the
35 case of an applicant for nurse aide or personal care assistant
36 certification**[, and to] or a certified nurse aide or personal care**
37 **assistant;** the New Jersey Board of Nursing in the Division of
38 Consumer Affairs in the Department of Law and Public Safety, in the
39 case of an applicant for homemaker-home health aide certification or
40 a certified homemaker-home health aide; and the Director of the
41 Division of Consumer Affairs in the Department of Law and Public
42 Safety, in the case of an applicant for licensure or other authorization
43 to practice as a health care professional as defined in section 1 of
44 P.L. , c. (C.)(pending before the Legislature as this bill).
45 (cf: P.L.2000, c.20, s.8)

1 -- the State Board of Veterinary Medical Examiners;
2 -- the State Board of Examiners of Ophthalmic Dispensers and
3 Ophthalmic Technicians;
4 -- the Audiology and Speech-Language Pathology Advisory
5 Committee; or
6 -- the State Board of Marriage and Family Therapy Examiners.
7 The bill would not apply to nurse aides, personal care assistants or
8 homemaker-home health aides who are already required to undergo a
9 criminal history record background check pursuant to State law.
10 Specifically, the bill provides that:
11 C A person shall be disqualified from licensure or other authorization
12 to practice as a health care professional if that person's criminal
13 history record background check reveals a record of conviction of
14 any crime or disorderly persons offense in New Jersey or another
15 state or jurisdiction:
16 - involving danger to the person, meaning those crimes and
17 disorderly persons offenses set forth in N.J.S.A.2C:11-1 et seq.,
18 N.J.S.A.2C:12-1 et seq., N.J.S.A.2C:13-1 et seq., N.J.S.A.2C:14-1 et
19 seq. or N.J.S.A.2C:15-1 et seq.;
20 - against the family, children or incompetents, meaning those crimes
21 and disorderly persons offenses set forth in N.J.S.A.2C:24-1 et seq.;
22 - involving theft as set forth in chapter 20 of Title 2C of the New
23 Jersey Statutes, or fraud relating to any health care plan or program as
24 set forth in N.J.S.A.2C:21-4.1, 2C:21-4.2, 2C:21-4.3, 2C:21-22.1 or
25 30:4D-17; or
26 - involving any controlled dangerous substance or controlled
27 substance analog as set forth in chapter 35 of Title 2C of the New
28 Jersey Statutes except paragraph (4) of subsection a. of
29 N.J.S.A.2C:35-10.
30 C No applicant shall be disqualified from licensure or other
31 authorization on the basis of any conviction disclosed by a criminal
32 history record background check if the applicant has affirmatively
33 demonstrated to the board or director, as applicable, clear and
34 convincing evidence of the applicant's rehabilitation. In determining
35 whether the applicant has affirmatively demonstrated rehabilitation,
36 the following factors shall be considered:
37 -- the nature and responsibility of the position which the applicant
38 would hold, has held or currently holds, as the case may be;
39 -- the nature and seriousness of the offense;
40 -- the circumstances under which the offense occurred;
41 -- the date of the offense;
42 -- the age of the applicant when the offense was committed;
43 -- whether the offense was an isolated or repeated incident;
44 -- any social conditions which may have contributed to the offense;
45 and

- 1 -- any evidence of rehabilitation, including good conduct in prison
2 or in the community, counseling or psychiatric treatment received,
3 acquisition of additional academic or vocational schooling, successful
4 participation in correctional work-release programs, or the
5 recommendation of those who have had the applicant under their
6 supervision.
- 7 C If an applicant refuses to consent to, or cooperate in, the securing
8 of a criminal history record background check, the board or
9 director, as applicable, shall not issue a license or other
10 authorization to the applicant and the board or director shall notify
11 the applicant of that denial.
- 12 C An applicant who is required to undergo a criminal history record
13 background check shall submit to the director that individual's
14 name, address and fingerprints taken on standard fingerprint cards
15 by a State or municipal law enforcement agency. The director is
16 authorized to exchange fingerprint data with and receive criminal
17 history record information from the FBI and the State Police for
18 use in making the determinations required pursuant to the bill.
- 19 C Upon receipt of the criminal history record information for an
20 applicant from the FBI or the State Police, the board or director, as
21 applicable, shall immediately notify the applicant in writing. If the
22 applicant is disqualified, the conviction or convictions that
23 constitute the basis for the disqualification shall be identified in the
24 notice to the applicant.
- 25 C The applicant shall have 30 days from the date of the written notice
26 of disqualification to petition the board or director, as applicable,
27 for a hearing on the accuracy of the applicant's criminal history
28 record information or to establish the applicant's rehabilitation.
29 Upon the issuance of a final decision on a petition to the board or
30 director, the board or director shall notify the applicant as to
31 whether the applicant remains disqualified.
- 32 C An applicant shall be required to assume the cost of the criminal
33 history record background check, in accordance with procedures
34 determined by regulation of the director.
- 35 The bill takes effect on the 180th day after enactment, but
36 authorizes the Director of the Division of Consumer Affairs to take
37 anticipatory administrative action in advance as necessary for its
38 implementation.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 970

STATE OF NEW JERSEY

DATED: MAY 9, 2002

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 970.

This bill requires that a professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety, or the Director of the Division of Consumer Affairs, as applicable, who regulates the practice of a health care professional shall not issue an initial license or other authorization to practice a health care profession that is regulated by that board or the director to any applicant therefor unless the board or director, as applicable, first determines, consistent with the requirements of the bill, that no criminal history record information exists on file in the Federal Bureau of Investigation (FBI), Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being licensed or otherwise authorized to practice as a health care professional.

The bill would apply to applicants for licensure or other authorization to practice a health care profession that is regulated under Titles 45 or 52 of the Revised Statutes by one of the following boards or committees or by the Director of the Division of Consumer Affairs:

- the State Board of Medical Examiners;
- the New Jersey Board of Nursing;
- the New Jersey State Board of Dentistry;
- the New Jersey State Board of Optometrists;
- the Board of Pharmacy of the State of New Jersey;
- the State Board of Chiropractic Examiners;
- the Acupuncture Examining Board;
- the State Board of Physical Therapy;
- the State Board of Respiratory Care;
- the Orthotics and Prosthetics Board of Examiners;
- the State Board of Psychological Examiners;
- the State Board of Social Work Examiners;
- the State Board of Veterinary Medical Examiners;
- the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians;

-- the Audiology and Speech-Language Pathology Advisory Committee; or

-- the State Board of Marriage and Family Therapy Examiners.

The bill would not apply to nurse aides, personal care assistants or homemaker-home health aides who are already required to undergo a criminal history record background check pursuant to State law.

Specifically, the bill provides that:

C A person shall be disqualified from licensure or other authorization to practice as a health care professional if that person's criminal history record background check reveals a record of conviction of any crime or disorderly persons offense in New Jersey or another state or jurisdiction:

- involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A.2C:11-1 et seq., N.J.S.A.2C:12-1 et seq., N.J.S.A.2C:13-1 et seq., N.J.S.A.2C:14-1 et seq. or N.J.S.A.2C:15-1 et seq.;

- against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A.2C:24-1 et seq.;

- involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or fraud relating to any health care plan or program as set forth in N.J.S.A.2C:21-4.1, 2C:21-4.2, 2C:21-4.3, 2C:21-22.1 or 30:4D-17; or

- involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.A.2C:35-10.

C No applicant shall be disqualified from licensure or other authorization on the basis of any conviction disclosed by a criminal history record background check if the applicant has affirmatively demonstrated to the board or director, as applicable, clear and convincing evidence of the applicant's rehabilitation. In determining whether the applicant has affirmatively demonstrated rehabilitation, the following factors shall be considered:

-- the nature and responsibility of the position which the applicant would hold, has held or currently holds, as the case may be;

-- the nature and seriousness of the offense;

-- the circumstances under which the offense occurred;

-- the date of the offense;

-- the age of the applicant when the offense was committed;

-- whether the offense was an isolated or repeated incident;

-- any social conditions which may have contributed to the offense;

and

-- any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the

recommendation of those who have had the applicant under their supervision.

- C If an applicant refuses to consent to, or cooperate in, the securing of a criminal history record background check, the board or director, as applicable, shall not issue a license or other authorization to the applicant and the board or director shall notify the applicant of that denial.
- C An applicant who is required to undergo a criminal history record background check shall submit to the director that individual's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The director is authorized to exchange fingerprint data with and receive criminal history record information from the FBI and the State Police for use in making the determinations required pursuant to the bill.
- C Upon receipt of the criminal history record information for an applicant from the FBI or the State Police, the board or director, as applicable, shall immediately notify the applicant in writing. If the applicant is disqualified, the conviction or convictions that constitute the basis for the disqualification shall be identified in the notice to the applicant.
- C The applicant shall have 30 days from the date of the written notice of disqualification to petition the board or director, as applicable, for a hearing on the accuracy of the applicant's criminal history record information or to establish the applicant's rehabilitation. Upon the issuance of a final decision on a petition to the board or director, the board or director shall notify the applicant as to whether the applicant remains disqualified.
- C An applicant shall be required to assume the cost of the criminal history record background check, in accordance with procedures determined by regulation of the director.

The bill repeals N.J.S.A.45:2D-18, concerning the authority of the State Board of Marriage and Family Therapy Examiners to refuse to issue or to revoke licensure or certification for alcohol and drug counselors, because the provisions of that section are incorporated in this bill.

The bill takes effect on the 180th day after enactment, but authorizes the Director of the Division of Consumer Affairs to take anticipatory administrative action in advance as necessary for its implementation.

ASSEMBLY BILL NO. 2264
(First Reprint)

To the Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2264 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill provides that all health care professional boards or committees that are regulated by the Division of Consumer Affairs, including doctors, nurses, dentists, optometrists, pharmacists, chiropractors, acupuncturists, physical therapists, psychologists, social workers, veterinarians, and others, must undergo a criminal history background check at the time of their initial licensure. The cost of the background check is to be paid by the applicant.

There will be an automatic license denial if a conviction of any of the crimes enumerated in the bill is disclosed by a criminal history background check, unless an applicant can affirmatively demonstrate to the Division of Consumer Affairs clear and convincing evidence of rehabilitation.

B. Recommended Action

I commend the sponsors of this bill and the Legislature for recognizing the need to ensure that licensed medical professionals working in this State meet certain standards by having officials review those professionals for a criminal background prior to issuing them licenses. I firmly believe that our New Jersey consumers deserve the protection and peace of mind that medical professionals practicing in this State are held to the highest standards. Indeed, those who care for some of our most vulnerable citizens, including nurses' aides, personal care assistants and homemaker-home health aides, already undergo criminal history background checks. Expanding this universe of professionals subject to a background check makes sense.

I have been advised by the Office of the Attorney General, however, that this bill should incorporate the provisions of the Uniform Enforcement Act rather than create an additional statutory scheme for determining rehabilitation of convicted offenders. The Uniform Enforcement Act requires that when a prior criminal conviction exists, it must be evaluated as to whether the crime committed by the applicant is one of moral turpitude or one that relates adversely to the occupation being sought. The application of the Uniform Enforcement Act will give the

professional licensing boards the discretion they need and deserve in evaluating the criminal history of applicants on a case by case basis.

In addition, the Division of State Police anticipates utilizing a digital fingerprint scanning system in the very near future that will obviate the need for traditional fingerprint cards, which are specifically referenced in this bill. These technological advances will greatly improve and simplify the background check process. This bill should incorporate that technology.

Lastly, the Division of Consumer Affairs advises that the medical professional occupations subject to criminal background checks pursuant to the bill should include all medical professions. I agree. Therefore, those professionals governed by the Occupational Therapy Advisory Council and the Certified Psychoanalysis Advisory Committee should be subject to criminal background checks as well.

As a result of the above considerations, I recommend that the bill be conditionally vetoed to ensure that the legislation encompasses the effect of existing law, provides for changes in applicable technology, and provides uniform application of the bill to all similarly situated medical professions.

Therefore, I herewith return Assembly bill No. 2264 (First Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Line 33: Delete “or”

Page 2, Section 1, Line 34: After “Examiners” insert
 “, the Occupational Therapy
 Advisory Council or the
 Certified Psychoanalysts
 Advisory Committee”

Page 3, Section 2, Line 6: After “with” insert “section 8 of P.L. 1978,
 c. 73 (C.45:1-21)”

Page 3, Section 2, Line 7: Delete “the requirements of this act”

Page 3, Section 2, Line 10: Delete “would” insert “may”

Page 3, Section 2, Line 13 to
 Page 4, Section 2, Line 19: Delete in their entirety.

Page 4, Section 3, Line 25: After “agency” insert “or by a private entity
 under contract with the State”

Page 4, Section 3, Line 33:

Delete “, who shall immediately notify the applicant in writing. If the” and after “applicable” insert “.”

Page 4, Section 3, Lines 34 to 44:

Delete in their entirety.

Page 4, Section 3, Line 45:

Insert new subsection “c” as follows: “c. If an applicant refuses to consent to, or cooperate in, the securing of a criminal history record background check, the board or director, as applicable, shall not issue a license or other authorization to the applicant and shall notify the applicant of that denial.”

Page 6, Section 8, Line 7:

Delete “180th” insert “365th”

Respectfully,

/s/ James E. McGreevey

Governor

[seal]

Attest:

/s/ Paul A. Levinsohn

Chief Counsel to the Governor