

# 26:2H-83

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2000 **CHAPTER:** 20  
**NJSA:** 26:2H-83 (Nurses aides, etc – criminal background checks)  
**BILL NO:** S116 (Substituted for A324/1821)  
**SPONSOR(S):** Connors and McNamara  
**DATE INTRODUCED:** Pre-filed  
**COMMITTEE:** **ASSEMBLY:** Appropriations  
**SENATE:** Law and Public Safety  
**AMENDED DURING PASSAGE:** Yes  
**DATE OF PASSAGE:** **ASSEMBLY:** March 16, 2000  
**SENATE:** March 23, 2000  
**DATE OF APPROVAL:** May 3, 2000  
**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL:** Senate Committee Substitute S116/S124 (1R)  
(Amendments during passage denoted by superscript numbers)

### S116

**SPONSORS STATEMENT:** (Begins on p 19 of original bill) Yes  
**COMMITTEE STATEMENT:** **ASSEMBLY:** No  
**SENATE:** No  
**FLOOR AMENDMENT STATEMENTS:** No  
**LEGISLATIVE FISCAL ESTIMATE:** No

### S124

**SPONSORS STATEMENT:** (Begins on p 18 of original bill) Yes  
**COMMITTEE STATEMENT:** **ASSEMBLY:** No  
**SENATE:** No  
**FLOOR AMENDMENT STATEMENTS:** No  
**LEGISLATIVE FISCAL ESTIMATE:** No

### SCS for S116/S124

**SPONSORS STATEMENT:** No  
**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes  
**FLOOR AMENDMENT STATEMENTS:** No  
**LEGISLATIVE FISCAL ESTIMATE:** Yes

### A324

**SPONSORS STATEMENT:** (Begins on p 20 of original bill) Yes  
**COMMITTEE STATEMENT:** **ASSEMBLY:** No  
**SENATE:** No  
**FLOOR AMENDMENT STATEMENTS:** No  
**LEGISLATIVE FISCAL ESTIMATE:** No

### A1821

**SPONSORS STATEMENT:** (Begins on p 19 of original bill) Yes  
(Identical to sponsor's statement for S116)  
**COMMITTEE STATEMENT:** **ASSEMBLY:** No  
**SENATE:** No  
**FLOOR AMENDMENT STATEMENTS:** No  
**LEGISLATIVE FISCAL ESTIMATE:** No

### SCS for A324/A1821

**SPONSORS STATEMENT:** (Begins on p. 20 of original bill) No  
**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes 1-27-2000 (Health)  
Yes 3-2-2000 (Appropriations)  
**SENATE:** No  
**FLOOR AMENDMENT STATEMENTS:** No  
**LEGISLATIVE FISCAL ESTIMATE:** Yes

Identical to fiscal estimate for S116/S124

**VETO MESSAGE:** No  
**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

### FOLLOWING WERE PRINTED:

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**REPORTS:**

No

**HEARINGS:**

No

Comments from Governor Whitman's 2000 State of the State Speech

**NEWSPAPER ARTICLES:**

No

"Background checks for home health aides," 3-17-2000 Star Ledger, p. 31

"Criminal check passes for home health aides," 5-4-2000 Star Ledger, p.A1

"Aides history a matter of law," 5-4-2000 Bergen Record, p.A1

# SENATE, No. 116

## STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator LEONARD T. CONNORS, JR.**  
**District 9 (Atlantic, Burlington and Ocean)**  
**Senator HENRY P. MCNAMARA**  
**District 40 (Bergen and Passaic)**

**Co-Sponsored by:**

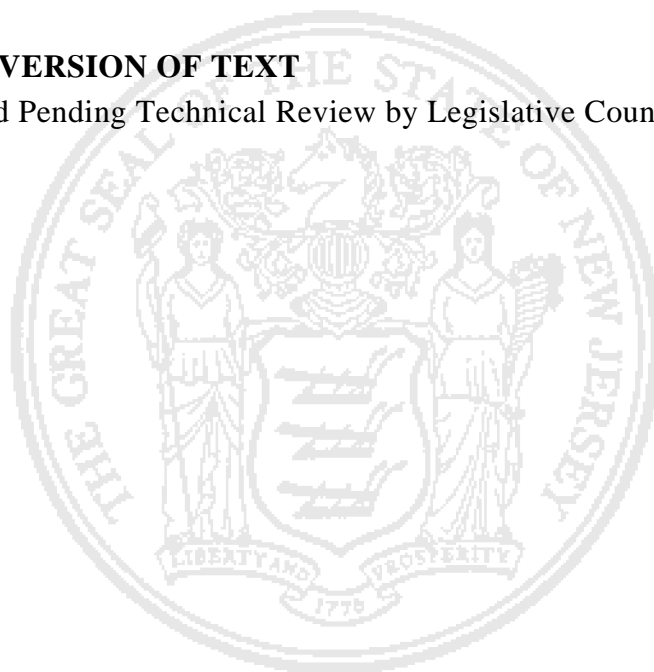
**Senator Bucco**

**SYNOPSIS**

Requires criminal history record checks for all certified nurse aides, personal care assistants and homemaker-home health aides as condition of recertification.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning providers of health care services for the elderly  
2 and disabled, amending P.L.1997, c.100 and supplementing Titles  
3 2A and 2C of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 2 of P.L.1997, c.100 (C.26:2H-83) is amended to read  
9 as follows:

10 2. a. The Department of Health and Senior Services shall not issue  
11 a nurse aide or personal care assistant certification to any applicant,  
12 except on a conditional basis as provided for in subsection d. of  
13 section 3 of P.L.1997, c.100 (C.26:2H-84), unless the Commissioner  
14 of Health and Senior Services first determines, consistent with the  
15 requirements of sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83  
16 through 87), that no criminal history record information exists on file  
17 in the Federal Bureau of Investigation, Identification Division, or in  
18 the State Bureau of Identification in the Division of State Police,  
19 which would disqualify that person from being certified. In addition,  
20 each nurse aide or personal care assistant certified by the department  
21 prior to the effective date of P.L. , c. (C. )(pending before the  
22 Legislature as this bill) upon whom a criminal history record  
23 background check has not been conducted pursuant to sections 2  
24 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87), shall be  
25 required to undergo an initial criminal history record background  
26 check as a condition of recertification. A follow-up criminal history  
27 record background check shall be conducted at least once every two  
28 years as a condition of recertification for every certified nurse aide and  
29 personal care assistant, subject to the provisions of subsection d. of  
30 this section. A person shall be disqualified from certification if that  
31 person's criminal history record background check reveals a record of  
32 conviction of any of the following crimes and offenses:

- 33 (1) In New Jersey, any crime or disorderly persons offense:  
34 (a) involving danger to the person, meaning those crimes and  
35 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
36 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  
37 N.J.S.2C:15-1 et seq.; or  
38 (b) against the family, children or incompetents, meaning those  
39 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et  
40 seq.; or  
41 (c) involving theft as set forth in chapter 20 of Title 2C of the New  
42 Jersey Statutes; or

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

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

9 b. Notwithstanding the provisions of subsection a. of this section,  
10 no person shall be disqualified from certification on the basis of any  
11 conviction disclosed by a criminal history record background check  
12 performed pursuant to sections 2 through 6 and section 14 of  
13 P.L.1997, c.100 (C.26:2H-83 through 87 and C.53:1-20.9a) if the  
14 person has affirmatively demonstrated to the Commissioner of Health  
15 and Senior Services clear and convincing evidence of the person's  
16 rehabilitation. In determining whether a person has affirmatively  
17 demonstrated rehabilitation, the following factors shall be considered:

18 (1) the nature and responsibility of the position which the  
19 convicted person would hold [or], has held or currently holds, as the  
20 case may be;

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

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

23 (4) the date of the offense;

24 (5) the age of the person when the offense was committed;

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

26 (7) any social conditions which may have contributed to the  
27 offense; and

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

34 c. If a person subject to the provisions of sections 2 through 6 of  
35 P.L.1997, c.100 (C.26:2H-83 through 87) refuses to consent to, or  
36 cooperate in, the securing of a criminal history record background  
37 check, the commissioner shall, as applicable:

38 (1) not issue a nurse aide or personal care assistant certification and  
39 shall notify the applicant, and the applicant's employer if the applicant  
40 is conditionally employed as provided in subsection d. of section 3 of  
41 P.L.1997, c.100 (C.26:2H-84) or the applicant's prospective employer  
42 if known, of that denial; or

43 (2) revoke the person's current nurse aide or personal care assistant  
44 certification and notify the person, and the person's employer if  
45 known, of that revocation.

1       d. In lieu of implementing the requirement for a follow-up criminal  
2 history record background check at least once every two years as a  
3 condition of recertification for every certified nurse aide and personal  
4 care assistant pursuant to subsection a. of this section, the  
5 Commissioner of Health and Senior Services, in consultation with the  
6 New Jersey Board of Nursing in the Division of Consumer Affairs in  
7 the Department of Law and Public Safety, may implement an  
8 alternative means, which the commissioner has determined to be  
9 feasible and more cost-effective than the performance of a criminal  
10 history record background check, of ascertaining whether a certified  
11 nurse aide or personal care assistant has been convicted of a crime or  
12 disorderly persons offense as described in section 2 of P.L.1997, c.100  
13 (C.26:2H-83), including, but not limited to, the matching of a person's  
14 Social Security number or other identifying information with records  
15 of criminal proceedings in this and other states.

16 (cf: P.L.1997,c.284, s.2)

17

18       2. Section 3 of P.L.1997, c.100 (C.26:2H-84) is amended to read  
19 as follows:

20       3. a. An applicant for certification, or a certified nurse aide or  
21 personal care assistant who is required to undergo a criminal history  
22 record background check pursuant to section 2 of P.L.1997, c.100  
23 (C.26:2H-83), shall submit to the Commissioner of Health and Senior  
24 Services [the applicant's] that individual's name, address and  
25 fingerprints taken on standard fingerprint cards by a State or municipal  
26 law enforcement agency. The commissioner is authorized to exchange  
27 fingerprint data with and receive criminal history record information  
28 from the Federal Bureau of Investigation and the Division of State  
29 Police for use in making the determinations required by sections 2  
30 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

31       b. Upon receipt of the criminal history record information for a  
32 person from the Federal Bureau of Investigation or the Division of  
33 State Police, the commissioner shall immediately notify, in writing, the  
34 applicant, and the applicant's employer if the applicant is conditionally  
35 employed as provided in subsection d. of this section or the applicant's  
36 prospective employer if known, or a certified nurse aide or personal  
37 care assistant who is required to undergo a criminal history record  
38 background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-  
39 83) and that person's employer, as applicable, of the person's  
40 qualification or disqualification for certification under sections 2  
41 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87). If the  
42 [applicant] person is disqualified, the conviction or convictions which  
43 constitute the basis for the disqualification shall be identified in the  
44 notice to the [applicant] person, but shall not be identified in the  
45 notice to the [applicant's] person's employer or prospective employer.

1 c. The [applicant] person who is the subject of the background  
2 check shall have 30 days from the date of the written notice of  
3 disqualification to petition the commissioner for a hearing on the  
4 accuracy of the [applicant's] person's criminal history record  
5 information or to establish the [applicant's] person's rehabilitation  
6 under subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83).  
7 The commissioner shall notify the [applicant's] person's employer or  
8 prospective employer of the [applicant's] person's petition for a  
9 hearing within five days following the receipt of the petition from the  
10 [applicant] person. Upon the issuance of a final decision upon a  
11 petition to the commissioner pursuant to this subsection, the  
12 commissioner shall notify the [applicant] person and the [applicant's]  
13 person's employer or prospective employer as to whether the  
14 [applicant] person remains disqualified from certification under  
15 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

16 d. An applicant for certification may be issued conditional  
17 certification and may be employed as a nurse aide or a personal care  
18 assistant conditionally for a period not to exceed [180] 90 days,  
19 pending completion of a criminal history record background check  
20 required under sections 2 through 6 of P.L.1997,c.100 (C.26:2H-83  
21 through 87), if the person submits to the commissioner a sworn  
22 statement attesting that the person has not been convicted of any crime  
23 or disorderly persons offense as described in section 2 of P.L.1997,  
24 c.100 (C.26:2H-83). A person who submits a false sworn statement  
25 shall be disqualified from certification as a nurse aide or a personal  
26 care assistant, as the case may be, and shall not have an opportunity  
27 to establish rehabilitation pursuant to subsection b. of section 2 of  
28 P.L.1997, c.100 (C.26:2H-83).

29 A conditionally employed person, or an employed person certified  
30 as a nurse aide or a personal care assistant, who disputes the accuracy  
31 of the criminal history record information and who files a petition  
32 requesting a hearing pursuant to subsection c. of this section may  
33 remain employed by [the] that person's employer until the  
34 commissioner rules on the [applicant's] person's petition but, pending  
35 the commissioner's ruling, the employer shall not permit the  
36 [applicant] person to have unsupervised contact with patients,  
37 residents or clients, as the case may be, who are 60 years of age or  
38 older.

39 e. (1) A licensed health care facility or other entity that has  
40 received an application from or conditionally employs an applicant for  
41 nurse aide or personal care assistant certification, or employs a  
42 certified nurse aide or personal care assistant, and:

43 (a) which receives notice from the Commissioner of Health and  
44 Senior Services that the applicant or certified nurse aide or personal  
45 care assistant, as applicable, has been determined by the commissioner  
46 to be disqualified from certification as a nurse aide or personal care

1 assistant pursuant to sections 2 through 6 of P.L.1997, c.100  
2 (C.26:2H-83 through 87); or

3 (b) which terminates its employment of a conditionally employed  
4 applicant for nurse aide or personal care assistant certification or a  
5 certified nurse aide or personal care assistant because of unsatisfactory  
6 performance or conduct by that person as an employee, or because the  
7 person was disqualified from employment at the health care facility or  
8 other entity on the basis of a conviction of a crime or disorderly  
9 persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-  
10 83) after commencing employment at the health care facility or other  
11 entity;

12 shall be immune from liability for disclosing information about that  
13 disqualification or termination in good faith to another licensed health  
14 care facility or other entity which is qualified by statute or regulation  
15 to employ the person as a nurse aide or personal care assistant.

16 (2) A licensed health care facility or other entity which discloses  
17 information pursuant to paragraph (1) of this subsection shall be  
18 presumed to be acting in good faith unless it is shown by clear and  
19 convincing evidence that the health care facility or other entity acted  
20 with actual malice toward the person who is the subject of the  
21 information.

22 f. (1) A licensed health care facility or other entity, upon receiving  
23 notice from the chief law enforcement officer of a municipality  
24 pursuant to section 9 of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill) that a person employed by it as a nurse aide or  
26 personal care assistant, including a conditionally employed person, has  
27 been arrested for a crime or disorderly persons offense as described in  
28 section 2 of P.L.1997, c.100 (C.26:2H-83) after commencing  
29 employment at the health care facility or other entity, shall:

30 (a) restrict the person's employment as a nurse aide or personal care  
31 assistant, pending the person's acquittal or conviction, so that the  
32 person shall not have unsupervised contact with patients, residents or  
33 clients, as the case may be, who are 60 years of age or older; and

34 (b) report information about the arrest to the Commissioner of  
35 Health and Senior Services in a manner prescribed by the  
36 commissioner.

37 (2) A licensed health care facility or other entity, upon receiving  
38 notice from the Administrative Office of the Courts pursuant to  
39 section 10 of P.L. , c. (C. ) that a person employed by it as a  
40 nurse aide or personal care assistant, including a conditionally  
41 employed person, has been convicted of a crime or disorderly persons  
42 offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83)  
43 after commencing employment at the health care facility or other  
44 entity, shall:



1       (a) immediately terminate the person's employment as a nurse aide  
2 or personal care assistant; and

3       (b) report information about the conviction and termination to the  
4 Commissioner of Health and Senior Services in a manner prescribed  
5 by the commissioner, who shall thereupon deem the person to be  
6 disqualified from certification as a nurse aide or personal care  
7 assistant, subject to the provisions of paragraph (4) of this subsection.

8       (3) A licensed health care facility or other entity shall be immune  
9 from liability for any actions taken in good faith pursuant to  
10 paragraphs (1) or (2) of this subsection and shall be presumed to be  
11 acting in good faith unless it is shown by clear and convincing  
12 evidence that the health care facility or other entity acted with actual  
13 malice toward the employee.

14       (4) The person terminated from employment pursuant to paragraph  
15 (2) of this subsection shall have 30 days from the date of the  
16 termination to petition the commissioner for a hearing on the accuracy  
17 of the information about the conviction reported to the commissioner  
18 or to establish why the person should not be terminated from  
19 employment, and disqualified from certification, as a nurse aide or  
20 personal care assistant. The commissioner shall notify the person's  
21 employer of the person's petition for a hearing within five days  
22 following the receipt of the petition from the person. Upon the  
23 issuance of a final decision upon a petition to the commissioner  
24 pursuant to this paragraph, the commissioner shall notify the person  
25 and the person's employer as to whether:

26       (a) the person is to be reinstated in his employment as a nurse aide  
27 or personal care assistant and retain his certification; or

28       (b) the person's termination from employment as a nurse aide or  
29 personal care assistant stands and the person remains disqualified from  
30 certification.

31       g. The commissioner shall provide for a registry of all persons who  
32 have successfully completed all training and competency evaluation  
33 requirements for certification as a nurse aide or personal care assistant  
34 and shall provide for the inclusion in the registry of information about  
35 the disqualification of any person from certification pursuant to  
36 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87); for  
37 which purposes, the commissioner may use an existing registry  
38 established pursuant to statute or regulation, subject to the  
39 requirements of federal law. The registry shall include the specific  
40 documented findings constituting the basis for that disqualification,  
41 except that the information shall indicate that the person was  
42 convicted of a crime or disorderly persons offense as described in  
43 section 2 of P.L.1997, c.100 (C.26:2H-83) but shall not identify the  
44 conviction or convictions which constitute the basis for the  
45 disqualification. The registry shall also include information about the

1 arrest of a person who is employed as a nurse aide or personal care  
2 assistant for a crime or disorderly persons offense as described in  
3 section 2 of P.L.1997, c.100 (C.26:2H-83), as reported by the person's  
4 employer pursuant to subsection f. of this section or the chief law  
5 enforcement officer of a municipality pursuant to section 9 of P.L. ,  
6 c. (C. ) (pending before the Legislature as this bill), but who has  
7 not yet been acquitted or convicted; except that the information shall  
8 indicate that the person was arrested for a such a crime or disorderly  
9 persons offense but shall not identify the specific crime or offense.

10 (cf: P.L.1997,c.284, s.3)

11

12 3. Section 4 of P.L.1997, c.100 (C.26:2H-85) is amended to read  
13 as follows:

14 4. [An applicant's employer if the applicant is conditionally  
15 employed as provided in subsection d. of section 3 of P.L.1997, c.100  
16 (C.26:2H-84) or an applicant's prospective employer may] a. The  
17 Department of Health and Senior Services shall assume the cost of the  
18 criminal history record background check conducted on an applicant  
19 for nurse aide or personal care assistant certification, or a certified  
20 nurse aide or personal care assistant, as the case may be, pursuant to  
21 sections 2 through 6 and section 14 of P.L.1997,c.100 (C.26:2H-83  
22 through 87 and C.53:1-20.9a)[; or the employer or prospective  
23 employer may require the applicant to pay the cost of the criminal  
24 history record background check].

25 b. In fiscal year 2000 and each fiscal year thereafter, the Governor  
26 shall recommend and the Legislature shall appropriate from the  
27 General Fund to the Department of Health and Senior Services such  
28 funds as shall be necessary to effectuate the purposes of subsection a.  
29 of this section.

30 (cf: P.L.1997, c.284, s.4)

31

32 4. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to read  
33 as follows:

34 2. a. The board; appointment; terms. In addition to the members  
35 appointed to represent the interests of the public pursuant to P.L.1971,  
36 c.60 as amended by P.L.1977, c.285 (C.45:1-2.2) the New Jersey  
37 Board of Nursing shall consist of 10 members, six of whom shall be  
38 registered professional nurses, two of whom shall be licensed practical  
39 nurses, one of whom shall be an advanced practice nurse, and one of  
40 whom shall be an additional public member, all to be appointed by the  
41 Governor. Appointments to the board shall be for terms of five years  
42 or for the unexpired portion of a term in the case of a vacancy for any  
43 cause within a term, and until a successor shall be appointed and  
44 qualified. In making appointments the Governor shall give due  
45 consideration to, but shall not be bound by, recommendations  
46 submitted by the various nurses' professional associations of this State.

1 Upon notice and hearing, the Governor may remove from office any  
2 member of the board for neglect of duty, incompetency, unprofessional  
3 or dishonorable conduct.

4 b. Qualifications for appointment. The advanced practice nurse  
5 member shall be a resident of this State, shall be a graduate of an  
6 accredited advanced practice nurse program, shall have had at least  
7 five years' experience in professional nursing, shall at the time of  
8 appointment be actively working as an advanced practice nurse, and,  
9 except for the member first appointed, shall hold a certification as an  
10 advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et  
11 al.). Each registered professional nurse member of the board shall be  
12 a citizen of the United States and a resident of this State; shall be a  
13 graduate of an accredited school of nursing within the United States;  
14 shall be a registered nurse in this State; shall have had at least five  
15 years' experience in professional nursing following graduation from an  
16 accredited school of nursing; and shall at the time of appointment be  
17 actively engaged in nursing or work relating thereto. The licensed  
18 practical nurse members of the board shall be citizens of the United  
19 States and residents of this State; shall hold a valid license to practice  
20 practical nursing in this State; shall have had at least three years'  
21 experience in practical nursing; and shall at the time of appointment be  
22 actively engaged in practical nursing or work related thereto.

23 c. Oath or affirmation of office. Within 30 days after receipt of  
24 the commission, each appointee shall take, subscribe and file in the  
25 office of the Secretary of State the oath or affirmation prescribed by  
26 law.

27 d. Duties and powers. The board shall have the following duties  
28 and powers: (1) It shall hold annual meetings and such other meetings  
29 as it may deem necessary at such times and places as the board shall  
30 prescribe and a majority of the board including one officer shall  
31 constitute a quorum. (2) It shall elect from its members and prescribe  
32 the duties of a president and secretary-treasurer, each of whom shall  
33 serve for one year and until a successor is elected. (3) It shall appoint  
34 and prescribe the duties of an executive secretary to the board who  
35 need not be a member thereof but who shall be a citizen of the United  
36 States, a graduate of a college or university with a major in nursing  
37 education, a registered nurse of this State with at least five years'  
38 experience in teaching or administration or both in an accredited  
39 school of professional nursing, or have equivalent qualifications as  
40 determined by the board. The executive secretary shall hold office  
41 during the will and pleasure of the board. (4) It shall employ and  
42 prescribe the duties of such persons as in its judgment shall be  
43 necessary for the proper performance and execution of the duties and  
44 powers of the board. (5) It shall determine and pay reasonable  
45 compensation and necessary expenses of the executive secretary and  
46 all employees of the board. (6) It shall pay to each member of the

1 board the compensation hereinafter provided. (7) It shall have a  
2 common seal, keep an official record of all its meetings, and through  
3 its secretary-treasurer report annually to the Governor the work of the  
4 board. (8) It shall examine applicants for a license or renewals thereof,  
5 issue, renew, revoke and suspend licenses, as hereinafter provided. (9)  
6 It shall in its discretion investigate and prosecute all violations of  
7 provisions of this act. (10) It shall keep an official record which shall  
8 show the name, age, nativity and permanent place of residence of each  
9 applicant and licensee and such further information concerning each  
10 applicant and licensee as the board shall deem advisable. The record  
11 shall show also whether the applicant was examined, licensed or  
12 rejected under this and any prior act. Copies of any of the entries of  
13 the record or of any certificate issued by the board may be  
14 authenticated by any member of the board under its seal and when so  
15 authenticated shall be evidence in all courts of this State of the same  
16 weight and force as the original thereof. For authenticating a copy of  
17 any entry or entries contained in its record the board shall be paid a fee  
18 of \$3.00, but such authentication, if made at the request of any public  
19 agency of this or any other jurisdiction, may be without fee. (11) In its  
20 discretion it may publish at such times as it shall determine a list of  
21 nurses licensed under this act, a list of schools of nursing accredited  
22 or approved under this act, and such other information as it shall deem  
23 advisable. (12) It shall prescribe standards and curricula for schools of  
24 nursing and evaluate and approve courses for affiliation. (13) It shall  
25 hear and determine applications for accreditation of schools of  
26 professional nursing, conduct investigations before and after  
27 accreditation of such schools and institutions with which they are  
28 affiliated, and issue, suspend or revoke certificates of accreditation as  
29 hereinafter provided. (14) It shall approve schools of practical nursing  
30 which shall conform to the standards, curricula, and requirements  
31 prescribed by the board, and suspend or revoke approval for violations  
32 thereof; provided, that this power shall not extend to schools operated  
33 by any board of education in this State. (15) It may consult with the  
34 Medical Society of New Jersey and the New Jersey Hospital  
35 Association with respect to any matter relating to the administration  
36 of this act and shall consult with those associations with respect to  
37 standards and curricula and any change thereof for schools of nursing.  
38 (16) It shall issue subpoenas for the attendance of witnesses and  
39 production of documents at any hearing before the board authorized  
40 by this act and any member of the board shall administer an oath or  
41 affirmation to persons appearing to give testimony at such hearings.  
42 (17) It may conduct any investigations, studies of nursing and nursing  
43 education and related matters, and prepare and issue such publications  
44 as in the judgment of the board will advance the profession of nursing  
45 and its service to the public. (18) It shall perform all other functions  
46 which are provided in this act to be performed by it or which in the

1 judgment of the board are necessary or proper for the administration  
2 of this act. (19) It shall from time to time prescribe rules and  
3 regulations not inconsistent with this act. (20) It shall prescribe  
4 standards and curricula for homemaker-home health aide education  
5 and training programs which a homemaker-home health aide shall  
6 complete in order to work in this State. (21) It shall review  
7 applications to provide homemaker-home health aide training  
8 programs and shall issue, suspend or revoke program approval. (22)  
9 It shall establish and maintain a registry of all individuals who have  
10 successfully completed a homemaker-home health aide training and  
11 competency evaluation program. The board shall provide for the  
12 inclusion in the registry of information about: (a) the disqualification  
13 of any person from certification as a homemaker-home health aide  
14 pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3  
15 through 24.9), including the specific documented findings constituting  
16 the basis for that disqualification; except that the information shall  
17 indicate that the person was convicted of a crime or disorderly persons  
18 offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3)  
19 but shall not identify the conviction or convictions which constitute the  
20 basis for the disqualification; and (b) the arrest of a person who is  
21 employed as a homemaker-home health aide for a crime or disorderly  
22 persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-  
23 83), as reported by the person's employer pursuant to subsection f. of  
24 section 8 of P.L.1997, c.100 (C.45:11-24.4) or the chief law  
25 enforcement officer of a municipality pursuant to section 9 of P.L. .  
26 c. (C. ) (pending before the Legislature as this bill), but who has  
27 not yet been acquitted or convicted; except that the information shall  
28 indicate that the person was arrested for a such a crime or disorderly  
29 persons offense but shall not identify the specific crime or offense.  
30 (23) It shall prescribe standards and requirements for a competency  
31 evaluation program resulting in certification of the homemaker-home  
32 health aide, and the renewal, revocation, and suspension of that  
33 certification. (24) It shall review applications for homemaker  
34 home-health aide certification and shall issue, suspend, revoke, or fail  
35 to renew certifications and conduct investigations pursuant to the  
36 provisions of P.L.1978, c.73 (C.45:1-14 et seq.).

37 e. Compensation. Each member of the board shall receive \$15.00  
38 per day for each day in which such member is actually engaged in the  
39 discharge of duties and traveling and other expenses necessarily  
40 incurred in the discharge of duties.

41 (cf: P.L.1999, c.85, s.2)

42

43 5. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read  
44 as follows:

45 7. a. The New Jersey Board of Nursing in the Division of  
46 Consumer Affairs in the Department of Law and Public Safety shall

1 not issue a homemaker-home health aide certification to any applicant,  
2 except on a conditional basis as provided for in subsection d. of  
3 section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the board first  
4 determines, consistent with the requirements of sections 7 through 13  
5 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), that no criminal  
6 history record information exists on file in the Federal Bureau of  
7 Investigation, Identification Division, or in the State Bureau of  
8 Identification in the Division of State Police, which would disqualify  
9 that person from being certified. In addition, each homemaker-home  
10 health aide certified by the board prior to the effective date of P.L. ,  
11 c. (C. )(pending before the Legislature as this bill) and upon whom  
12 a criminal history record background check has not been conducted  
13 pursuant to sections 7 through 9 of P.L.1997, c.100 (C. (C.45:11-24.3  
14 through 24.5), shall be required to undergo an initial criminal history  
15 record background check as a condition of recertification. A follow-  
16 up criminal history record background check shall be conducted at  
17 least once every two years as a condition of recertification for every  
18 certified homemaker-home health aide, subject to the provisions of  
19 subsection d. of this section. A person shall be disqualified from  
20 certification if that person's criminal history record background check  
21 reveals a record of conviction of any of the following crimes and  
22 offenses:

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

24 (a) involving danger to the person, meaning those crimes and  
25 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
26 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  
27 N.J.S.2C:15-1 et seq.; or

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

31 (c) involving theft as set forth in chapter 20 of Title 2C of the New  
32 Jersey Statutes; or

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

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

41 b. Notwithstanding the provisions of subsection a. of this section,  
42 no person shall be disqualified from certification on the basis of any  
43 conviction disclosed by a criminal history record background check  
44 performed pursuant to sections 7 through 13 and section 14 of  
45 P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a) if the  
46 person has affirmatively demonstrated to the New Jersey Board of

1 Nursing in the Division of Consumer Affairs clear and convincing  
2 evidence of the person's rehabilitation. In determining whether a  
3 person has affirmatively demonstrated rehabilitation, the following  
4 factors shall be considered:

5 (1) the nature and responsibility of the position which the  
6 convicted person would hold [or], has held or currently holds, as the  
7 case may be;

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

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

10 (4) the date of the offense;

11 (5) the age of the person when the offense was committed;

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

13 (7) any social conditions which may have contributed to the  
14 offense; and

15 (8) any evidence of rehabilitation, including good conduct in prison  
16 or in the community, counseling or psychiatric treatment received,  
17 acquisition of additional academic or vocational schooling, successful  
18 participation in correctional work-release programs, or the  
19 recommendation of those who have had the person under their  
20 supervision.

21 c. If a person subject to the provisions of sections 7 through 13  
22 of P.L.1997, c.100 (C.45:11-24.3 through 24.9) refuses to consent to,  
23 or cooperate in, the securing of a criminal history record background  
24 check, the New Jersey Board of Nursing shall, as applicable:

25 (1) not issue a homemaker-home health aide certification and shall  
26 notify the applicant, and the applicant's employer if the applicant is  
27 conditionally employed as provided in subsection d. of section 8 of  
28 P.L.1997, c.100 (C.45:11-24.4) or the applicant's prospective  
29 employer if known, of that denial; or

30 (2) revoke the person's current homemaker-home health aide  
31 certification and notify the person, and the person's employer if  
32 known, of that revocation.

33 d. In lieu of implementing the requirement for a follow-up criminal  
34 history record background check at least once every two years as a  
35 condition of recertification for every certified homemaker-home health  
36 aide pursuant to subsection a. of this section, the New Jersey Board  
37 of Nursing, in consultation with the Department of Health and Senior  
38 Services, may implement an alternative means, which the board has  
39 determined to be feasible and more cost-effective than the performance  
40 of a criminal history record background check, of ascertaining whether  
41 a certified homemaker-home health aide has been convicted of a crime  
42 or disorderly persons offense as described in section 7 of P.L.1997,  
43 c.100 (C.45:11-24.3), including, but not limited to, the matching of a  
44 person's Social Security number or other identifying information with  
45 records of criminal proceedings in this and other states.

46 (cf: P.L.1997,c.284, s.6)

1       6. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read  
2 as follows:

3       8. a. An applicant for homemaker-home health aide certification,  
4 or a certified person who is required to undergo a criminal history  
5 record background check pursuant to section 7 of P.L.1997, c.100  
6 (C.45:11-24.3), shall submit to the New Jersey Board of Nursing [the  
7 applicant's] that individual's name, address and fingerprints taken on  
8 standard fingerprint cards by a State or municipal law enforcement  
9 agency. The board is authorized to exchange fingerprint data with and  
10 receive criminal history record information from the Federal Bureau  
11 of Investigation and the Division of State Police for use in making the  
12 determinations required by sections 7 through 13 of P.L.1997, c.100  
13 (C.45:11-24.3 through 24.9).

14       b. Upon receipt of the criminal history record information for a  
15 person from the Federal Bureau of Investigation or the Division of  
16 State Police, the New Jersey Board of Nursing shall immediately  
17 notify, in writing, the applicant, and the applicant's employer if the  
18 applicant is conditionally employed as provided in subsection d. of this  
19 section or the applicant's prospective employer if known, or the  
20 certified person who is required to undergo a criminal history record  
21 background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-  
22 24.3) and that person's employer, as applicable, of the person's  
23 qualification or disqualification for homemaker-home health aide  
24 certification under sections 7 through 13 of P.L.1997, c.100  
25 (C.45:11-24.3 through 24.9). If the [applicant] person is disqualified,  
26 the conviction or convictions which constitute the basis for the  
27 disqualification shall be identified in the notice to the [applicant]  
28 person, but shall not be identified in the notice to the [applicant's]  
29 person's employer or prospective employer.

30       c. The [applicant] person who is the subject of the background  
31 check shall have 30 days from the date of the written notice of  
32 disqualification to petition the New Jersey Board of Nursing for a  
33 hearing on the accuracy of the [applicant's] person's criminal history  
34 record information or to establish the [applicant's] person's  
35 rehabilitation under subsection b. of section 7 of P.L.1997, c.100  
36 (C.45:11-24.3). The board shall notify the [applicant's] person's  
37 employer or prospective employer of the [applicant's] person's  
38 petition for a hearing within five days following the receipt of the  
39 petition from the [applicant] person. Upon the issuance of a final  
40 decision upon a petition to the board pursuant to this subsection, the  
41 board shall notify the [applicant] person and the [applicant's] person's  
42 employer or prospective employer as to whether the [applicant] person  
43 remains disqualified from certification under sections 7 through 13 of  
44 P.L.1997, c.100 (C.45:11-24.3 through 24.9).

45       d. An applicant for certification may be issued conditional  
46 certification and may be employed as a homemaker-home health aide



1 conditionally for a period not to exceed [180] 90 days, pending  
2 completion of a criminal history record background check required  
3 under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through  
4 24.9), if the person submits to the New Jersey Board of Nursing a  
5 sworn statement attesting that the person has not been convicted of  
6 any crime or disorderly persons offense as described in section 7 of  
7 P.L.1997, c.100 (C.45:11-24.3). A person who submits a false sworn  
8 statement shall be disqualified from certification as a homemaker-home  
9 health aide and shall not have an opportunity to establish rehabilitation  
10 pursuant to subsection b. of section 7 of P.L.1997, c.100  
11 (C.45:11-24.3).

12 A conditionally employed person, or an employed person certified  
13 as a homemaker-home health aide, who disputes the accuracy of the  
14 criminal history record information and who files a petition requesting  
15 a hearing pursuant to subsection c. of this section may remain  
16 employed by [the] that person's employer until the board rules on the  
17 [applicant's] person's petition but, pending the board's ruling, the  
18 employer shall not permit the [applicant] person to have unsupervised  
19 contact with patients or clients who are 60 years of age or older.

20 e. (1) A home care services agency that has received an application  
21 from or conditionally employed an applicant for homemaker-home  
22 health aide certification, or has employed a certified homemaker-home  
23 health aide, and

24 (a) which receives notice from the board that the applicant or  
25 certified homemaker-home health aide, as applicable, has been  
26 determined by the board to be disqualified from certification as a  
27 homemaker-home health aide pursuant to sections 7 through 13 of  
28 P.L.1997, c.100 (C.45:11-24.3 through 24.9);or

29 (b) which terminates its employment of a conditionally employed  
30 applicant for homemaker-home health aide certification or a certified  
31 homemaker-home health aide because of unsatisfactory performance  
32 or conduct by that person as an employee, or because the person was  
33 disqualified from employment at the home care services agency on the  
34 basis of a conviction of a crime or disorderly persons offense as  
35 described in section 2 of P.L.1997, c.100 (C.26:2H-83) after  
36 commencing employment at the home care services agency;  
37 shall be immune from liability for disclosing information about that  
38 disqualification or termination in good faith to another home care  
39 services agency.

40 (2) A home care services agency which discloses information  
41 pursuant to paragraph (1) of this subsection shall be presumed to be  
42 acting in good faith unless it is shown by clear and convincing  
43 evidence that the home care services agency acted with actual malice  
44 toward the person who is the subject of the information.

45 f. (1) A home care services agency, upon receiving notice from the  
46 chief law enforcement officer of a municipality pursuant to section 9

1 of P.L. , c. (C. ) (pending before the Legislature as this bill) that  
2 a person employed by it as a homemaker-home health aide, including  
3 a conditionally employed person, has been arrested for a crime or  
4 disorderly persons offense as described in section 2 of P.L.1997, c.100  
5 (C.26:2H-83) after commencing employment at the home care services  
6 agency, shall:

7 (a) restrict the person's employment as a homemaker-home health  
8 aide, pending the person's acquittal or conviction, so that the person  
9 shall not have unsupervised contact with patients or clients, as the case  
10 may be, who are 60 years of age or older; and

11 (b) report information about the arrest to the board in a manner  
12 prescribed by the board.

13 (2) A home care services agency, upon receiving notice from the  
14 Administrative Office of the Courts pursuant to section 10 of P.L. ,  
15 c. (C. ) that a person employed by it as a homemaker-home health  
16 aide, including a conditionally employed person, has been convicted of  
17 a crime or disorderly persons offense as described in section 2 of  
18 P.L.1997, c.100 (C.26:2H-83) after commencing employment at the  
19 home health care agency or other entity, shall:

20 (a) immediately terminate the person's employment as a  
21 homemaker-home health aide; and

22 (b) report information about the conviction and termination to the  
23 board in a manner prescribed by the board, which shall thereupon  
24 deem the person to be disqualified from certification as a homemaker-  
25 home health aide, subject to the provisions of paragraph (4) of this  
26 subsection.

27 (3) A home care services agency shall be immune from liability for  
28 any actions taken in good faith pursuant to paragraphs (1) or (2) of  
29 this subsection and shall be presumed to be acting in good faith unless  
30 it is shown by clear and convincing evidence that the home care  
31 services agency acted with actual malice toward the employee.

32 (4) The person terminated from employment pursuant to paragraph  
33 (2) of this subsection shall have 30 days from the date of the  
34 termination to petition the board for a hearing on the accuracy of the  
35 information about the conviction reported to the board or to establish  
36 why the person should not be terminated from employment, and  
37 disqualified from certification, as a homemaker-home health aide. The  
38 board shall notify the person's employer of the person's petition for a  
39 hearing within five days following the receipt of the petition from the  
40 person. Upon the issuance of a final decision upon a petition to the  
41 board pursuant to this paragraph, the board shall notify the person and  
42 the person's employer or as to whether:

43 (a) the person is to be reinstated in his employment as a  
44 homemaker-home health aide and retain his certification; or

1       **(b) the person's termination from employment as a homemaker-**  
2 **home health aide stands and the person remains disqualified from**  
3 **certification.**

4 (cf: P.L.1997,c.284, s.7)

5  
6       7. Section 9 of P.L.1997, c.100 (C.45:11-24.5) is amended to read  
7 as follows:

8       9. [A home health agency or a health care service firm, as defined  
9 in regulations of the Division of Consumer Affairs, may] **a. The**  
10 **Department of Law and Public Safety shall** assume the cost of the  
11 criminal history record background check conducted on an applicant  
12 for homemaker-home health aide certification pursuant to sections 7  
13 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through  
14 24.9 and C.53:1-20.9a), **or a certified homemaker-home health aide**  
15 **who is required to undergo a criminal history record background**  
16 **check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), as**  
17 **applicable** [; or it may require the applicant to pay the cost of the  
18 criminal history record background check].

19       **b. In fiscal year 2000 and each fiscal year thereafter, the Governor**  
20 **shall recommend and the Legislature shall appropriate from the**  
21 **General Fund to the Department of Law and Public Safety such funds**  
22 **as shall be necessary to effectuate the purposes of subsection a. of this**  
23 **section.**

24 (cf: P.L.1997,c.284, s.8)

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

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

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

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

43       **b.** For the purpose of conducting [the] **a** criminal history record  
44 background check **pursuant to subsection a. of this section,** the  
45 Division of State Police shall examine its own files and arrange for a  
46 similar examination by federal authorities. The division shall

1 immediately forward the information obtained as a result of conducting  
2 the check to the Commissioner of Health and Senior Services, in the  
3 case of an applicant for nurse aide or personal care assistant  
4 certification, and to the New Jersey Board of Nursing in the Division  
5 of Consumer Affairs in the Department of Law and Public Safety, in  
6 the case of an applicant for homemaker-home health aide certification.  
7 (cf: P.L.1997,c.284, s.13)

8

9 9. (New section) a. The chief law enforcement officer of a  
10 municipality in which a person who is identified by the officer as being  
11 employed in the capacity of a nurse aide or personal care assistant is  
12 arrested for a crime or disorderly persons offense as described in  
13 section 2 of P.L.1997, c.100 (C.26:2H-83), shall, on a form and in a  
14 manner to be established in consultation with the Commissioner of  
15 Health and Senior Services, provide notice of that arrest to:

16 (1) the Department of Health and Senior Services for inclusion in  
17 the registry provided for in subsection g. of section 3 of P.L.1997,  
18 c.100 (C.26:2H-84); and

19 (2) a licensed health care facility or other entity which the officer  
20 has identified as the person's employer.

21 b. The chief law enforcement officer of a municipality in which a  
22 person who is identified by the officer as being employed in the  
23 capacity of a homemaker-home health aide is arrested for a crime or  
24 disorderly persons offense as described in section 7 of P.L.1997, c.100  
25 (C.45:11-24.3), shall, on a form and in a manner to be established in  
26 consultation with the New Jersey Board of Nursing in the Division of  
27 Consumer Affairs in the Department of Law and Public Safety, provide  
28 notice of that arrest to:

29 (1) the New Jersey Board of Nursing for inclusion in the registry  
30 established pursuant to paragraph (22) of subsection d. of section 2 of  
31 P.L.1947, c.262 (C.45:11-24); and

32 (2) a home care services agency which the officer has identified as  
33 the person's employer.

34 c. A municipality which provides notice pursuant to subsections a.  
35 or b. of this subsection shall be entitled to reimbursement from the  
36 Department of Health and Senior Services or the New Jersey Board of  
37 Nursing, as applicable, for the reasonable costs associated with  
38 providing that notice.

39

40 10. (New section) a. The Administrative Office of the Courts, on a  
41 form and in a manner to be established in consultation with the  
42 Commissioner of Health and Senior Services, shall report notice of a  
43 conviction of a crime or disorderly persons offense as described in  
44 section 2 of P.L.1997, c.100 (C.26:2H-83) with respect to a person  
45 whom the court has identified as a certified nurse aide or personal care  
46 assistant, to:

1 (1) the Department of Health and Senior Services for inclusion in  
2 the registry provided for in subsection g. of section 3 of P.L.1997,  
3 c.100 (C.26:2H-84); and

4 (2) a licensed health care facility or other entity which the court has  
5 identified as the person's employer.

6 b. The Administrative Office of the Courts, on a form and in a  
7 manner to be established in consultation with the New Jersey Board of  
8 Nursing in the Division of Consumer Affairs in the Department of Law  
9 and Public Safety, shall report notice of a conviction of a crime or  
10 disorderly persons offense as described in section 7 of P.L.1997, c.100  
11 (C.45:11-24.3) with respect to a person whom the court has identified  
12 as a certified homemaker-home health aide, to:

13 (1) the New Jersey Board of Nursing for inclusion in the registry  
14 established pursuant to paragraph (22) of subsection d. of section 2 of  
15 P.L.1947, c.262 (C.45:11-24); and

16 (2) a home care services agency which the court as identified as the  
17 person's employer.

18  
19 11. This act shall take effect immediately.  
20  
21

22 STATEMENT  
23

24 P.L.1997, c.100 (N.J.S.A.26:2H-83 et al.) required all applicants  
25 for certification as a nurse aide, personal care assistant or homemaker-  
26 home health aide to undergo a criminal history record background  
27 check but exempted persons who were already certified from this  
28 requirement. As a result, most of the currently certified 30,000 nurse  
29 aides and 24,000 homemaker-home health aides in New Jersey have  
30 not undergone a criminal history check to date.

31 This bill contains a number of provisions to better protect health  
32 care consumers, as follows:

33 C The bill requires any nurse aides, personal care assistants and  
34 homemaker-home health aides who were certified when P.L.1997,  
35 c.100 became effective and were exempted from the background  
36 check requirement to undergo an initial background check as a  
37 condition of being recertified. In addition, the bill requires that  
38 these persons undergo a follow-up background check at least once  
39 every two years as a condition of recertification. The bill requires  
40 the State to assume the cost of conducting these background  
41 checks.

42 C The bill provides that, in lieu of requiring a follow-up criminal  
43 history record background check at least once every two years as  
44 a condition of recertification for every certified nurse aide, personal  
45 care assistant and homemaker-home health aide, the appropriate  
46 State regulatory agency may, in each case, implement an alternative

- 1 means, which it has determined to be feasible and more cost-  
2 effective than the performance of a criminal history record  
3 background check, of ascertaining whether a person has been  
4 convicted of a crime or disorderly persons offense which would  
5 disqualify the person from certification, including, but not limited  
6 to, the matching of a person's Social Security number or other  
7 identifying information with records of criminal proceedings in this  
8 and other states.
- 9 C The bill reduces from 180 days to 90 days the period during which  
10 a person may be conditionally employed as a nurse aide, personal  
11 care assistant or homemaker-home health aide, pending completion  
12 of the person's criminal history record background check.
- 13 C The bill provides immunity from liability for a former employer of  
14 an applicant for nurse aide, personal care assistant or homemaker-  
15 home health aide certification or a certified nurse aide, personal  
16 care assistant or homemaker-home health aide which makes a good  
17 faith disclosure to: another employer that the individual is  
18 disqualified from certification as a result of a criminal history check,  
19 or that it terminated the person's employment due to unsatisfactory  
20 performance or conduct; or to the appropriate State regulatory  
21 agency that it terminated the person's employment due to  
22 unsatisfactory performance or conduct.
- 23 C The bill requires that if a certified nurse aide, personal care assistant  
24 or homemaker-home health aide is convicted of a crime or  
25 disorderly person's offense which would disqualify that person from  
26 certification, after commencing employment at a health care facility  
27 or home care services agency, as applicable, the employer shall  
28 immediately terminate the person's employment as a nurse aide,  
29 personal care assistant or homemaker-home health aide, as  
30 applicable; and report information about the conviction and  
31 termination to the appropriate State regulatory agency in a manner  
32 prescribed by the agency, which shall thereupon deem the person to  
33 be disqualified from certification, subject to the person's right to  
34 appeal the disqualification.
- 35 C The bill requires that the registry of homemaker-home health aides  
36 in the New Jersey Board of Nursing established under paragraph  
37 (22) of N.J.S.A.45:11-24 and the registry of nurse aides and  
38 personal care assistants in the Department of Health and Senior  
39 Services provided for in this bill include information about the  
40 disqualification of any person from certification as a homemaker-  
41 home health aide or a nurse aide or personal care assistant, as  
42 applicable, including information which indicates that the person  
43 was convicted of a crime or disorderly persons offense which  
44 disqualifies the person from certification without identifying the  
45 specific conviction or convictions constituting the basis for the  
46 disqualification. The registries shall also contain information on the

1 arrest of an employed nurse aide, personal care assistant or  
2 homemaker-home health aide, as applicable, for a crime or  
3 disorderly persons offense which would disqualify that individual  
4 from certification, as reported by the employer or a law  
5 enforcement agency; except that this information shall indicate that  
6 the person was arrested for such a crime or disorderly persons  
7 offense without identifying the specific crime or offense.

8 C The bill requires municipal law enforcement agencies and the  
9 Administrative Office of the Courts to provide notice of the arrest  
10 and conviction, respectively, of any person whom they identify as  
11 an employed nurse aide, personal care assistant or homemaker-  
12 home health aide to that person's employer and the appropriate  
13 State regulatory agency. The State shall be required to reimburse  
14 municipalities for the reasonable costs associated with providing  
15 such notice.

16 The purpose of this bill is to ensure that frail elderly and disabled  
17 individuals who need the services of certified caregivers such as nurse  
18 aides, personal care assistants or homemaker-home health aides, either  
19 in an institutional or home-based setting as appropriate, are protected  
20 against the possibility of any act of abuse, neglect, exploitation or theft  
21 being committed by a caregiver with an undetected criminal record.  
22 The enactment of this bill will complete the work begun with the  
23 enactment of P.L.1997, c.100 by extending its requirements to cover  
24 all certified nurse aides, personal care assistants and homemaker-home  
25 health aides and providing greater protection to health care consumers  
26 and their families. The State has no higher moral obligation than to do  
27 this.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 116 and 124**

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 10, 2000

The Senate Law and Public Safety Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 116 and 124.

This committee substitute is designed to correct a "loophole" in P.L.1997, c.100 (C.26:2H-82 et al.), under which all applicants for certification as a nurse aide, personal care assistant or homemaker-home health aide are required to undergo a criminal history record background check, but persons who were certified prior to the effective date of that law (i.e., November 1, 1997) are exempted from this requirement. Because of this "loophole," most of the 30,000 nurse aides and 24,000 homemaker-home health aides who are certified in this State have not undergone a criminal history record background check.

Specifically, this substitute provides as follows:

- C The substitute requires any nurse aides, personal care assistants and homemaker-home health aides who were exempted from the criminal history record background check requirement of P.L.1997, c.100 to undergo a background check as a condition of their initial recertification following the effective date of the substitute. In addition, the substitute requires that these persons undergo a follow-up background check of federal records at least once every two years as a condition of recertification (which would supplement the system operated by the Division of State Police in the Department of Law and Public Safety that continuously monitors whether a person has been convicted of a criminal offense in this State). The substitute requires the State to assume the cost of conducting these background checks.
- C The substitute provides that, in lieu of requiring a follow-up background check at least once every two years as a condition of recertification, the appropriate State regulatory agency may, in each case, implement an alternative means of determining whether a person has been convicted of a crime or disorderly persons offense which would disqualify the person from certification, including, but not limited to, the matching of a person's Social Security number or other identifying information with records of



criminal proceedings in this and other states. If the agency elects to implement this alternative means of determining whether a person has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, the agency is required to report to the Governor and the Legislature prior to its implementation on the projected costs and procedures to be followed and to set forth the rationale therefor.

- C The substitute provides that a person may be conditionally employed as a nurse aide, personal care assistant or homemaker-home health aide for a period not to exceed 60 days, pending completion of a criminal history record background check by the Division of State Police, and for an additional period not to exceed 60 days pending completion of a criminal history record background check by federal authorities as arranged for by the Division of State Police pursuant to section 14 of P.L.1997, c.100 (C.53:1-20.9a).
- C The substitute provides immunity from liability for an employer of an applicant for nurse aide, personal care assistant or homemaker-home health aide certification or a certified nurse aide, personal care assistant or homemaker-home health aide which makes a good faith disclosure to another employer or the appropriate State regulatory agency that the individual's employment was terminated as a result of a criminal history check.
- C The substitute requires that if a certified nurse aide, personal care assistant or homemaker-home health aide is convicted of a crime or disorderly person's offense which would disqualify that person from certification after commencing employment at a health care facility or home care services agency, the employer is required to immediately terminate the person's employment as a nurse aide, personal care assistant or homemaker-home health aide. The employer is also required to report information about the conviction and termination to the appropriate State regulatory agency in a manner prescribed by that agency, which must then deem the person to be disqualified, subject to the person's right to appeal.
- C The substitute requires that the registry of homemaker-home health aides in the New Jersey Board of Nursing established pursuant to paragraph (22) of section 2 of P.L.1947, c.262 (C.45:11-24) and the registry of nurse aides and personal care assistants in the Department of Health and Senior Services provided for in this substitute include information about the disqualification of any person from certification as a homemaker-home health aide or a nurse aide or personal care assistant, including information which indicates that the person was convicted of a crime or disorderly persons offense which disqualifies the person from certification without identifying the specific conviction or convictions constituting the basis for the disqualification.

C Finally, the substitute requires the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Health and Senior Services, to report to the Governor and the Legislature no later than one year after the effective date of the substitute on the feasibility and cost of implementing a criminal history record background check requirement for all persons employed by home health agencies licensed by the Department of Health and Senior Services or by health care service firms, employment agencies or registries, temporary help service firms or personnel consultants regulated by the Division of Consumer Affairs, who are assigned to provide health care services in a home-based or other community setting and are not required to undergo a criminal history record background check pursuant to P.L.1997, c.100. This report is to include a detailed plan for implementation of a criminal history record background check requirement for these persons.

The substitute requires, the Legislature to appropriate from the General Fund such funds as the State Treasurer recommends to effectuate the substitute's purposes in FY 2001.

The substitute takes effect on the 90th day after enactment.

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 116 and 124**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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ADOPTED FEBRUARY 10, 2000

**Sponsored by:**

**Senator LEONARD T. CONNORS, JR.**

**District 9 (Atlantic, Burlington and Ocean)**

**Senator HENRY P. MCNAMARA**

**District 40 (Bergen and Passaic)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator GARRY J. FURNARI**

**District 36 (Bergen, Essex and Passaic)**

**Co-Sponsored by:**

**Senators Bucco, Kenny, Codey, Girgenti, Allen, Matheussen and  
Robertson**

**SYNOPSIS**

Requires criminal history record checks for all certified nurse aides, personal care assistants and homemaker-home health aides; requires plan for similar checks to be conducted on other providers of home care services.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Law and Public Safety Committee.

**(Sponsorship Updated As Of: 2/29/2000)**

1 **AN ACT** requiring criminal history record background checks for  
2 certain providers of institutional and home health care services,  
3 and amending P.L.1997, c.100 and P.L.1947, c.262.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 2 of P.L.1997, c.100 (C.26:2H-83) is amended to read  
9 as follows:

10 2. a. The Department of Health and Senior Services shall not  
11 issue a nurse aide or personal care assistant certification to any  
12 applicant, except on a conditional basis as provided for in subsection  
13 d. of section 3 of P.L.1997, c.100 (C.26:2H-84), unless the  
14 Commissioner of Health and Senior Services first determines,  
15 consistent with the requirements of sections 2 through 6 of P.L.1997,  
16 c.100 (C.26:2H-83 through 87), that no criminal history record  
17 information exists on file in the Federal Bureau of Investigation,  
18 Identification Division, or in the State Bureau of Identification in the  
19 Division of State Police, which would disqualify that person from  
20 being certified. A nurse aide or personal care assistant certified by the  
21 department prior to the effective date of P.L. , c. (C. )(now  
22 pending before the Legislature as this bill) upon whom a criminal  
23 history record background check has not been conducted pursuant to  
24 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87),  
25 shall be required to undergo that criminal history record background  
26 check as a condition of that individual's initial recertification following  
27 the effective date of P.L. , c. (now pending before the Legislature  
28 as this bill).

29 In addition, a follow-up criminal history record background check  
30 of federal records shall be conducted at least once every two years as  
31 a condition of recertification for every certified nurse aide and  
32 personal care assistant; except that the commissioner, in lieu of  
33 conducting follow-up criminal history record background checks for  
34 purposes of recertification, may provide for an alternative means of  
35 determining whether a certified nurse aide or personal care assistant  
36 has been convicted of a crime or disorderly persons offense which  
37 would disqualify that person from certification, including, but not  
38 limited to, a match of a person's Social Security number or other  
39 identifying information with records of criminal proceedings in this and

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

Matter underlined thus is new matter.

1 other states. If the commissioner elects to implement this alternative  
2 means of determining whether a certified nurse aide or personal care  
3 assistant has been convicted of a crime or disorderly persons offense  
4 which would disqualify that person from certification, the  
5 commissioner shall report to the Governor and the Legislature prior  
6 to its implementation on the projected costs and procedures to be  
7 followed with respect to its implementation and setting forth the  
8 rationale therefor.

9 A person shall be disqualified from certification if that person's  
10 criminal history record background check reveals a record of  
11 conviction of any of the following crimes and offenses:

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

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

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

20 (c) involving theft as set forth in chapter 20 of Title 2C of the  
21 New Jersey Statutes; or

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

26 (2) In any other state or jurisdiction, of conduct which, if  
27 committed in New Jersey, would constitute any of the crimes or  
28 disorderly persons offenses described in paragraph (1) of this  
29 subsection.

30 b. Notwithstanding the provisions of subsection a. of this section,  
31 no person shall be disqualified from certification on the basis of any  
32 conviction disclosed by a criminal history record background check  
33 performed pursuant to sections 2 through 6 and section 14 of  
34 P.L.1997, c.100 (C.26:2H-83 through 87 and C.53:1-20.9a) if the  
35 person has affirmatively demonstrated to the Commissioner of Health  
36 and Senior Services clear and convincing evidence of the person's  
37 rehabilitation. In determining whether a person has affirmatively  
38 demonstrated rehabilitation, the following factors shall be considered:

39 (1) the nature and responsibility of the position which the  
40 convicted person would hold [or], has held or currently holds, as the  
41 case may be;

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

1 (3) the circumstances under which the offense occurred;  
2 (4) the date of the offense;  
3 (5) the age of the person when the offense was committed;  
4 (6) whether the offense was an isolated or repeated incident;  
5 (7) any social conditions which may have contributed to the  
6 offense; and

7 (8) any evidence of rehabilitation, including good conduct in  
8 prison or in the community, counseling or psychiatric treatment  
9 received, acquisition of additional academic or vocational schooling,  
10 successful participation in correctional work-release programs, or the  
11 recommendation of those who have had the person under their  
12 supervision.

13 c. If a person subject to the provisions of sections 2 through 6 of  
14 P.L.1997, c.100 (C.26:2H-83 through 87) refuses to consent to, or  
15 cooperate in, the securing of a criminal history record background  
16 check, the commissioner shall, as applicable:

17 (1) not issue a nurse aide or personal care assistant certification  
18 and shall notify the applicant, and the applicant's employer if the  
19 applicant is conditionally employed as provided in subsection d. of  
20 section 3 of P.L.1997, c.100 (C.26:2H-84) or the applicant's  
21 prospective employer if known, of that denial; or

22 (2) revoke the person's current nurse aide or personal care  
23 assistant certification and notify the person, and the person's employer,  
24 if known, of that revocation.

25 (cf: P.L.1997,c.284, s.2)

26

27 2. Section 3 of P.L.1997, c.100 (C.26:2H-84) is amended to read  
28 as follows:

29 3. a. An applicant for certification, or a certified nurse aide or  
30 personal care assistant who is required to undergo a criminal history  
31 record background check pursuant to section 2 of P.L.1997, c.100  
32 (C.26:2H-83), shall submit to the Commissioner of Health and Senior  
33 Services [the applicant's] that individual's name, address and  
34 fingerprints taken on standard fingerprint cards by a State or municipal  
35 law enforcement agency. The commissioner is authorized to exchange  
36 fingerprint data with and receive criminal history record information  
37 from the Federal Bureau of Investigation and the Division of State  
38 Police for use in making the determinations required by sections 2  
39 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

40 b. Upon receipt of the criminal history record information for a  
41 person from the Federal Bureau of Investigation or the Division of  
42 State Police, the commissioner shall immediately notify, in writing, the

1 applicant, and the applicant's employer if the applicant is conditionally  
2 employed as provided in subsection d. of this section or the applicant's  
3 prospective employer if known, or a certified nurse aide or personal  
4 care assistant who is required to undergo a criminal history record  
5 background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-  
6 83) and that person's employer, as applicable, of the person's  
7 qualification or disqualification for certification under sections 2  
8 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87). If the  
9 [applicant] person is disqualified, the conviction or convictions which  
10 constitute the basis for the disqualification shall be identified in the  
11 notice to the [applicant] person, but shall not be identified in the  
12 notice to the [applicant's] person's employer or prospective employer.

13 c. The [applicant] person who is the subject of the background  
14 check shall have 30 days from the date of the written notice of  
15 disqualification to petition the commissioner for a hearing on the  
16 accuracy of the [applicant's] person's criminal history record  
17 information or to establish the [applicant's] person's rehabilitation  
18 under subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83).  
19 The commissioner shall notify the [applicant's] person's employer or  
20 prospective employer of the [applicant's] person's petition for a  
21 hearing within five days following the receipt of the petition from the  
22 [applicant] person. Upon the issuance of a final decision upon a  
23 petition to the commissioner pursuant to this subsection, the  
24 commissioner shall notify the [applicant] person and the [applicant's]  
25 person's employer or prospective employer as to whether the  
26 [applicant] person remains disqualified from certification under  
27 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

28 d. An applicant for certification may be issued conditional  
29 certification and may be employed as a nurse aide or a personal care  
30 assistant conditionally for a period not to exceed [180] 60 days,  
31 pending completion of a criminal history record background check  
32 required under sections 2 through 6 of P.L.1997,c.100 (C.26:2H-83  
33 through 87) by the Division of State Police in the Department of Law  
34 and Public Safety based upon an examination of its own files in  
35 accordance with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for  
36 an additional period not to exceed 60 days pending completion of a  
37 criminal history record background check by federal authorities as  
38 arranged for by the Division of State Police pursuant to section 14 of  
39 P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the  
40 commissioner a sworn statement attesting that the person has not been  
41 convicted of any crime or disorderly persons offense as described in

1 section 2 of P.L.1997, c.100 (C.26:2H-83). A person who submits a  
2 false sworn statement shall be disqualified from certification as a nurse  
3 aide or a personal care assistant, as the case may be, and shall not have  
4 an opportunity to establish rehabilitation pursuant to subsection b. of  
5 section 2 of P.L.1997, c.100 (C.26:2H-83).

6 A conditionally employed person, or an employed person certified  
7 as a nurse aide or a personal care assistant, who disputes the accuracy  
8 of the criminal history record information and who files a petition  
9 requesting a hearing pursuant to subsection c. of this section may  
10 remain employed by [the] that person's employer until the  
11 commissioner rules on the [applicant's] person's petition but, pending  
12 the commissioner's ruling, the employer shall not permit the  
13 [applicant] person to have unsupervised contact with patients,  
14 residents or clients, as the case may be, who are 60 years of age or  
15 older.

16 e. (1) A licensed health care facility or other entity that has  
17 received an application from or conditionally employs an applicant for  
18 nurse aide or personal care assistant certification, or employs a  
19 certified nurse aide or personal care assistant, and:

20 (a) receives notice from the Commissioner of Health and Senior  
21 Services that the applicant or certified nurse aide or personal care  
22 assistant, as applicable, has been determined by the commissioner to  
23 be disqualified from certification as a nurse aide or personal care  
24 assistant pursuant to sections 2 through 6 of P.L.1997, c.100  
25 (C.26:2H-83 through 87); or

26 (b) terminates its employment of a conditionally employed  
27 applicant for nurse aide or personal care assistant certification or a  
28 certified nurse aide or personal care assistant because the person was  
29 disqualified from employment at the health care facility or other entity  
30 on the basis of a conviction of a crime or disorderly persons offense as  
31 described in section 2 of P.L.1997, c.100 (C.26:2H-83) after  
32 commencing employment at the health care facility or other entity;  
33 shall be immune from liability for disclosing that disqualification or  
34 termination in good faith to another licensed health care facility or  
35 other entity that is qualified by statute or regulation to employ the  
36 person as a nurse aide or personal care assistant.

37 (2) A licensed health care facility or other entity which discloses  
38 information pursuant to paragraph (1) of this subsection shall be  
39 presumed to be acting in good faith unless it is shown by clear and  
40 convincing evidence that the health care facility or other entity acted  
41 with actual malice toward the person who is the subject of the  
42 information.



1 f. (1) A licensed health care facility or other entity, upon  
2 receiving notice from the Commissioner of Health and Senior Services  
3 that a person employed by it as a nurse aide or personal care assistant,  
4 including a conditionally employed person, has been convicted of a  
5 crime or disorderly persons offense as described in section 2 of  
6 P.L.1997, c.100 (C.26:2H-83) after commencing employment at the  
7 health care facility or other entity, shall:

8 (a) immediately terminate the person's employment as a nurse aide  
9 or personal care assistant; and

10 (b) report information about the termination to the Commissioner  
11 of Health and Senior Services in a manner prescribed by the  
12 commissioner, who shall thereupon deem the person to be disqualified  
13 from certification as a nurse aide or personal care assistant, subject to  
14 the provisions of paragraph (3) of this subsection.

15 (2) A licensed health care facility or other entity shall be immune  
16 from liability for any actions taken in good faith pursuant to paragraph  
17 (1) of this subsection and shall be presumed to be acting in good faith  
18 unless it is shown by clear and convincing evidence that the health care  
19 facility or other entity acted with actual malice toward the employee.

20 (3) The person terminated from employment pursuant to  
21 paragraph (1) of this subsection shall have 30 days from the date of the  
22 termination to petition the commissioner for a hearing on the accuracy  
23 of the information about the conviction reported to the commissioner  
24 or to establish why the person should not be terminated from  
25 employment, and disqualified from certification, as a nurse aide or  
26 personal care assistant. The commissioner shall notify the person's  
27 employer of the person's petition for a hearing within five days  
28 following the receipt of the petition from the person. Upon the  
29 issuance of a final decision upon a petition to the commissioner  
30 pursuant to this paragraph, the commissioner shall notify the person  
31 and the person's employer as to whether:

32 (a) the person is to be reinstated in his employment as a nurse aide  
33 or personal care assistant and retain his certification; or

34 (b) the person's termination from employment as a nurse aide or  
35 personal care assistant stands and the person remains disqualified from  
36 certification.

37 g. The commissioner shall provide for a registry of all persons  
38 who have successfully completed all training and competency  
39 evaluation requirements for certification as a nurse aide or personal  
40 care assistant and shall provide for the inclusion in the registry of  
41 information about the disqualification of any person from certification  
42 pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83  
43 through 87); for which purposes, the commissioner may use an  
44 existing registry established pursuant to statute or regulation, subject  
45 to the requirements of federal law. The registry shall include the  
46 specific documented findings constituting the basis for that  
47 disqualification, except that the information shall indicate that the

1 person was convicted of a crime or disorderly persons offense as  
2 described in section 2 of P.L.1997, c.100 (C.26:2H-83), but shall not  
3 identify the conviction or convictions which constitute the basis for the  
4 disqualification.

5 (cf: P.L.1997, c.284, s.3)

6

7 3. Section 4 of P.L.1997, c.100 (C.26:2H-85) is amended to read  
8 as follows:

9 4. [An applicant's employer if the applicant is conditionally  
10 employed as provided in subsection d. of section 3 of P.L.1997, c.100  
11 (C.26:2H-84) or an applicant's prospective employer may] The  
12 Department of Health and Senior Services shall assume the cost of the  
13 criminal history record background check conducted on an applicant  
14 for nurse aide or personal care assistant certification, or a certified  
15 nurse aide or personal care assistant, as the case may be, pursuant to  
16 sections 2 through 6 and section 14 of P.L.1997,c.100 (C.26:2H-83  
17 through 87 and C.53:1-20.9a)[; or the employer or prospective  
18 employer may require the applicant to pay the cost of the criminal  
19 history record background check].

20 (cf: P.L.1997, c.284, s.4)

21 4. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to read  
22 as follows:

23 2. a. The board; appointment; terms. In addition to the members  
24 appointed to represent the interests of the public pursuant to P.L.1971,  
25 c.60 as amended by P.L.1977, c.285 (C.45:1-2.2) the New Jersey  
26 Board of Nursing shall consist of 10 members, six of whom shall be  
27 registered professional nurses, two of whom shall be licensed practical  
28 nurses, one of whom shall be an advanced practice nurse, and one of  
29 whom shall be an additional public member, all to be appointed by the  
30 Governor. Appointments to the board shall be for terms of five years  
31 or for the unexpired portion of a term in the case of a vacancy for any  
32 cause within a term, and until a successor shall be appointed and  
33 qualified. In making appointments the Governor shall give due  
34 consideration to, but shall not be bound by, recommendations  
35 submitted by the various nurses' professional associations of this State.  
36 Upon notice and hearing, the Governor may remove from office any  
37 member of the board for neglect of duty, incompetency, unprofessional  
38 or dishonorable conduct.

39 b. Qualifications for appointment. The advanced practice nurse  
40 member shall be a resident of this State, shall be a graduate of an  
41 accredited advanced practice nurse program, shall have had at least  
42 five years' experience in professional nursing, shall at the time of  
43 appointment be actively working as an advanced practice nurse, and,  
44 except for the member first appointed, shall hold a certification as an  
45 advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et  
46 al.). Each registered professional nurse member of the board shall be

1 a citizen of the United States and a resident of this State; shall be a  
2 graduate of an accredited school of nursing within the United States;  
3 shall be a registered nurse in this State; shall have had at least five  
4 years' experience in professional nursing following graduation from an  
5 accredited school of nursing; and shall at the time of appointment be  
6 actively engaged in nursing or work relating thereto. The licensed  
7 practical nurse members of the board shall be citizens of the United  
8 States and residents of this State; shall hold a valid license to practice  
9 practical nursing in this State; shall have had at least three years'  
10 experience in practical nursing; and shall at the time of appointment be  
11 actively engaged in practical nursing or work related thereto.

12 c. Oath or affirmation of office. Within 30 days after receipt of  
13 the commission, each appointee shall take, subscribe and file in the  
14 office of the Secretary of State the oath or affirmation prescribed by  
15 law.

16 d. Duties and powers. The board shall have the following duties  
17 and powers: (1) It shall hold annual meetings and such other meetings  
18 as it may deem necessary at such times and places as the board shall  
19 prescribe and a majority of the board including one officer shall  
20 constitute a quorum. (2) It shall elect from its members and prescribe  
21 the duties of a president and secretary-treasurer, each of whom shall  
22 serve for one year and until a successor is elected. (3) It shall appoint  
23 and prescribe the duties of an executive secretary to the board who  
24 need not be a member thereof but who shall be a citizen of the United  
25 States, a graduate of a college or university with a major in nursing  
26 education, a registered nurse of this State with at least five years'  
27 experience in teaching or administration or both in an accredited  
28 school of professional nursing, or have equivalent qualifications as  
29 determined by the board. The executive secretary shall hold office  
30 during the will and pleasure of the board. (4) It shall employ and  
31 prescribe the duties of such persons as in its judgment shall be  
32 necessary for the proper performance and execution of the duties and  
33 powers of the board. (5) It shall determine and pay reasonable  
34 compensation and necessary expenses of the executive secretary and  
35 all employees of the board. (6) It shall pay to each member of the  
36 board the compensation hereinafter provided. (7) It shall have a  
37 common seal, keep an official record of all its meetings, and through  
38 its secretary-treasurer report annually to the Governor the work of the  
39 board. (8) It shall examine applicants for a license or renewals thereof,  
40 issue, renew, revoke and suspend licenses, as hereinafter provided. (9)  
41 It shall in its discretion investigate and prosecute all violations of  
42 provisions of this act. (10) It shall keep an official record which shall  
43 show the name, age, nativity and permanent place of residence of each  
44 applicant and licensee and such further information concerning each  
45 applicant and licensee as the board shall deem advisable. The record  
46 shall show also whether the applicant was examined, licensed or

1 rejected under this and any prior act. Copies of any of the entries of  
2 the record or of any certificate issued by the board may be  
3 authenticated by any member of the board under its seal and when so  
4 authenticated shall be evidence in all courts of this State of the same  
5 weight and force as the original thereof. For authenticating a copy of  
6 any entry or entries contained in its record the board shall be paid a fee  
7 of \$3.00, but such authentication, if made at the request of any public  
8 agency of this or any other jurisdiction, may be without fee. (11) In its  
9 discretion it may publish at such times as it shall determine a list of  
10 nurses licensed under this act, a list of schools of nursing accredited  
11 or approved under this act, and such other information as it shall deem  
12 advisable. (12) It shall prescribe standards and curricula for schools of  
13 nursing and evaluate and approve courses for affiliation. (13) It shall  
14 hear and determine applications for accreditation of schools of  
15 professional nursing, conduct investigations before and after  
16 accreditation of such schools and institutions with which they are  
17 affiliated, and issue, suspend or revoke certificates of accreditation as  
18 hereinafter provided. (14) It shall approve schools of practical nursing  
19 which shall conform to the standards, curricula, and requirements  
20 prescribed by the board, and suspend or revoke approval for violations  
21 thereof; provided, that this power shall not extend to schools operated  
22 by any board of education in this State. (15) It may consult with the  
23 Medical Society of New Jersey and the New Jersey Hospital  
24 Association with respect to any matter relating to the administration  
25 of this act and shall consult with those associations with respect to  
26 standards and curricula and any change thereof for schools of nursing.  
27 (16) It shall issue subpoenas for the attendance of witnesses and  
28 production of documents at any hearing before the board authorized  
29 by this act and any member of the board shall administer an oath or  
30 affirmation to persons appearing to give testimony at such hearings.  
31 (17) It may conduct any investigations, studies of nursing and nursing  
32 education and related matters, and prepare and issue such publications  
33 as in the judgment of the board will advance the profession of nursing  
34 and its service to the public. (18) It shall perform all other functions  
35 which are provided in this act to be performed by it or which in the  
36 judgment of the board are necessary or proper for the administration  
37 of this act. (19) It shall from time to time prescribe rules and  
38 regulations not inconsistent with this act. (20) It shall prescribe  
39 standards and curricula for homemaker-home health aide education  
40 and training programs which a homemaker-home health aide shall  
41 complete in order to work in this State. (21) It shall review  
42 applications to provide homemaker-home health aide training  
43 programs and shall issue, suspend or revoke program approval. (22)  
44 It shall establish and maintain a registry of all individuals who have  
45 successfully completed a homemaker-home health aide training and  
46 competency evaluation program. The board shall provide for the  
47 inclusion in the registry of information about the disqualification of

1 any person from certification as a homemaker-home health aide  
2 pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3  
3 through 24.9), including the specific documented findings constituting  
4 the basis for that disqualification; except that the information shall  
5 indicate that the person was convicted of a crime or disorderly persons  
6 offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3),  
7 but shall not identify the conviction or convictions which constitute the  
8 basis for the disqualification. (23) It shall prescribe standards and  
9 requirements for a competency evaluation program resulting in  
10 certification of the homemaker-home health aide, and the renewal,  
11 revocation, and suspension of that certification. (24) It shall review  
12 applications for homemaker home-health aide certification and shall  
13 issue, suspend, revoke, or fail to renew certifications and conduct  
14 investigations pursuant to the provisions of P.L.1978, c.73 (C.45:1-14  
15 et seq.).

16 e. Compensation. Each member of the board shall receive \$15.00  
17 per day for each day in which such member is actually engaged in the  
18 discharge of duties and traveling and other expenses necessarily  
19 incurred in the discharge of duties.

20 (cf: P.L.1999, c.85, s.2)

21 5. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read  
22 as follows:

23 7. a. The New Jersey Board of Nursing in the Division of  
24 Consumer Affairs in the Department of Law and Public Safety shall  
25 not issue a homemaker-home health aide certification to any applicant,  
26 except on a conditional basis as provided for in subsection d. of  
27 section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the board first  
28 determines, consistent with the requirements of sections 7 through 13  
29 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), that no criminal  
30 history record information exists on file in the Federal Bureau of  
31 Investigation, Identification Division, or in the State Bureau of  
32 Identification in the Division of State Police, which would disqualify  
33 that person from being certified. A homemaker-home health aide  
34 certified by the board prior to the effective date of  
35 P.L. , c. (C. )(now pending before the Legislature as this bill) and  
36 upon whom a criminal history record background check has not been  
37 conducted pursuant to sections 7 through 13 of P.L.1997, c.100  
38 (C.45:11-24.3 through 24.9), shall be required to undergo that  
39 criminal history record background check as a condition of that  
40 individual's initial recertification following the effective date of  
41 P.L. , c. (now pending before the Legislature as this bill).

42 In addition, a follow-up criminal history record background check  
43 of federal records shall be conducted at least once every two years as  
44 a condition of recertification for every certified homemaker-home  
45 health aide; except that the board, in lieu of conducting follow-up  
46 criminal history record background checks for purposes of

1 recertification, may provide for an alternative means of determining  
2 whether a certified homemaker-home health aide has been convicted  
3 of a crime or disorderly persons offense which would disqualify that  
4 person from certification, including, but not limited to, a match of a  
5 person's Social Security number or other identifying information with  
6 records of criminal proceedings in this and other states. If the board  
7 elects to implement this alternative means of determining whether a  
8 certified homemaker-home health aide has been convicted of a crime  
9 or disorderly persons offense which would disqualify that person from  
10 certification, the board shall report to the Governor and the  
11 Legislature prior to its implementation on the projected costs and  
12 procedures to be followed with respect to its implementation and  
13 setting forth the rationale therefor.

14 A person shall be disqualified from certification if that person's  
15 criminal history record background check reveals a record of  
16 conviction of any of the following crimes and offenses:

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

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

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

25 (c) involving theft as set forth in chapter 20 of Title 2C of the  
26 New Jersey Statutes; or

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

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

35 b. Notwithstanding the provisions of subsection a. of this section,  
36 no person shall be disqualified from certification on the basis of any  
37 conviction disclosed by a criminal history record background check  
38 performed pursuant to sections 7 through 13 and section 14 of  
39 P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a) if the  
40 person has affirmatively demonstrated to the New Jersey Board of  
41 Nursing in the Division of Consumer Affairs clear and convincing  
42 evidence of the person's rehabilitation. In determining whether a  
43 person has affirmatively demonstrated rehabilitation, the following  
44 factors shall be considered:

45 (1) the nature and responsibility of the position which the  
46 convicted person would hold [or], has held or currently holds, as the

1 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 person 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  
10 prison or in the community, counseling or psychiatric treatment  
11 received, acquisition of additional academic or vocational schooling,  
12 successful participation in correctional work-release programs, or the  
13 recommendation of those who have had the person under their  
14 supervision.

15 c. If a person subject to the provisions of sections 7 through 13 of  
16 P.L.1997, c.100 (C.45:11-24.3 through 24.9) refuses to consent to, or  
17 cooperate in, the securing of a criminal history record background  
18 check, the New Jersey Board of Nursing shall, as applicable:

19 (1) not issue a homemaker-home health aide certification and shall  
20 notify the applicant, and the applicant's employer if the applicant is  
21 conditionally employed as provided in subsection d. of section 8 of  
22 P.L.1997, c.100 (C.45:11-24.4) or the applicant's prospective  
23 employer if known, of that denial; or

24 (2) revoke the person's current homemaker-home health aide  
25 certification and notify the person, and the person's employer, if  
26 known, of that revocation.

27 (cf: P.L.1997,c.284, s.6)

28

29 6. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read  
30 as follows:

31 8. a. An applicant for homemaker-home health aide certification,  
32 or a certified person who is required to undergo a criminal history  
33 record background check pursuant to section 7 of P.L.1997, c.100  
34 (C.45:11-24.3), shall submit to the New Jersey Board of Nursing [the  
35 applicant's] that individual's name, address and fingerprints taken on  
36 standard fingerprint cards by a State or municipal law enforcement  
37 agency. The board is authorized to exchange fingerprint data with and  
38 receive criminal history record information from the Federal Bureau  
39 of Investigation and the Division of State Police for use in making the  
40 determinations required by sections 7 through 13 of P.L.1997, c.100  
41 (C.45:11-24.3 through 24.9).

42 b. Upon receipt of the criminal history record information for a  
43 person from the Federal Bureau of Investigation or the Division of  
44 State Police, the New Jersey Board of Nursing shall immediately  
45 notify, in writing, the applicant, and the applicant's employer if the  
46 applicant is conditionally employed as provided in subsection d. of this

1 section or the applicant's prospective employer, if known, or the  
2 certified person who is required to undergo a criminal history record  
3 background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-  
4 24.3) and that person's employer, as applicable, of the person's  
5 qualification or disqualification for homemaker-home health aide  
6 certification under sections 7 through 13 of P.L.1997, c.100  
7 (C.45:11-24.3 through 24.9). If the [applicant] person is disqualified,  
8 the conviction or convictions which constitute the basis for the  
9 disqualification shall be identified in the notice to the [applicant]  
10 person, but shall not be identified in the notice to the [applicant's]  
11 person's employer or prospective employer.

12 c. The [applicant] person who is the subject of the background  
13 check shall have 30 days from the date of the written notice of  
14 disqualification to petition the New Jersey Board of Nursing for a  
15 hearing on the accuracy of the [applicant's] person's criminal history  
16 record information or to establish the [applicant's] person's  
17 rehabilitation under subsection b. of section 7 of P.L.1997, c.100  
18 (C.45:11-24.3). The board shall notify the [applicant's] person's  
19 employer or prospective employer of the [applicant's] person's  
20 petition for a hearing within five days following the receipt of the  
21 petition from the [applicant] person. Upon the issuance of a final  
22 decision upon a petition to the board pursuant to this subsection, the  
23 board shall notify the [applicant] person and the [applicant's]  
24 person's employer or prospective employer as to whether the  
25 [applicant] person remains disqualified from certification under  
26 sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

27 d. An applicant for certification may be issued conditional  
28 certification and may be employed as a homemaker-home health aide  
29 conditionally for a period not to exceed [180] 60 days, pending  
30 completion of a criminal history record background check required  
31 under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through  
32 24.9) by the Division of State Police in the Department of Law and  
33 Public Safety based upon an examination of its own files in accordance  
34 with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for an  
35 additional period not to exceed 60 days pending completion of a  
36 criminal history record background check by federal authorities as  
37 arranged for by the Division of State Police pursuant to section 14 of  
38 P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the New  
39 Jersey Board of Nursing a sworn statement attesting that the person  
40 has not been convicted of any crime or disorderly persons offense as  
41 described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A person  
42 who submits a false sworn statement shall be disqualified from  
43 certification as a homemaker-home health aide and shall not have an  
44 opportunity to establish rehabilitation pursuant to subsection b. of  
45 section 7 of P.L.1997, c.100 (C.45:11-24.3).



1       A conditionally employed person, or an employed person certified  
2 as a homemaker-home health aide, who disputes the accuracy of the  
3 criminal history record information and who files a petition requesting  
4 a hearing pursuant to subsection c. of this section may remain  
5 employed by [the] that person's employer until the board rules on the  
6 [applicant's] person's petition but, pending the board's ruling, the  
7 employer shall not permit the [applicant] person to have unsupervised  
8 contact with patients or clients who are 60 years of age or older.

9       e. (1) A home care services agency that has received an  
10 application from or conditionally employed an applicant for  
11 homemaker-home health aide certification, or has employed a certified  
12 homemaker-home health aide, and

13       (a) receives notice from the board that the applicant or certified  
14 homemaker-home health aide, as applicable, has been determined by  
15 the board to be disqualified from certification as a homemaker-home  
16 health aide pursuant to sections 7 through 13 of P.L.1997, c.100  
17 (C.45:11-24.3 through 24.9); or

18       (b) terminates its employment of a conditionally employed  
19 applicant for homemaker-home health aide certification or a certified  
20 homemaker-home health aide because the person was disqualified from  
21 employment at the home care services agency on the basis of a  
22 conviction of a crime or disorderly persons offense as described in  
23 section 7 of P.L.1997, c.100 (C.45:11-24.3) after commencing  
24 employment at the home care services agency;  
25 shall be immune from liability for disclosing that disqualification or  
26 termination in good faith to another home care services agency.

27       (2) A home care services agency which discloses information  
28 pursuant to paragraph (1) of this subsection shall be presumed to be  
29 acting in good faith unless it is shown by clear and convincing  
30 evidence that the home care services agency acted with actual malice  
31 toward the person who is the subject of the information.

32       f. (1) A home care services agency, upon receiving notice from the  
33 board that a person employed by it as a homemaker-home health aide,  
34 including a conditionally employed person, has been convicted of a  
35 crime or disorderly persons offense as described in section 7 of  
36 P.L.1997, c.100 (C.45:11-24.3) after commencing employment at the  
37 home health care agency or other entity, shall:

38       (a) immediately terminate the person's employment as a  
39 homemaker-home health aide; and

40       (b) report information about the conviction and termination to the  
41 board in a manner prescribed by the board, which shall thereupon  
42 deem the person to be disqualified from certification as a homemaker-  
43 home health aide, subject to the provisions of paragraph (3) of this  
44 subsection.

45       (2) A home care services agency shall be immune from liability for  
46 any actions taken in good faith pursuant to paragraph (1) of this

1 subsection and shall be presumed to be acting in good faith unless it  
2 is shown by clear and convincing evidence that the home care services  
3 agency acted with actual malice toward the employee.

4 (3) The person terminated from employment pursuant to  
5 paragraph (1) of this subsection shall have 30 days from the date of the  
6 termination to petition the board for a hearing on the accuracy of the  
7 information about the conviction reported to the board or to establish  
8 why the person should not be terminated from employment, and  
9 disqualified from certification, as a homemaker-home health aide. The  
10 board shall notify the person's employer of the person's petition for a  
11 hearing within five days following the receipt of the petition from the  
12 person. Upon the issuance of a final decision upon a petition to the  
13 board pursuant to this paragraph, the board shall notify the person and  
14 the person's employer or as to whether:

15 (a) the person is to be reinstated in his employment as a  
16 homemaker-home health aide and retain his certification; or

17 (b) the person's termination from employment as a homemaker-  
18 home health aide stands and the person remains disqualified from  
19 certification.

20 (cf: P.L.1997,c.284, s.7)

21  
22 7. Section 9 of P.L.1997, c.100 (C.45:11-24.5) is amended to read  
23 as follows:

24 9. [A home health agency or a health care service firm, as defined  
25 in regulations of the Division of Consumer Affairs, may] The  
26 Department of Law and Public Safety shall assume the cost of the  
27 criminal history record background check conducted on an applicant  
28 for homemaker-home health aide certification pursuant to sections 7  
29 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through  
30 24.9 and C.53:1-20.9a), or a certified homemaker-home health aide  
31 who is required to undergo a criminal history record background  
32 check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), as  
33 applicable[; or it may require the applicant to pay the cost of the  
34 criminal history record background check].

35 (cf: P.L.1997,c.284, s.8)

36  
37 8. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to  
38 read as follows:

39 14. a. In accordance with the provisions of sections 2 through 6  
40 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through  
41 87; C.45:11-24.3 through 24.9), the Division of State Police in the  
42 Department of Law and Public Safety shall conduct a criminal history  
43 record background check, including a name and fingerprint  
44 identification check, of:

45 (1) each applicant for nurse aide or personal care assistant  
46 certification submitted to the Department of Health and Senior

1 Services and of each applicant for homemaker-home health aide  
2 certification submitted to the New Jersey Board of Nursing in the  
3 Division of Consumer Affairs; and

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

8 b. For the purpose of conducting [the] a criminal history record  
9 background check pursuant to subsection a. of this section, the  
10 Division of State Police shall examine its own files and arrange for a  
11 similar examination by federal authorities. The division shall  
12 immediately forward the information obtained as a result of conducting  
13 the check to the Commissioner of Health and Senior Services, in the  
14 case of an applicant for nurse aide or personal care assistant  
15 certification, and to the New Jersey Board of Nursing in the Division  
16 of Consumer Affairs in the Department of Law and Public Safety, in  
17 the case of an applicant for homemaker-home health aide certification.  
18 (cf: P.L.1997, c.284, s.13)

19

20 9. The Director of the Division of Consumer Affairs in the  
21 Department of Law and Public Safety, in consultation with the  
22 Commissioner of Health and Senior Services, shall report to the  
23 Governor and the Legislature no later than one year after the effective  
24 date of this act on the feasibility and cost of implementing a criminal  
25 history record background check requirement for all persons employed  
26 by home health agencies licensed by the Department of Health and  
27 Senior Services or by health care service firms, employment agencies  
28 or registries, temporary help service firms or personnel consultants  
29 regulated by the Division of Consumer Affairs, who are assigned to  
30 provide health care services in a home-based or other community  
31 setting and are not required to undergo a criminal history record  
32 background check pursuant to P.L.1997, c.100 (C.26:2H-83 et al.).  
33 The report shall include a detailed plan for implementation of a  
34 criminal history record background check requirement.

35

36 10. In fiscal year 2001, the Legislature shall appropriate from the  
37 General Fund to the Department of Health and Senior Services and the  
38 Department of Law and Public Safety such funds as the State  
39 Treasurer recommends to effectuate the purposes of this act.

40

41 11. This act shall take effect on the 90th day after enactment.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 116 and 124**

with Assembly committee amendments

# STATE OF NEW JERSEY

DATED: MARCH 2, 2000

The Assembly Appropriations Committee reports favorably Senate Bill Nos. 116 and 124 (SCS) with committee amendments.

Senate Bill Nos. 116 and 124 (SCS), as amended, is designed to correct a "loophole" in P.L.1997, c.100 (N.J.S.A.26:2H-83 et al.), under which all applicants for certification as a nurse aide, personal care assistant or homemaker-home health aide are required to undergo a criminal history record background check, except for those who were certified prior to the effective date of that law (i.e., November 1, 1997) were exempted from this requirement. Because of this "loophole," most of the 30,000 nurse aides and 24,000 homemaker-home health aides who are certified in this State have not undergone a criminal history record background check.

In addition, the bill requires that these persons undergo a follow-up background check of federal records at least once every two years as a condition of recertification. The bill provides that, in lieu of a follow-up background check every two years, the appropriate State regulatory agency may implement an alternative means of determining whether a person has been convicted of an offense which would disqualify the person from recertification.

The bill requires the Legislature to annually appropriate from the General Fund such funds as the State Treasurer recommends to effectuate the purposes of the bill.

As amended and reported, this legislation is identical to Assembly Bill Nos. 324 and 1821 ACS as amended and reported by the committee.

#### FISCAL IMPACT:

The estimated cost of providing the required background checks is approximately \$2.3 million in the first year of which 50 percent may be eligible for federal funding. There would be no cost for the second year. In the third year, federal background checks could cost \$936,000, however, the bill permits the development of an alternative to the federal record check.

The Governor's FY2001 budget request recommends \$2,513,000 to defray costs of these criminal history background checks. Of this amount, \$1,613,000 is recommended to Law & Public Safety and \$900,000 to Health and Senior Services.

COMMITTEE AMENDMENTS:

The amendments change a provision that would have required the Legislature to appropriate sufficient funds for the program for State fiscal year 2001 to a requirement that the Legislature annually appropriate sufficient funds for the program.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, Nos. 116 and 124**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: MARCH 23, 2000

**SUMMARY**

**Synopsis:** Requires criminal history record checks for all certified nurse aides and personal care assistants and homemaker health aides.

**Type of Impact:** Expenditure Increase, State General Fund

**Agencies Affected:** Department of Law and Public Safety, Department of Health and Senior Services

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$2,301,000	\$115,050	\$936,000

- ! Requires certified nurse aides and personal care assistants and homemaker health aides who were exempted from undergoing criminal history background checks because they were employed in these positions upon enactment of P.L.1997, c.100 to undergo these checks.
- ! Requires the State to assume the cost of conducting these background checks.
- ! Follow-up background checks of federal records are required every two years, however, the bill permits responsible State agencies to implement an alternate means of determining whether person has been convicted of an offense in lieu of biennial recertification.
- ! The Governor's FY 2001 budget recommends a total of \$2,513,000 (\$1,613,000 to Law and Public Safety and \$900,000 to the Department of Health and Senior Services) to defray the cost of criminal history background checks for personnel covered by this bill and by P.L.1997, c.100.

**BILL DESCRIPTION**

Senate Committee Substitute for Senate Bill Nos. 116 and 124 of 2000 would close a "loophole" in the existing law that requires criminal history background checks for certified nurse aides and personal care assistants and homemaker health aides. This law, which became effective in 1997, did not require these checks for persons who were employed in these positions at that

time. This bill would require these persons to pass such a check as a condition of continued employment. Follow-up background checks of federal records would be required every two years. However, the bill permits responsible State agencies to implement an alternate means of determining whether a person has been convicted of an offense, in lieu of the biennial recertification. The bill requires the Departments of Health and Senior Services and Law and Public Safety to assume the costs of the background checks. It further directs the Legislature to appropriate to these departments in FY 2001 such funds as the State Treasurer recommends to carry out the purposes of the bill.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) estimates the cost of providing the required background checks at approximately \$2,301,000 in the first year following enactment. This estimate is based on information provided informally by the Office of Management and Budget that approximately 54,000 individuals would be subject to background checks at a cost of \$59 per check. This estimate assumes that background checks for the estimated 30,000 nurse aides and personal care assistants licensed by the Department of Health and Senior Services would qualify for federal matching funds at a rate of 50 percent. The Governor's budget recommends \$2,513,000 to defray the cost of criminal history background checks. Included in the budget recommendation is a new appropriation of \$1,613,000 to the Department of Law and Public Safety and a continued appropriation of \$900,000 to the Department of Health and Senior Services.

Costs in the second year following enactment would be substantially lower because the bill does not require persons to be retested at that time. Assuming a rate of turnover of 5 percent among persons undergoing background checks in year one, background checks in year two would cost \$115,050. The bill requires that a follow-up check of the federal criminal record database be conducted in year three. The current cost of a federal record check is \$24. The cost of conducting these tests would be \$936,000. However, the bill permits the development of an alternative to the federal record check. Such an alternative might reduce costs in year three and beyond.

To the extent that existing resources are insufficient, this bill could increase administrative costs for the DHSS and L&PS. OLS does not have sufficient information on which to base an estimate of these potential costs.

Section: *Law and Public Safety*

Analyst: *James F. Vari*  
*Associate Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 116 and 124**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

ADOPTED FEBRUARY 10, 2000

**Sponsored by:**

**Senator LEONARD T. CONNORS, JR.**

**District 9 (Atlantic, Burlington and Ocean)**

**Senator HENRY P. MCNAMARA**

**District 40 (Bergen and Passaic)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator GARRY J. FURNARI**

**District 36 (Bergen, Essex and Passaic)**

**Co-Sponsored by:**

**Senators Bucco, Kenny, Codey, Girgenti, Allen, Matheussen, Robertson,  
Assemblywomen Vandervalk, Heck, Assemblymen Moran, Connors,  
Corodemus, T.Smith, Assemblywomen Weinberg, Quigley, Assemblyman  
LeFevre, Assemblywoman Murphy, Assemblyman Holzapfel,  
Assemblywoman Pou, Assemblymen Sires, Thompson and Baer**

**SYNOPSIS**

Requires criminal history record checks for all certified nurse aides, personal care assistants and homemaker-home health aides; requires plan for similar checks to be conducted on other providers of home care services.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on March 2, 2000, with amendments.

**(Sponsorship Updated As Of: 3/24/2000)**



1 AN ACT requiring criminal history record background checks for  
2 certain providers of institutional and home health care services,  
3 and amending P.L.1997, c.100 and P.L.1947, c.262.

4  
5 BE IT ENACTED by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 2 of P.L.1997, c.100 (C.26:2H-83) is amended to read  
9 as follows:

10 2. a. The Department of Health and Senior Services shall not  
11 issue a nurse aide or personal care assistant certification to any  
12 applicant, except on a conditional basis as provided for in subsection  
13 d. of section 3 of P.L.1997, c.100 (C.26:2H-84), unless the  
14 Commissioner of Health and Senior Services first determines,  
15 consistent with the requirements of sections 2 through 6 of P.L.1997,  
16 c.100 (C.26:2H-83 through 87), that no criminal history record  
17 information exists on file in the Federal Bureau of Investigation,  
18 Identification Division, or in the State Bureau of Identification in the  
19 Division of State Police, which would disqualify that person from  
20 being certified. A nurse aide or personal care assistant certified by the  
21 department prior to the effective date of P.L. , c. (C. )(now  
22 pending before the Legislature as this bill) upon whom a criminal  
23 history record background check has not been conducted pursuant to  
24 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87),  
25 shall be required to undergo that criminal history record background  
26 check as a condition of that individual's initial recertification following  
27 the effective date of P.L. , c. (now pending before the Legislature  
28 as this bill).

29 In addition, a follow-up criminal history record background check  
30 of federal records shall be conducted at least once every two years as  
31 a condition of recertification for every certified nurse aide and  
32 personal care assistant; except that the commissioner, in lieu of  
33 conducting follow-up criminal history record background checks for  
34 purposes of recertification, may provide for an alternative means of  
35 determining whether a certified nurse aide or personal care assistant  
36 has been convicted of a crime or disorderly persons offense which  
37 would disqualify that person from certification, including, but not  
38 limited to, a match of a person's Social Security number or other  
39 identifying information with records of criminal proceedings in this and  
40 other states. If the commissioner elects to implement this alternative  
41 means of determining whether a certified nurse aide or personal care  
42 assistant has been convicted of a crime or disorderly persons offense

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AAP committee amendments adopted March 2, 2000.

1 which would disqualify that person from certification, the  
2 commissioner shall report to the Governor and the Legislature prior  
3 to its implementation on the projected costs and procedures to be  
4 followed with respect to its implementation and setting forth the  
5 rationale therefor.

6 A person shall be disqualified from certification if that person's  
7 criminal history record background check reveals a record of  
8 conviction of any of the following crimes and offenses:

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

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

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

17 (c) involving theft as set forth in chapter 20 of Title 2C of the  
18 New Jersey Statutes; or

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

23 (2) In any other state or jurisdiction, of conduct which, if  
24 committed in New Jersey, would constitute any of the crimes or  
25 disorderly persons offenses described in paragraph (1) of this  
26 subsection.

27 b. Notwithstanding the provisions of subsection a. of this section,  
28 no person shall be disqualified from certification on the basis of any  
29 conviction disclosed by a criminal history record background check  
30 performed pursuant to sections 2 through 6 and section 14 of  
31 P.L.1997, c.100 (C.26:2H-83 through 87 and C.53:1-20.9a) if the  
32 person has affirmatively demonstrated to the Commissioner of Health  
33 and Senior Services clear and convincing evidence of the person's  
34 rehabilitation. In determining whether a person has affirmatively  
35 demonstrated rehabilitation, the following factors shall be considered:

36 (1) the nature and responsibility of the position which the  
37 convicted person would hold [or], has held or currently holds, as the  
38 case may be;

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

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

41 (4) the date of the offense;

42 (5) the age of the person when the offense was committed;

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

44 (7) any social conditions which may have contributed to the  
45 offense; and

46 (8) any evidence of rehabilitation, including good conduct in

1 prison or in the community, counseling or psychiatric treatment  
2 received, acquisition of additional academic or vocational schooling,  
3 successful participation in correctional work-release programs, or the  
4 recommendation of those who have had the person under their  
5 supervision.

6 c. If a person subject to the provisions of sections 2 through 6 of  
7 P.L.1997, c.100 (C.26:2H-83 through 87) refuses to consent to, or  
8 cooperate in, the securing of a criminal history record background  
9 check, the commissioner shall, as applicable:

10 (1) not issue a nurse aide or personal care assistant certification  
11 and shall notify the applicant, and the applicant's employer if the  
12 applicant is conditionally employed as provided in subsection d. of  
13 section 3 of P.L.1997, c.100 (C.26:2H-84) or the applicant's  
14 prospective employer if known, of that denial; or

15 (2) revoke the person's current nurse aide or personal care  
16 assistant certification and notify the person, and the person's employer,  
17 if known, of that revocation.

18 (cf: P.L.1997,c.284, s.2)

19

20 2. Section 3 of P.L.1997, c.100 (C.26:2H-84) is amended to read  
21 as follows:

22 3. a. An applicant for certification, or a certified nurse aide or  
23 personal care assistant who is required to undergo a criminal history  
24 record background check pursuant to section 2 of P.L.1997, c.100  
25 (C.26:2H-83), shall submit to the Commissioner of Health and Senior  
26 Services **[the applicant's]** that individual's name, address and  
27 fingerprints taken on standard fingerprint cards by a State or municipal  
28 law enforcement agency. The commissioner is authorized to exchange  
29 fingerprint data with and receive criminal history record information  
30 from the Federal Bureau of Investigation and the Division of State  
31 Police for use in making the determinations required by sections 2  
32 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

33 b. Upon receipt of the criminal history record information for a  
34 person from the Federal Bureau of Investigation or the Division of  
35 State Police, the commissioner shall immediately notify, in writing, the  
36 applicant, and the applicant's employer if the applicant is conditionally  
37 employed as provided in subsection d. of this section or the applicant's  
38 prospective employer if known, or a certified nurse aide or personal  
39 care assistant who is required to undergo a criminal history record  
40 background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-  
41 83) and that person's employer, as applicable, of the person's  
42 qualification or disqualification for certification under sections 2  
43 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87). If the  
44 **[applicant]** person is disqualified, the conviction or convictions which  
45 constitute the basis for the disqualification shall be identified in the  
46 notice to the **[applicant]** person, but shall not be identified in the

1 notice to the [applicant's] person's employer or prospective employer.

2 c. The [applicant] person who is the subject of the background  
3 check shall have 30 days from the date of the written notice of  
4 disqualification to petition the commissioner for a hearing on the  
5 accuracy of the [applicant's] person's criminal history record  
6 information or to establish the [applicant's] person's rehabilitation  
7 under subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83).  
8 The commissioner shall notify the [applicant's] person's employer or  
9 prospective employer of the [applicant's] person's petition for a  
10 hearing within five days following the receipt of the petition from the  
11 [applicant] person. Upon the issuance of a final decision upon a  
12 petition to the commissioner pursuant to this subsection, the  
13 commissioner shall notify the [applicant] person and the [applicant's]  
14 person's employer or prospective employer as to whether the  
15 [applicant] person remains disqualified from certification under  
16 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

17 d. An applicant for certification may be issued conditional  
18 certification and may be employed as a nurse aide or a personal care  
19 assistant conditionally for a period not to exceed [180] 60 days,  
20 pending completion of a criminal history record background check  
21 required under sections 2 through 6 of P.L.1997,c.100 (C.26:2H-83  
22 through 87) by the Division of State Police in the Department of Law  
23 and Public Safety based upon an examination of its own files in  
24 accordance with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for  
25 an additional period not to exceed 60 days pending completion of a  
26 criminal history record background check by federal authorities as  
27 arranged for by the Division of State Police pursuant to section 14 of  
28 P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the  
29 commissioner a sworn statement attesting that the person has not been  
30 convicted of any crime or disorderly persons offense as described in  
31 section 2 of P.L.1997, c.100 (C.26:2H-83). A person who submits a  
32 false sworn statement shall be disqualified from certification as a nurse  
33 aide or a personal care assistant, as the case may be, and shall not have  
34 an opportunity to establish rehabilitation pursuant to subsection b. of  
35 section 2 of P.L.1997, c.100 (C.26:2H-83).

36 A conditionally employed person, or an employed person certified  
37 as a nurse aide or a personal care assistant, who disputes the accuracy  
38 of the criminal history record information and who files a petition  
39 requesting a hearing pursuant to subsection c. of this section may  
40 remain employed by [the] that person's employer until the  
41 commissioner rules on the [applicant's] person's petition but, pending  
42 the commissioner's ruling, the employer shall not permit the  
43 [applicant] person to have unsupervised contact with patients,  
44 residents or clients, as the case may be, who are 60 years of age or  
45 older.

1       e. (1) A licensed health care facility or other entity that has  
2 received an application from or conditionally employs an applicant for  
3 nurse aide or personal care assistant certification, or employs a  
4 certified nurse aide or personal care assistant, and:

5       (a) receives notice from the Commissioner of Health and Senior  
6 Services that the applicant or certified nurse aide or personal care  
7 assistant, as applicable, has been determined by the commissioner to  
8 be disqualified from certification as a nurse aide or personal care  
9 assistant pursuant to sections 2 through 6 of P.L.1997, c.100  
10 (C.26:2H-83 through 87); or

11       (b) terminates its employment of a conditionally employed  
12 applicant for nurse aide or personal care assistant certification or a  
13 certified nurse aide or personal care assistant because the person was  
14 disqualified from employment at the health care facility or other entity  
15 on the basis of a conviction of a crime or disorderly persons offense as  
16 described in section 2 of P.L.1997, c.100 (C.26:2H-83) after  
17 commencing employment at the health care facility or other entity;  
18 shall be immune from liability for disclosing that disqualification or  
19 termination in good faith to another licensed health care facility or  
20 other entity that is qualified by statute or regulation to employ the  
21 person as a nurse aide or personal care assistant.

22       (2) A licensed health care facility or other entity which discloses  
23 information pursuant to paragraph (1) of this subsection shall be  
24 presumed to be acting in good faith unless it is shown by clear and  
25 convincing evidence that the health care facility or other entity acted  
26 with actual malice toward the person who is the subject of the  
27 information.

28       f. (1) A licensed health care facility or other entity, upon  
29 receiving notice from the Commissioner of Health and Senior Services  
30 that a person employed by it as a nurse aide or personal care assistant,  
31 including a conditionally employed person, has been convicted of a  
32 crime or disorderly persons offense as described in section 2 of  
33 P.L.1997, c.100 (C.26:2H-83) after commencing employment at the  
34 health care facility or other entity, shall:

35       (a) immediately terminate the person's employment as a nurse aide  
36 or personal care assistant; and

37       (b) report information about the termination to the Commissioner  
38 of Health and Senior Services in a manner prescribed by the  
39 commissioner, who shall thereupon deem the person to be disqualified  
40 from certification as a nurse aide or personal care assistant, subject to  
41 the provisions of paragraph (3) of this subsection.

42       (2) A licensed health care facility or other entity shall be immune  
43 from liability for any actions taken in good faith pursuant to paragraph  
44 (1) of this subsection and shall be presumed to be acting in good faith  
45 unless it is shown by clear and convincing evidence that the health care  
46 facility or other entity acted with actual malice toward the employee.

1       (3) The person terminated from employment pursuant to  
2 paragraph (1) of this subsection shall have 30 days from the date of the  
3 termination to petition the commissioner for a hearing on the accuracy  
4 of the information about the conviction reported to the commissioner  
5 or to establish why the person should not be terminated from  
6 employment, and disqualified from certification, as a nurse aide or  
7 personal care assistant. The commissioner shall notify the person's  
8 employer of the person's petition for a hearing within five days  
9 following the receipt of the petition from the person. Upon the  
10 issuance of a final decision upon a petition to the commissioner  
11 pursuant to this paragraph, the commissioner shall notify the person  
12 and the person's employer as to whether:

13       (a) the person is to be reinstated in his employment as a nurse aide  
14 or personal care assistant and retain his certification; or

15       (b) the person's termination from employment as a nurse aide or  
16 personal care assistant stands and the person remains disqualified from  
17 certification.

18       g. The commissioner shall provide for a registry of all persons  
19 who have successfully completed all training and competency  
20 evaluation requirements for certification as a nurse aide or personal  
21 care assistant and shall provide for the inclusion in the registry of  
22 information about the disqualification of any person from certification  
23 pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83  
24 through 87); for which purposes, the commissioner may use an  
25 existing registry established pursuant to statute or regulation, subject  
26 to the requirements of federal law. The registry shall include the  
27 specific documented findings constituting the basis for that  
28 disqualification, except that the information shall indicate that the  
29 person was convicted of a crime or disorderly persons offense as  
30 described in section 2 of P.L.1997, c.100 (C.26:2H-83), but shall not  
31 identify the conviction or convictions which constitute the basis for the  
32 disqualification.

33 (cf: P.L.1997, c.284, s.3)

34

35       3. Section 4 of P.L.1997, c.100 (C.26:2H-85) is amended to read  
36 as follows:

37       4. [An applicant's employer if the applicant is conditionally  
38 employed as provided in subsection d. of section 3 of P.L.1997, c.100  
39 (C.26:2H-84) or an applicant's prospective employer may] The  
40 Department of Health and Senior Services shall assume the cost of the  
41 criminal history record background check conducted on an applicant  
42 for nurse aide or personal care assistant certification, or a certified  
43 nurse aide or personal care assistant, as the case may be, pursuant to  
44 sections 2 through 6 and section 14 of P.L.1997,c.100 (C.26:2H-83  
45 through 87 and C.53:1-20.9a)]; or the employer or prospective  
46 employer may require the applicant to pay the cost of the criminal

1 history record background check].

2 (cf: P.L.1997, c.284, s.4)

3

4 4. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to read  
5 as follows:

6 2. a. The board; appointment; terms. In addition to the members  
7 appointed to represent the interests of the public pursuant to P.L.1971,  
8 c.60 as amended by P.L.1977, c.285 (C.45:1-2.2) the New Jersey  
9 Board of Nursing shall consist of 10 members, six of whom shall be  
10 registered professional nurses, two of whom shall be licensed practical  
11 nurses, one of whom shall be an advanced practice nurse, and one of  
12 whom shall be an additional public member, all to be appointed by the  
13 Governor. Appointments to the board shall be for terms of five years  
14 or for the unexpired portion of a term in the case of a vacancy for any  
15 cause within a term, and until a successor shall be appointed and  
16 qualified. In making appointments the Governor shall give due  
17 consideration to, but shall not be bound by, recommendations  
18 submitted by the various nurses' professional associations of this State.  
19 Upon notice and hearing, the Governor may remove from office any  
20 member of the board for neglect of duty, incompetency, unprofessional  
21 or dishonorable conduct.

22 b. Qualifications for appointment. The advanced practice nurse  
23 member shall be a resident of this State, shall be a graduate of an  
24 accredited advanced practice nurse program, shall have had at least  
25 five years' experience in professional nursing, shall at the time of  
26 appointment be actively working as an advanced practice nurse, and,  
27 except for the member first appointed, shall hold a certification as an  
28 advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et  
29 al.). Each registered professional nurse member of the board shall be  
30 a citizen of the United States and a resident of this State; shall be a  
31 graduate of an accredited school of nursing within the United States;  
32 shall be a registered nurse in this State; shall have had at least five  
33 years' experience in professional nursing following graduation from an  
34 accredited school of nursing; and shall at the time of appointment be  
35 actively engaged in nursing or work relating thereto. The licensed  
36 practical nurse members of the board shall be citizens of the United  
37 States and residents of this State; shall hold a valid license to practice  
38 practical nursing in this State; shall have had at least three years'  
39 experience in practical nursing; and shall at the time of appointment be  
40 actively engaged in practical nursing or work related thereto.

41 c. Oath or affirmation of office. Within 30 days after receipt of  
42 the commission, each appointee shall take, subscribe and file in the  
43 office of the Secretary of State the oath or affirmation prescribed by  
44 law.

45 d. Duties and powers. The board shall have the following duties  
46 and powers: (1) It shall hold annual meetings and such other meetings  
47 as it may deem necessary at such times and places as the board shall

1 prescribe and a majority of the board including one officer shall  
2 constitute a quorum. (2) It shall elect from its members and prescribe  
3 the duties of a president and secretary-treasurer, each of whom shall  
4 serve for one year and until a successor is elected. (3) It shall appoint  
5 and prescribe the duties of an executive secretary to the board who  
6 need not be a member thereof but who shall be a citizen of the United  
7 States, a graduate of a college or university with a major in nursing  
8 education, a registered nurse of this State with at least five years'  
9 experience in teaching or administration or both in an accredited  
10 school of professional nursing, or have equivalent qualifications as  
11 determined by the board. The executive secretary shall hold office  
12 during the will and pleasure of the board. (4) It shall employ and  
13 prescribe the duties of such persons as in its judgment shall be  
14 necessary for the proper performance and execution of the duties and  
15 powers of the board. (5) It shall determine and pay reasonable  
16 compensation and necessary expenses of the executive secretary and  
17 all employees of the board. (6) It shall pay to each member of the  
18 board the compensation hereinafter provided. (7) It shall have a  
19 common seal, keep an official record of all its meetings, and through  
20 its secretary-treasurer report annually to the Governor the work of the  
21 board. (8) It shall examine applicants for a license or renewals thereof,  
22 issue, renew, revoke and suspend licenses, as hereinafter provided. (9)  
23 It shall in its discretion investigate and prosecute all violations of  
24 provisions of this act. (10) It shall keep an official record which shall  
25 show the name, age, nativity and permanent place of residence of each  
26 applicant and licensee and such further information concerning each  
27 applicant and licensee as the board shall deem advisable. The record  
28 shall show also whether the applicant was examined, licensed or  
29 rejected under this and any prior act. Copies of any of the entries of  
30 the record or of any certificate issued by the board may be  
31 authenticated by any member of the board under its seal and when so  
32 authenticated shall be evidence in all courts of this State of the same  
33 weight and force as the original thereof. For authenticating a copy of  
34 any entry or entries contained in its record the board shall be paid a fee  
35 of \$3.00, but such authentication, if made at the request of any public  
36 agency of this or any other jurisdiction, may be without fee. (11) In its  
37 discretion it may publish at such times as it shall determine a list of  
38 nurses licensed under this act, a list of schools of nursing accredited  
39 or approved under this act, and such other information as it shall deem  
40 advisable. (12) It shall prescribe standards and curricula for schools of  
41 nursing and evaluate and approve courses for affiliation. (13) It shall  
42 hear and determine applications for accreditation of schools of  
43 professional nursing, conduct investigations before and after  
44 accreditation of such schools and institutions with which they are  
45 affiliated, and issue, suspend or revoke certificates of accreditation as  
46 hereinafter provided. (14) It shall approve schools of practical nursing  
47 which shall conform to the standards, curricula, and requirements



1 prescribed by the board, and suspend or revoke approval for violations  
2 thereof; provided, that this power shall not extend to schools operated  
3 by any board of education in this State. (15) It may consult with the  
4 Medical Society of New Jersey and the New Jersey Hospital  
5 Association with respect to any matter relating to the administration  
6 of this act and shall consult with those associations with respect to  
7 standards and curricula and any change thereof for schools of nursing.  
8 (16) It shall issue subpoenas for the attendance of witnesses and  
9 production of documents at any hearing before the board authorized  
10 by this act and any member of the board shall administer an oath or  
11 affirmation to persons appearing to give testimony at such hearings.  
12 (17) It may conduct any investigations, studies of nursing and nursing  
13 education and related matters, and prepare and issue such publications  
14 as in the judgment of the board will advance the profession of nursing  
15 and its service to the public. (18) It shall perform all other functions  
16 which are provided in this act to be performed by it or which in the  
17 judgment of the board are necessary or proper for the administration  
18 of this act. (19) It shall from time to time prescribe rules and  
19 regulations not inconsistent with this act. (20) It shall prescribe  
20 standards and curricula for homemaker-home health aide education  
21 and training programs which a homemaker-home health aide shall  
22 complete in order to work in this State. (21) It shall review  
23 applications to provide homemaker-home health aide training  
24 programs and shall issue, suspend or revoke program approval. (22)  
25 It shall establish and maintain a registry of all individuals who have  
26 successfully completed a homemaker-home health aide training and  
27 competency evaluation program. The board shall provide for the  
28 inclusion in the registry of information about the disqualification of  
29 any person from certification as a homemaker-home health aide  
30 pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3  
31 through 24.9), including the specific documented findings constituting  
32 the basis for that disqualification; except that the information shall  
33 indicate that the person was convicted of a crime or disorderly persons  
34 offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3),  
35 but shall not identify the conviction or convictions which constitute the  
36 basis for the disqualification. (23) It shall prescribe standards and  
37 requirements for a competency evaluation program resulting in  
38 certification of the homemaker-home health aide, and the renewal,  
39 revocation, and suspension of that certification. (24) It shall review  
40 applications for homemaker home-health aide certification and shall  
41 issue, suspend, revoke, or fail to renew certifications and conduct  
42 investigations pursuant to the provisions of P.L.1978, c.73 (C.45:1-14  
43 et seq.).  
44 e. Compensation. Each member of the board shall receive \$15.00  
45 per day for each day in which such member is actually engaged in the  
46 discharge of duties and traveling and other expenses necessarily

1 incurred in the discharge of duties.

2 (cf: P.L.1999, c.85, s.2)

3

4 5. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read  
5 as follows:

6 7. a. The New Jersey Board of Nursing in the Division of  
7 Consumer Affairs in the Department of Law and Public Safety shall  
8 not issue a homemaker-home health aide certification to any applicant,  
9 except on a conditional basis as provided for in subsection d. of  
10 section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the board first  
11 determines, consistent with the requirements of sections 7 through 13  
12 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), that no criminal  
13 history record information exists on file in the Federal Bureau of  
14 Investigation, Identification Division, or in the State Bureau of  
15 Identification in the Division of State Police, which would disqualify  
16 that person from being certified. A homemaker-home health aide  
17 certified by the board prior to the effective date of  
18 P.L. , c. (C. )(now pending before the Legislature as this bill) and  
19 upon whom a criminal history record background check has not been  
20 conducted pursuant to sections 7 through 13 of P.L.1997, c.100  
21 (C.45:11-24.3 through 24.9), shall be required to undergo that  
22 criminal history record background check as a condition of that  
23 individual's initial recertification following the effective date of  
24 P.L. , c. (now pending before the Legislature as this bill).

25 In addition, a follow-up criminal history record background check  
26 of federal records shall be conducted at least once every two years as  
27 a condition of recertification for every certified homemaker-home  
28 health aide; except that the board, in lieu of conducting follow-up  
29 criminal history record background checks for purposes of  
30 recertification, may provide for an alternative means of determining  
31 whether a certified homemaker-home health aide has been convicted  
32 of a crime or disorderly persons offense which would disqualify that  
33 person from certification, including, but not limited to, a match of a  
34 person's Social Security number or other identifying information with  
35 records of criminal proceedings in this and other states. If the board  
36 elects to implement this alternative means of determining whether a  
37 certified homemaker-home health aide has been convicted of a crime  
38 or disorderly persons offense which would disqualify that person from  
39 certification, the board shall report to the Governor and the  
40 Legislature prior to its implementation on the projected costs and  
41 procedures to be followed with respect to its implementation and  
42 setting forth the rationale therefor.

43 A person shall be disqualified from certification if that person's  
44 criminal history record background check reveals a record of  
45 conviction of any of the following crimes and offenses:

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

1 (a) involving danger to the person, meaning those crimes and  
2 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
3 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  
4 N.J.S.2C:15-1 et seq.; or

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

8 (c) involving theft as set forth in chapter 20 of Title 2C of the  
9 New Jersey Statutes; or

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

14 (2) In any other state or jurisdiction, of conduct which, if  
15 committed in New Jersey, would constitute any of the crimes or  
16 disorderly persons offenses described in paragraph (1) of this  
17 subsection.

18 b. Notwithstanding the provisions of subsection a. of this section,  
19 no person shall be disqualified from certification on the basis of any  
20 conviction disclosed by a criminal history record background check  
21 performed pursuant to sections 7 through 13 and section 14 of  
22 P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a) if the  
23 person has affirmatively demonstrated to the New Jersey Board of  
24 Nursing in the Division of Consumer Affairs clear and convincing  
25 evidence of the person's rehabilitation. In determining whether a  
26 person has affirmatively demonstrated rehabilitation, the following  
27 factors shall be considered:

28 (1) the nature and responsibility of the position which the  
29 convicted person would hold [or], has held or currently holds, as the  
30 case may be;

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

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

33 (4) the date of the offense;

34 (5) the age of the person when the offense was committed;

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

36 (7) any social conditions which may have contributed to the  
37 offense; and

38 (8) any evidence of rehabilitation, including good conduct in  
39 prison or in the community, counseling or psychiatric treatment  
40 received, acquisition of additional academic or vocational schooling,  
41 successful participation in correctional work-release programs, or the  
42 recommendation of those who have had the person under their  
43 supervision.

44 c. If a person subject to the provisions of sections 7 through 13 of  
45 P.L.1997, c.100 (C.45:11-24.3 through 24.9) refuses to consent to, or  
46 cooperate in, the securing of a criminal history record background

1 check, the New Jersey Board of Nursing shall, as applicable:

2 (1) not issue a homemaker-home health aide certification and shall  
3 notify the applicant, and the applicant's employer if the applicant is  
4 conditionally employed as provided in subsection d. of section 8 of  
5 P.L.1997, c.100 (C.45:11-24.4) or the applicant's prospective  
6 employer if known, of that denial; or

7 (2) revoke the person's current homemaker-home health aide  
8 certification and notify the person, and the person's employer, if  
9 known, of that revocation.

10 (cf: P.L.1997,c.284, s.6)

11

12 6. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read  
13 as follows:

14 8. a. An applicant for homemaker-home health aide certification,  
15 or a certified person who is required to undergo a criminal history  
16 record background check pursuant to section 7 of P.L.1997, c.100  
17 (C.45:11-24.3), shall submit to the New Jersey Board of Nursing [the  
18 applicant's] that individual's name, address and fingerprints taken on  
19 standard fingerprint cards by a State or municipal law enforcement  
20 agency. The board is authorized to exchange fingerprint data with and  
21 receive criminal history record information from the Federal Bureau  
22 of Investigation and the Division of State Police for use in making the  
23 determinations required by sections 7 through 13 of P.L.1997, c.100  
24 (C.45:11-24.3 through 24.9).

25 b. Upon receipt of the criminal history record information for a  
26 person from the Federal Bureau of Investigation or the Division of  
27 State Police, the New Jersey Board of Nursing shall immediately  
28 notify, in writing, the applicant, and the applicant's employer if the  
29 applicant is conditionally employed as provided in subsection d. of this  
30 section or the applicant's prospective employer, if known, or the  
31 certified person who is required to undergo a criminal history record  
32 background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-  
33 24.3) and that person's employer, as applicable, of the person's  
34 qualification or disqualification for homemaker-home health aide  
35 certification under sections 7 through 13 of P.L.1997, c.100  
36 (C.45:11-24.3 through 24.9). If the [applicant] person is disqualified,  
37 the conviction or convictions which constitute the basis for the  
38 disqualification shall be identified in the notice to the [applicant]  
39 person, but shall not be identified in the notice to the [applicant's]  
40 person's employer or prospective employer.

41 c. The [applicant] person who is the subject of the background  
42 check shall have 30 days from the date of the written notice of  
43 disqualification to petition the New Jersey Board of Nursing for a  
44 hearing on the accuracy of the [applicant's] person's criminal history  
45 record information or to establish the [applicant's] person's  
46 rehabilitation under subsection b. of section 7 of P.L.1997, c.100

1 (C.45:11-24.3). The board shall notify the [applicant's] person's  
2 employer or prospective employer of the [applicant's] person's  
3 petition for a hearing within five days following the receipt of the  
4 petition from the [applicant] person. Upon the issuance of a final  
5 decision upon a petition to the board pursuant to this subsection, the  
6 board shall notify the [applicant] person and the [applicant's]  
7 person's employer or prospective employer as to whether the  
8 [applicant] person remains disqualified from certification under  
9 sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

10 d. An applicant for certification may be issued conditional  
11 certification and may be employed as a homemaker-home health aide  
12 conditionally for a period not to exceed [180] 60 days, pending  
13 completion of a criminal history record background check required  
14 under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through  
15 24.9) by the Division of State Police in the Department of Law and  
16 Public Safety based upon an examination of its own files in accordance  
17 with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for an  
18 additional period not to exceed 60 days pending completion of a  
19 criminal history record background check by federal authorities as  
20 arranged for by the Division of State Police pursuant to section 14 of  
21 P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the New  
22 Jersey Board of Nursing a sworn statement attesting that the person  
23 has not been convicted of any crime or disorderly persons offense as  
24 described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A person  
25 who submits a false sworn statement shall be disqualified from  
26 certification as a homemaker-home health aide and shall not have an  
27 opportunity to establish rehabilitation pursuant to subsection b. of  
28 section 7 of P.L.1997, c.100 (C.45:11-24.3).

29 A conditionally employed person, or an employed person certified  
30 as a homemaker-home health aide, who disputes the accuracy of the  
31 criminal history record information and who files a petition requesting  
32 a hearing pursuant to subsection c. of this section may remain  
33 employed by [the] that person's employer until the board rules on the  
34 [applicant's] person's petition but, pending the board's ruling, the  
35 employer shall not permit the [applicant] person to have unsupervised  
36 contact with patients or clients who are 60 years of age or older.

37 e. (1) A home care services agency that has received an  
38 application from or conditionally employed an applicant for  
39 homemaker-home health aide certification, or has employed a certified  
40 homemaker-home health aide, and

41 (a) receives notice from the board that the applicant or certified  
42 homemaker-home health aide, as applicable, has been determined by  
43 the board to be disqualified from certification as a homemaker-home  
44 health aide pursuant to sections 7 through 13 of P.L.1997, c.100  
45 (C.45:11-24.3 through 24.9); or

1 (b) terminates its employment of a conditionally employed  
2 applicant for homemaker-home health aide certification or a certified  
3 homemaker-home health aide because the person was disqualified from  
4 employment at the home care services agency on the basis of a  
5 conviction of a crime or disorderly persons offense as described in  
6 section 7 of P.L.1997, c.100 (C.45:11-24.3) after commencing  
7 employment at the home care services agency;  
8 shall be immune from liability for disclosing that disqualification or  
9 termination in good faith to another home care services agency.

10 (2) A home care services agency which discloses information  
11 pursuant to paragraph (1) of this subsection shall be presumed to be  
12 acting in good faith unless it is shown by clear and convincing  
13 evidence that the home care services agency acted with actual malice  
14 toward the person who is the subject of the information.

15 f. (1) A home care services agency, upon receiving notice from the  
16 board that a person employed by it as a homemaker-home health aide,  
17 including a conditionally employed person, has been convicted of a  
18 crime or disorderly persons offense as described in section 7 of  
19 P.L.1997, c.100 (C.45:11-24.3) after commencing employment at the  
20 home health care agency or other entity, shall:

21 (a) immediately terminate the person's employment as a  
22 homemaker-home health aide; and

23 (b) report information about the conviction and termination to the  
24 board in a manner prescribed by the board, which shall thereupon  
25 deem the person to be disqualified from certification as a homemaker-  
26 home health aide, subject to the provisions of paragraph (3) of this  
27 subsection.

28 (2) A home care services agency shall be immune from liability for  
29 any actions taken in good faith pursuant to paragraph (1) of this  
30 subsection and shall be presumed to be acting in good faith unless it  
31 is shown by clear and convincing evidence that the home care services  
32 agency acted with actual malice toward the employee.

33 (3) The person terminated from employment pursuant to  
34 paragraph (1) of this subsection shall have 30 days from the date of the  
35 termination to petition the board for a hearing on the accuracy of the  
36 information about the conviction reported to the board or to establish  
37 why the person should not be terminated from employment, and  
38 disqualified from certification, as a homemaker-home health aide. The  
39 board shall notify the person's employer of the person's petition for a  
40 hearing within five days following the receipt of the petition from the  
41 person. Upon the issuance of a final decision upon a petition to the  
42 board pursuant to this paragraph, the board shall notify the person and  
43 the person's employer or as to whether:

44 (a) the person is to be reinstated in his employment as a  
45 homemaker-home health aide and retain his certification; or

46 (b) the person's termination from employment as a homemaker-

1 home health aide stands and the person remains disqualified from  
2 certification.

3 (cf: P.L.1997,c.284, s.7)

4

5 7. Section 9 of P.L.1997, c.100 (C.45:11-24.5) is amended to read  
6 as follows:

7 9. [A home health agency or a health care service firm, as defined  
8 in regulations of the Division of Consumer Affairs, may] The  
9 Department of Law and Public Safety shall assume the cost of the  
10 criminal history record background check conducted on an applicant  
11 for homemaker-home health aide certification pursuant to sections 7  
12 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through  
13 24.9 and C.53:1-20.9a), or a certified homemaker-home health aide  
14 who is required to undergo a criminal history record background  
15 check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), as  
16 applicable[; or it may require the applicant to pay the cost of the  
17 criminal history record background check].

18 (cf: P.L.1997,c.284, s.8)

19

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

22 14. a. In accordance with the provisions of sections 2 through 6  
23 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through  
24 87; C.45:11-24.3 through 24.9), the Division of State Police in the  
25 Department of Law and Public Safety shall conduct a criminal history  
26 record background check, including a name and fingerprint  
27 identification check, of:

28 (1) each applicant for nurse aide or personal care assistant  
29 certification submitted to the Department of Health and Senior  
30 Services and of each applicant for homemaker-home health aide  
31 certification submitted to the New Jersey Board of Nursing in the  
32 Division of Consumer Affairs; and

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

37 b. For the purpose of conducting [the] a criminal history record  
38 background check pursuant to subsection a. of this section, the  
39 Division of State Police shall examine its own files and arrange for a  
40 similar examination by federal authorities. The division shall  
41 immediately forward the information obtained as a result of conducting  
42 the check to the Commissioner of Health and Senior Services, in the  
43 case of an applicant for nurse aide or personal care assistant  
44 certification, and to the New Jersey Board of Nursing in the Division  
45 of Consumer Affairs in the Department of Law and Public Safety, in

1 the case of an applicant for homemaker-home health aide certification.  
2 (cf: P.L.1997, c.284, s.13)

3  
4 9. The Director of the Division of Consumer Affairs in the  
5 Department of Law and Public Safety, in consultation with the  
6 Commissioner of Health and Senior Services, shall report to the  
7 Governor and the Legislature no later than one year after the effective  
8 date of this act on the feasibility and cost of implementing a criminal  
9 history record background check requirement for all persons employed  
10 by home health agencies licensed by the Department of Health and  
11 Senior Services or by health care service firms, employment agencies  
12 or registries, temporary help service firms or personnel consultants  
13 regulated by the Division of Consumer Affairs, who are assigned to  
14 provide health care services in a home-based or other community  
15 setting and are not required to undergo a criminal history record  
16 background check pursuant to P.L.1997, c.100 (C.26:2H-83 et al.).  
17 The report shall include a detailed plan for implementation of a  
18 criminal history record background check requirement.

19  
20 10. <sup>1</sup>[In fiscal year 2001, the]The<sup>1</sup> Legislature shall <sup>1</sup>annually<sup>1</sup>  
21 appropriate from the General Fund to the Department of Health and  
22 Senior Services and the Department of Law and Public Safety such  
23 funds as the State Treasurer recommends to effectuate the purposes  
24 of this act.

25  
26 11. This act shall take effect on the 90th day after enactment.



§9 - T&E  
§10 - Note to §§1-8  
§11 - Note to §§1-10

P.L. 2000, CHAPTER 20, *approved May 3, 2000*  
Senate Committee Substitute (*First Reprint*) for  
Senate, Nos. 116 and 124

1 **AN ACT** requiring criminal history record background checks for  
2 certain providers of institutional and home health care services,  
3 and amending P.L.1997, c.100 and P.L.1947, c.262.

4

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

7

8 1. Section 2 of P.L.1997, c.100 (C.26:2H-83) is amended to read  
9 as follows:

10 2. a. The Department of Health and Senior Services shall not  
11 issue a nurse aide or personal care assistant certification to any  
12 applicant, except on a conditional basis as provided for in subsection  
13 d. of section 3 of P.L.1997, c.100 (C.26:2H-84), unless the  
14 Commissioner of Health and Senior Services first determines,  
15 consistent with the requirements of sections 2 through 6 of P.L.1997,  
16 c.100 (C.26:2H-83 through 87), that no criminal history record  
17 information exists on file in the Federal Bureau of Investigation,  
18 Identification Division, or in the State Bureau of Identification in the  
19 Division of State Police, which would disqualify that person from  
20 being certified. A nurse aide or personal care assistant certified by the  
21 department prior to the effective date of P.L. , c. (C. )(now  
22 pending before the Legislature as this bill) upon whom a criminal  
23 history record background check has not been conducted pursuant to  
24 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87),  
25 shall be required to undergo that criminal history record background  
26 check as a condition of that individual's initial recertification following  
27 the effective date of P.L. , c. (now pending before the Legislature  
28 as this bill).

29 In addition, a follow-up criminal history record background check  
30 of federal records shall be conducted at least once every two years as  
31 a condition of recertification for every certified nurse aide and  
32 personal care assistant; except that the commissioner, in lieu of  
33 conducting follow-up criminal history record background checks for  
34 purposes of recertification, may provide for an alternative means of  
35 determining whether a certified nurse aide or personal care assistant  
36 has been convicted of a crime or disorderly persons offense which  
37 would disqualify that person from certification, including, but not

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AAP committee amendments adopted March 2, 2000.

1 limited to, a match of a person's Social Security number or other  
2 identifying information with records of criminal proceedings in this and  
3 other states. If the commissioner elects to implement this alternative  
4 means of determining whether a certified nurse aide or personal care  
5 assistant has been convicted of a crime or disorderly persons offense  
6 which would disqualify that person from certification, the  
7 commissioner shall report to the Governor and the Legislature prior  
8 to its implementation on the projected costs and procedures to be  
9 followed with respect to its implementation and setting forth the  
10 rationale therefor.

11 A person shall be disqualified from certification if that person's  
12 criminal history record background check reveals a record of  
13 conviction of any of the following crimes and offenses:

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

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

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

22 (c) involving theft as set forth in chapter 20 of Title 2C of the  
23 New Jersey Statutes; or

24 (d) 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.2C:35-10.

28 (2) In any other state or jurisdiction, of conduct which, if  
29 committed in New Jersey, would constitute any of the crimes or  
30 disorderly persons offenses described in paragraph (1) of this  
31 subsection.

32 b. Notwithstanding the provisions of subsection a. of this section,  
33 no person shall be disqualified from certification on the basis of any  
34 conviction disclosed by a criminal history record background check  
35 performed pursuant to sections 2 through 6 and section 14 of  
36 P.L.1997, c.100 (C.26:2H-83 through 87 and C.53:1-20.9a) if the  
37 person has affirmatively demonstrated to the Commissioner of Health  
38 and Senior Services clear and convincing evidence of the person's  
39 rehabilitation. In determining whether a person has affirmatively  
40 demonstrated rehabilitation, the following factors shall be considered:

41 (1) the nature and responsibility of the position which the  
42 convicted person would hold [or], has held or currently holds, as the  
43 case may be;

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

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

46 (4) the date of the offense;

- 1 (5) the age of the person when the offense was committed;  
2 (6) whether the offense was an isolated or repeated incident;  
3 (7) any social conditions which may have contributed to the  
4 offense; and  
5 (8) any evidence of rehabilitation, including good conduct in  
6 prison or in the community, counseling or psychiatric treatment  
7 received, acquisition of additional academic or vocational schooling,  
8 successful participation in correctional work-release programs, or the  
9 recommendation of those who have had the person under their  
10 supervision.

11 c. If a person subject to the provisions of sections 2 through 6 of  
12 P.L.1997, c.100 (C.26:2H-83 through 87) refuses to consent to, or  
13 cooperate in, the securing of a criminal history record background  
14 check, the commissioner shall, as applicable:

15 (1) not issue a nurse aide or personal care assistant certification  
16 and shall notify the applicant, and the applicant's employer if the  
17 applicant is conditionally employed as provided in subsection d. of  
18 section 3 of P.L.1997, c.100 (C.26:2H-84) or the applicant's  
19 prospective employer if known, of that denial; or

20 (2) revoke the person's current nurse aide or personal care  
21 assistant certification and notify the person, and the person's employer,  
22 if known, of that revocation.

23 (cf: P.L.1997,c.284, s.2)

24

25 2. Section 3 of P.L.1997, c.100 (C.26:2H-84) is amended to read  
26 as follows:

27 3. a. An applicant for certification, or a certified nurse aide or  
28 personal care assistant who is required to undergo a criminal history  
29 record background check pursuant to section 2 of P.L.1997, c.100  
30 (C.26:2H-83), shall submit to the Commissioner of Health and Senior  
31 Services [the applicant's] that individual's name, address and  
32 fingerprints taken on standard fingerprint cards by a State or municipal  
33 law enforcement agency. The commissioner is authorized to exchange  
34 fingerprint data with and receive criminal history record information  
35 from the Federal Bureau of Investigation and the Division of State  
36 Police for use in making the determinations required by sections 2  
37 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

38 b. Upon receipt of the criminal history record information for a  
39 person from the Federal Bureau of Investigation or the Division of  
40 State Police, the commissioner shall immediately notify, in writing, the  
41 applicant, and the applicant's employer if the applicant is conditionally  
42 employed as provided in subsection d. of this section or the applicant's  
43 prospective employer if known, or a certified nurse aide or personal  
44 care assistant who is required to undergo a criminal history record  
45 background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-  
46 83) and that person's employer, as applicable, of the person's

1 qualification or disqualification for certification under sections  
2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87). If the  
3 [applicant] person is disqualified, the conviction or convictions which  
4 constitute the basis for the disqualification shall be identified in the  
5 notice to the [applicant] person, but shall not be identified in the  
6 notice to the [applicant's] person's employer or prospective employer.

7 c. The [applicant] person who is the subject of the background  
8 check shall have 30 days from the date of the written notice of  
9 disqualification to petition the commissioner for a hearing on the  
10 accuracy of the [applicant's] person's criminal history record  
11 information or to establish the [applicant's] person's rehabilitation  
12 under subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83).  
13 The commissioner shall notify the [applicant's] person's employer or  
14 prospective employer of the [applicant's] person's petition for a  
15 hearing within five days following the receipt of the petition from the  
16 [applicant] person. Upon the issuance of a final decision upon a  
17 petition to the commissioner pursuant to this subsection, the  
18 commissioner shall notify the [applicant] person and the [applicant's]  
19 person's employer or prospective employer as to whether the  
20 [applicant] person remains disqualified from certification under  
21 sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

22 d. An applicant for certification may be issued conditional  
23 certification and may be employed as a nurse aide or a personal care  
24 assistant conditionally for a period not to exceed ~~[180]~~ 60 days,  
25 pending completion of a criminal history record background check  
26 required under sections 2 through 6 of P.L.1997,c.100 (C.26:2H-83  
27 through 87) by the Division of State Police in the Department of Law  
28 and Public Safety based upon an examination of its own files in  
29 accordance with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for  
30 an additional period not to exceed 60 days pending completion of a  
31 criminal history record background check by federal authorities as  
32 arranged for by the Division of State Police pursuant to section 14 of  
33 P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the  
34 commissioner a sworn statement attesting that the person has not been  
35 convicted of any crime or disorderly persons offense as described in  
36 section 2 of P.L.1997, c.100 (C.26:2H-83). A person who submits a  
37 false sworn statement shall be disqualified from certification as a nurse  
38 aide or a personal care assistant, as the case may be, and shall not have  
39 an opportunity to establish rehabilitation pursuant to subsection b. of  
40 section 2 of P.L.1997, c.100 (C.26:2H-83).

41 A conditionally employed person, or an employed person certified  
42 as a nurse aide or a personal care assistant, who disputes the accuracy  
43 of the criminal history record information and who files a petition  
44 requesting a hearing pursuant to subsection c. of this section may  
45 remain employed by [the] that person's employer until the

1 commissioner rules on the [applicant's] person's petition but, pending  
2 the commissioner's ruling, the employer shall not permit the  
3 [applicant] person to have unsupervised contact with patients,  
4 residents or clients, as the case may be, who are 60 years of age or  
5 older.

6 e. (1) A licensed health care facility or other entity that has  
7 received an application from or conditionally employs an applicant for  
8 nurse aide or personal care assistant certification, or employs a  
9 certified nurse aide or personal care assistant, and:

10 (a) receives notice from the Commissioner of Health and Senior  
11 Services that the applicant or certified nurse aide or personal care  
12 assistant, as applicable, has been determined by the commissioner to  
13 be disqualified from certification as a nurse aide or personal care  
14 assistant pursuant to sections 2 through 6 of P.L.1997, c.100  
15 (C.26:2H-83 through 87); or

16 (b) terminates its employment of a conditionally employed  
17 applicant for nurse aide or personal care assistant certification or a  
18 certified nurse aide or personal care assistant because the person was  
19 disqualified from employment at the health care facility or other entity  
20 on the basis of a conviction of a crime or disorderly persons offense as  
21 described in section 2 of P.L.1997, c.100 (C.26:2H-83) after  
22 commencing employment at the health care facility or other entity;  
23 shall be immune from liability for disclosing that disqualification or  
24 termination in good faith to another licensed health care facility or  
25 other entity that is qualified by statute or regulation to employ the  
26 person as a nurse aide or personal care assistant.

27 (2) A licensed health care facility or other entity which discloses  
28 information pursuant to paragraph (1) of this subsection shall be  
29 presumed to be acting in good faith unless it is shown by clear and  
30 convincing evidence that the health care facility or other entity acted  
31 with actual malice toward the person who is the subject of the  
32 information.

33 f. (1) A licensed health care facility or other entity, upon  
34 receiving notice from the Commissioner of Health and Senior Services  
35 that a person employed by it as a nurse aide or personal care assistant,  
36 including a conditionally employed person, has been convicted of a  
37 crime or disorderly persons offense as described in section 2 of  
38 P.L.1997, c.100 (C.26:2H-83) after commencing employment at the  
39 health care facility or other entity, shall:

40 (a) immediately terminate the person's employment as a nurse aide  
41 or personal care assistant; and

42 (b) report information about the termination to the Commissioner  
43 of Health and Senior Services in a manner prescribed by the  
44 commissioner, who shall thereupon deem the person to be disqualified  
45 from certification as a nurse aide or personal care assistant, subject to  
46 the provisions of paragraph (3) of this subsection.

1       (2) A licensed health care facility or other entity shall be immune  
2 from liability for any actions taken in good faith pursuant to paragraph  
3 (1) of this subsection and shall be presumed to be acting in good faith  
4 unless it is shown by clear and convincing evidence that the health care  
5 facility or other entity acted with actual malice toward the employee.

6       (3) The person terminated from employment pursuant to  
7 paragraph (1) of this subsection shall have 30 days from the date of the  
8 termination to petition the commissioner for a hearing on the accuracy  
9 of the information about the conviction reported to the commissioner  
10 or to establish why the person should not be terminated from  
11 employment, and disqualified from certification, as a nurse aide or  
12 personal care assistant. The commissioner shall notify the person's  
13 employer of the person's petition for a hearing within five days  
14 following the receipt of the petition from the person. Upon the  
15 issuance of a final decision upon a petition to the commissioner  
16 pursuant to this paragraph, the commissioner shall notify the person  
17 and the person's employer as to whether:

18       (a) the person is to be reinstated in his employment as a nurse aide  
19 or personal care assistant and retain his certification; or

20       (b) the person's termination from employment as a nurse aide or  
21 personal care assistant stands and the person remains disqualified from  
22 certification.

23       g. The commissioner shall provide for a registry of all persons  
24 who have successfully completed all training and competency  
25 evaluation requirements for certification as a nurse aide or personal  
26 care assistant and shall provide for the inclusion in the registry of  
27 information about the disqualification of any person from certification  
28 pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83  
29 through 87); for which purposes, the commissioner may use an  
30 existing registry established pursuant to statute or regulation, subject  
31 to the requirements of federal law. The registry shall include the  
32 specific documented findings constituting the basis for that  
33 disqualification, except that the information shall indicate that the  
34 person was convicted of a crime or disorderly persons offense as  
35 described in section 2 of P.L.1997, c.100 (C.26:2H-83), but shall not  
36 identify the conviction or convictions which constitute the basis for the  
37 disqualification.

38 (cf: P.L.1997, c.284, s.3)

39  
40       3. Section 4 of P.L.1997, c.100 (C.26:2H-85) is amended to read  
41 as follows:

42       4. [An applicant's employer if the applicant is conditionally  
43 employed as provided in subsection d. of section 3 of P.L.1997, c.100  
44 (C.26:2H-84) or an applicant's prospective employer may] The  
45 Department of Health and Senior Services shall assume the cost of the  
46 criminal history record background check conducted on an applicant

1 for nurse aide or personal care assistant certification, or a certified  
2 nurse aide or personal care assistant, as the case may be, pursuant to  
3 sections 2 through 6 and section 14 of P.L.1997,c.100 (C.26:2H-83  
4 through 87 and C.53:1-20.9a)[; or the employer or prospective  
5 employer may require the applicant to pay the cost of the criminal  
6 history record background check].

7 (cf: P.L.1997, c.284, s.4)

8

9 4. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to read  
10 as follows:

11 2. a. The board; appointment; terms. In addition to the members  
12 appointed to represent the interests of the public pursuant to P.L.1971,  
13 c.60 as amended by P.L.1977, c.285 (C.45:1-2.2) the New Jersey  
14 Board of Nursing shall consist of 10 members, six of whom shall be  
15 registered professional nurses, two of whom shall be licensed practical  
16 nurses, one of whom shall be an advanced practice nurse, and one of  
17 whom shall be an additional public member, all to be appointed by the  
18 Governor. Appointments to the board shall be for terms of five years  
19 or for the unexpired portion of a term in the case of a vacancy for any  
20 cause within a term, and until a successor shall be appointed and  
21 qualified. In making appointments the Governor shall give due  
22 consideration to, but shall not be bound by, recommendations  
23 submitted by the various nurses' professional associations of this State.  
24 Upon notice and hearing, the Governor may remove from office any  
25 member of the board for neglect of duty, incompetency, unprofessional  
26 or dishonorable conduct.

27 b. Qualifications for appointment. The advanced practice nurse  
28 member shall be a resident of this State, shall be a graduate of an  
29 accredited advanced practice nurse program, shall have had at least  
30 five years' experience in professional nursing, shall at the time of  
31 appointment be actively working as an advanced practice nurse, and,  
32 except for the member first appointed, shall hold a certification as an  
33 advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et  
34 al.). Each registered professional nurse member of the board shall be  
35 a citizen of the United States and a resident of this State; shall be a  
36 graduate of an accredited school of nursing within the United States;  
37 shall be a registered nurse in this State; shall have had at least five  
38 years' experience in professional nursing following graduation from an  
39 accredited school of nursing; and shall at the time of appointment be  
40 actively engaged in nursing or work relating thereto. The licensed  
41 practical nurse members of the board shall be citizens of the United  
42 States and residents of this State; shall hold a valid license to practice  
43 practical nursing in this State; shall have had at least three years'  
44 experience in practical nursing; and shall at the time of appointment be  
45 actively engaged in practical nursing or work related thereto.

46 c. Oath or affirmation of office. Within 30 days after receipt of  
47 the commission, each appointee shall take, subscribe and file in the

1 office of the Secretary of State the oath or affirmation prescribed by  
2 law.

3 d. Duties and powers. The board shall have the following duties  
4 and powers: (1) It shall hold annual meetings and such other meetings  
5 as it may deem necessary at such times and places as the board shall  
6 prescribe and a majority of the board including one officer shall  
7 constitute a quorum. (2) It shall elect from its members and prescribe  
8 the duties of a president and secretary-treasurer, each of whom shall  
9 serve for one year and until a successor is elected. (3) It shall appoint  
10 and prescribe the duties of an executive secretary to the board who  
11 need not be a member thereof but who shall be a citizen of the United  
12 States, a graduate of a college or university with a major in nursing  
13 education, a registered nurse of this State with at least five years'  
14 experience in teaching or administration or both in an accredited  
15 school of professional nursing, or have equivalent qualifications as  
16 determined by the board. The executive secretary shall hold office  
17 during the will and pleasure of the board. (4) It shall employ and  
18 prescribe the duties of such persons as in its judgment shall be  
19 necessary for the proper performance and execution of the duties and  
20 powers of the board. (5) It shall determine and pay reasonable  
21 compensation and necessary expenses of the executive secretary and  
22 all employees of the board. (6) It shall pay to each member of the  
23 board the compensation hereinafter provided. (7) It shall have a  
24 common seal, keep an official record of all its meetings, and through  
25 its secretary-treasurer report annually to the Governor the work of the  
26 board. (8) It shall examine applicants for a license or renewals thereof,  
27 issue, renew, revoke and suspend licenses, as hereinafter provided. (9)  
28 It shall in its discretion investigate and prosecute all violations of  
29 provisions of this act. (10) It shall keep an official record which shall  
30 show the name, age, nativity and permanent place of residence of each  
31 applicant and licensee and such further information concerning each  
32 applicant and licensee as the board shall deem advisable. The record  
33 shall show also whether the applicant was examined, licensed or  
34 rejected under this and any prior act. Copies of any of the entries of  
35 the record or of any certificate issued by the board may be  
36 authenticated by any member of the board under its seal and when so  
37 authenticated shall be evidence in all courts of this State of the same  
38 weight and force as the original thereof. For authenticating a copy of  
39 any entry or entries contained in its record the board shall be paid a fee  
40 of \$3.00, but such authentication, if made at the request of any public  
41 agency of this or any other jurisdiction, may be without fee. (11) In its  
42 discretion it may publish at such times as it shall determine a list of  
43 nurses licensed under this act, a list of schools of nursing accredited  
44 or approved under this act, and such other information as it shall deem  
45 advisable. (12) It shall prescribe standards and curricula for schools of  
46 nursing and evaluate and approve courses for affiliation. (13) It shall  
47 hear and determine applications for accreditation of schools of



1 professional nursing, conduct investigations before and after  
2 accreditation of such schools and institutions with which they are  
3 affiliated, and issue, suspend or revoke certificates of accreditation as  
4 hereinafter provided. (14) It shall approve schools of practical nursing  
5 which shall conform to the standards, curricula, and requirements  
6 prescribed by the board, and suspend or revoke approval for violations  
7 thereof; provided, that this power shall not extend to schools operated  
8 by any board of education in this State. (15) It may consult with the  
9 Medical Society of New Jersey and the New Jersey Hospital  
10 Association with respect to any matter relating to the administration  
11 of this act and shall consult with those associations with respect to  
12 standards and curricula and any change thereof for schools of nursing.  
13 (16) It shall issue subpoenas for the attendance of witnesses and  
14 production of documents at any hearing before the board authorized  
15 by this act and any member of the board shall administer an oath or  
16 affirmation to persons appearing to give testimony at such hearings.  
17 (17) It may conduct any investigations, studies of nursing and nursing  
18 education and related matters, and prepare and issue such publications  
19 as in the judgment of the board will advance the profession of nursing  
20 and its service to the public. (18) It shall perform all other functions  
21 which are provided in this act to be performed by it or which in the  
22 judgment of the board are necessary or proper for the administration  
23 of this act. (19) It shall from time to time prescribe rules and  
24 regulations not inconsistent with this act. (20) It shall prescribe  
25 standards and curricula for homemaker-home health aide education  
26 and training programs which a homemaker-home health aide shall  
27 complete in order to work in this State. (21) It shall review  
28 applications to provide homemaker-home health aide training  
29 programs and shall issue, suspend or revoke program approval. (22)  
30 It shall establish and maintain a registry of all individuals who have  
31 successfully completed a homemaker-home health aide training and  
32 competency evaluation program. The board shall provide for the  
33 inclusion in the registry of information about the disqualification of  
34 any person from certification as a homemaker-home health aide  
35 pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3  
36 through 24.9), including the specific documented findings constituting  
37 the basis for that disqualification; except that the information shall  
38 indicate that the person was convicted of a crime or disorderly persons  
39 offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3),  
40 but shall not identify the conviction or convictions which constitute the  
41 basis for the disqualification. (23) It shall prescribe standards and  
42 requirements for a competency evaluation program resulting in  
43 certification of the homemaker-home health aide, and the renewal,  
44 revocation, and suspension of that certification. (24) It shall review  
45 applications for homemaker home-health aide certification and shall  
46 issue, suspend, revoke, or fail to renew certifications and conduct

1 investigations pursuant to the provisions of P.L.1978, c.73 (C.45:1-14  
2 et seq.).

3 e. Compensation. Each member of the board shall receive \$15.00  
4 per day for each day in which such member is actually engaged in the  
5 discharge of duties and traveling and other expenses necessarily  
6 incurred in the discharge of duties.

7 (cf: P.L.1999, c.85, s.2)

8

9 5. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read  
10 as follows:

11 7. a. The New Jersey Board of Nursing in the Division of  
12 Consumer Affairs in the Department of Law and Public Safety shall  
13 not issue a homemaker-home health aide certification to any applicant,  
14 except on a conditional basis as provided for in subsection d. of  
15 section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the board first  
16 determines, consistent with the requirements of sections 7 through 13  
17 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), that no criminal  
18 history record information exists on file in the Federal Bureau of  
19 Investigation, Identification Division, or in the State Bureau of  
20 Identification in the Division of State Police, which would disqualify  
21 that person from being certified. A homemaker-home health aide  
22 certified by the board prior to the effective date of  
23 P.L. , c. (C. )(now pending before the Legislature as this bill) and  
24 upon whom a criminal history record background check has not been  
25 conducted pursuant to sections 7 through 13 of P.L.1997, c.100  
26 (C.45:11-24.3 through 24.9), shall be required to undergo that  
27 criminal history record background check as a condition of that  
28 individual's initial recertification following the effective date of  
29 P.L. , c. (now pending before the Legislature as this bill).

30 In addition, a follow-up criminal history record background check  
31 of federal records shall be conducted at least once every two years as  
32 a condition of recertification for every certified homemaker-home  
33 health aide; except that the board, in lieu of conducting follow-up  
34 criminal history record background checks for purposes of  
35 recertification, may provide for an alternative means of determining  
36 whether a certified homemaker-home health aide has been convicted  
37 of a crime or disorderly persons offense which would disqualify that  
38 person from certification, including, but not limited to, a match of a  
39 person's Social Security number or other identifying information with  
40 records of criminal proceedings in this and other states. If the board  
41 elects to implement this alternative means of determining whether a  
42 certified homemaker-home health aide has been convicted of a crime  
43 or disorderly persons offense which would disqualify that person from  
44 certification, the board shall report to the Governor and the  
45 Legislature prior to its implementation on the projected costs and  
46 procedures to be followed with respect to its implementation and

1 setting forth the rationale therefor.

2 A person shall be disqualified from certification if that person's  
3 criminal history record background check reveals a record of  
4 conviction of any of the following crimes and offenses:

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

6 (a) involving danger to the person, meaning those crimes and  
7 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
8 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  
9 N.J.S.2C:15-1 et seq.; or

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

13 (c) involving theft as set forth in chapter 20 of Title 2C of the  
14 New Jersey Statutes; or

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

19 (2) In any other state or jurisdiction, of conduct which, if  
20 committed in New Jersey, would constitute any of the crimes or  
21 disorderly persons offenses described in paragraph (1) of this  
22 subsection.

23 b. Notwithstanding the provisions of subsection a. of this section,  
24 no person shall be disqualified from certification on the basis of any  
25 conviction disclosed by a criminal history record background check  
26 performed pursuant to sections 7 through 13 and section 14 of  
27 P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a) if the  
28 person has affirmatively demonstrated to the New Jersey Board of  
29 Nursing in the Division of Consumer Affairs clear and convincing  
30 evidence of the person's rehabilitation. In determining whether a  
31 person has affirmatively demonstrated rehabilitation, the following  
32 factors shall be considered:

33 (1) the nature and responsibility of the position which the  
34 convicted person would hold [or], has held or currently holds, as the  
35 case may be;

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

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

38 (4) the date of the offense;

39 (5) the age of the person when the offense was committed;

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

41 (7) any social conditions which may have contributed to the  
42 offense; and

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

1 recommendation of those who have had the person under their  
2 supervision.

3 c. If a person subject to the provisions of sections 7 through 13 of  
4 P.L.1997, c.100 (C.45:11-24.3 through 24.9) refuses to consent to, or  
5 cooperate in, the securing of a criminal history record background  
6 check, the New Jersey Board of Nursing shall, as applicable:

7 (1) not issue a homemaker-home health aide certification and shall  
8 notify the applicant, and the applicant's employer if the applicant is  
9 conditionally employed as provided in subsection d. of section 8 of  
10 P.L.1997, c.100 (C.45:11-24.4) or the applicant's prospective  
11 employer if known, of that denial; or

12 (2) revoke the person's current homemaker-home health aide  
13 certification and notify the person, and the person's employer, if  
14 known, of that revocation.

15 (cf: P.L.1997,c.284, s.6)

16

17 6. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read  
18 as follows:

19 8. a. An applicant for homemaker-home health aide certification,  
20 or a certified person who is required to undergo a criminal history  
21 record background check pursuant to section 7 of P.L.1997, c.100  
22 (C.45:11-24.3), shall submit to the New Jersey Board of Nursing [the  
23 applicant's] that individual's name, address and fingerprints taken on  
24 standard fingerprint cards by a State or municipal law enforcement  
25 agency. The board is authorized to exchange fingerprint data with and  
26 receive criminal history record information from the Federal Bureau  
27 of Investigation and the Division of State Police for use in making the  
28 determinations required by sections 7 through 13 of P.L.1997, c.100  
29 (C.45:11-24.3 through 24.9).

30 b. Upon receipt of the criminal history record information for a  
31 person from the Federal Bureau of Investigation or the Division of  
32 State Police, the New Jersey Board of Nursing shall immediately  
33 notify, in writing, the applicant, and the applicant's employer if the  
34 applicant is conditionally employed as provided in subsection d. of this  
35 section or the applicant's prospective employer, if known, or the  
36 certified person who is required to undergo a criminal history record  
37 background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-  
38 24.3) and that person's employer, as applicable, of the person's  
39 qualification or disqualification for homemaker-home health aide  
40 certification under sections 7 through 13 of P.L.1997, c.100  
41 (C.45:11-24.3 through 24.9). If the [applicant] person is disqualified,  
42 the conviction or convictions which constitute the basis for the  
43 disqualification shall be identified in the notice to the [applicant]  
44 person, but shall not be identified in the notice to the [applicant's]  
45 person's employer or prospective employer.

46 c. The [applicant] person who is the subject of the background

1 check shall have 30 days from the date of the written notice of  
2 disqualification to petition the New Jersey Board of Nursing for a  
3 hearing on the accuracy of the [applicant's] person's criminal history  
4 record information or to establish the [applicant's] person's  
5 rehabilitation under subsection b. of section 7 of P.L.1997, c.100  
6 (C.45:11-24.3). The board shall notify the [applicant's] person's  
7 employer or prospective employer of the [applicant's] person's  
8 petition for a hearing within five days following the receipt of the  
9 petition from the [applicant] person. Upon the issuance of a final  
10 decision upon a petition to the board pursuant to this subsection, the  
11 board shall notify the [applicant] person and the [applicant's]  
12 person's employer or prospective employer as to whether the  
13 [applicant] person remains disqualified from certification under  
14 sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

15 d. An applicant for certification may be issued conditional  
16 certification and may be employed as a homemaker-home health aide  
17 conditionally for a period not to exceed [180] 60 days, pending  
18 completion of a criminal history record background check required  
19 under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through  
20 24.9) by the Division of State Police in the Department of Law and  
21 Public Safety based upon an examination of its own files in accordance  
22 with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for an  
23 additional period not to exceed 60 days pending completion of a  
24 criminal history record background check by federal authorities as  
25 arranged for by the Division of State Police pursuant to section 14 of  
26 P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the New  
27 Jersey Board of Nursing a sworn statement attesting that the person  
28 has not been convicted of any crime or disorderly persons offense as  
29 described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A person  
30 who submits a false sworn statement shall be disqualified from  
31 certification as a homemaker-home health aide and shall not have an  
32 opportunity to establish rehabilitation pursuant to subsection b. of  
33 section 7 of P.L.1997, c.100 (C.45:11-24.3).

34 A conditionally employed person, or an employed person certified  
35 as a homemaker-home health aide, who disputes the accuracy of the  
36 criminal history record information and who files a petition requesting  
37 a hearing pursuant to subsection c. of this section may remain  
38 employed by [the] that person's employer until the board rules on the  
39 [applicant's] person's petition but, pending the board's ruling, the  
40 employer shall not permit the [applicant] person to have unsupervised  
41 contact with patients or clients who are 60 years of age or older.

42 e. (1) A home care services agency that has received an  
43 application from or conditionally employed an applicant for  
44 homemaker-home health aide certification, or has employed a certified  
45 homemaker-home health aide, and

1       (a) receives notice from the board that the applicant or certified  
2 homemaker-home health aide, as applicable, has been determined by  
3 the board to be disqualified from certification as a homemaker-home  
4 health aide pursuant to sections 7 through 13 of P.L.1997, c.100  
5 (C.45:11-24.3 through 24.9); or

6       (b) terminates its employment of a conditionally employed  
7 applicant for homemaker-home health aide certification or a certified  
8 homemaker-home health aide because the person was disqualified from  
9 employment at the home care services agency on the basis of a  
10 conviction of a crime or disorderly persons offense as described in  
11 section 7 of P.L.1997, c.100 (C.45:11-24.3) after commencing  
12 employment at the home care services agency;

13 shall be immune from liability for disclosing that disqualification or  
14 termination in good faith to another home care services agency.

15       (2) A home care services agency which discloses information  
16 pursuant to paragraph (1) of this subsection shall be presumed to be  
17 acting in good faith unless it is shown by clear and convincing  
18 evidence that the home care services agency acted with actual malice  
19 toward the person who is the subject of the information.

20       f. (1) A home care services agency, upon receiving notice from the  
21 board that a person employed by it as a homemaker-home health aide,  
22 including a conditionally employed person, has been convicted of a  
23 crime or disorderly persons offense as described in section 7 of  
24 P.L.1997, c.100 (C.45:11-24.3) after commencing employment at the  
25 home health care agency or other entity, shall:

26       (a) immediately terminate the person's employment as a  
27 homemaker-home health aide; and

28       (b) report information about the conviction and termination to the  
29 board in a manner prescribed by the board, which shall thereupon  
30 deem the person to be disqualified from certification as a homemaker-  
31 home health aide, subject to the provisions of paragraph (3) of this  
32 subsection.

33       (2) A home care services agency shall be immune from liability for  
34 any actions taken in good faith pursuant to paragraph (1) of this  
35 subsection and shall be presumed to be acting in good faith unless it  
36 is shown by clear and convincing evidence that the home care services  
37 agency acted with actual malice toward the employee.

38       (3) The person terminated from employment pursuant to  
39 paragraph (1) of this subsection shall have 30 days from the date of the  
40 termination to petition the board for a hearing on the accuracy of the  
41 information about the conviction reported to the board or to establish  
42 why the person should not be terminated from employment, and  
43 disqualified from certification, as a homemaker-home health aide. The  
44 board shall notify the person's employer of the person's petition for a  
45 hearing within five days following the receipt of the petition from the  
46 person. Upon the issuance of a final decision upon a petition to the

1 board pursuant to this paragraph, the board shall notify the person and  
2 the person's employer or as to whether:

3 (a) the person is to be reinstated in his employment as a  
4 homemaker-home health aide and retain his certification; or

5 (b) the person's termination from employment as a homemaker-  
6 home health aide stands and the person remains disqualified from  
7 certification.

8 (cf: P.L.1997,c.284, s.7)

9

10 7. Section 9 of P.L.1997, c.100 (C.45:11-24.5) is amended to read  
11 as follows:

12 9. [A home health agency or a health care service firm, as defined  
13 in regulations of the Division of Consumer Affairs, may] The  
14 Department of Law and Public Safety shall assume the cost of the  
15 criminal history record background check conducted on an applicant  
16 for homemaker-home health aide certification pursuant to sections 7  
17 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through  
18 24.9 and C.53:1-20.9a), or a certified homemaker-home health aide  
19 who is required to undergo a criminal history record background  
20 check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), as  
21 applicable[; or it may require the applicant to pay the cost of the  
22 criminal history record background check].

23 (cf: P.L.1997,c.284, s.8)

24

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

27 14. a. In accordance with the provisions of sections 2 through 6  
28 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through  
29 87; C.45:11-24.3 through 24.9), 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.).

42 b. For the purpose of conducting [the] a criminal history record  
43 background check pursuant to subsection a. of this section, the  
44 Division of State Police shall examine its own files and arrange for a  
45 similar examination by federal authorities. The division shall

1 immediately forward the information obtained as a result of conducting  
2 the check to the Commissioner of Health and Senior Services, in the  
3 case of an applicant for nurse aide or personal care assistant  
4 certification, and to the New Jersey Board of Nursing in the Division  
5 of Consumer Affairs in the Department of Law and Public Safety, in  
6 the case of an applicant for homemaker-home health aide certification.  
7 (cf: P.L.1997, c.284, s.13)

8

9 9. The Director of the Division of Consumer Affairs in the  
10 Department of Law and Public Safety, in consultation with the  
11 Commissioner of Health and Senior Services, shall report to the  
12 Governor and the Legislature no later than one year after the effective  
13 date of this act on the feasibility and cost of implementing a criminal  
14 history record background check requirement for all persons employed  
15 by home health agencies licensed by the Department of Health and  
16 Senior Services or by health care service firms, employment agencies  
17 or registries, temporary help service firms or personnel consultants  
18 regulated by the Division of Consumer Affairs, who are assigned to  
19 provide health care services in a home-based or other community  
20 setting and are not required to undergo a criminal history record  
21 background check pursuant to P.L.1997, c.100 (C.26:2H-83 et al.).  
22 The report shall include a detailed plan for implementation of a  
23 criminal history record background check requirement.

24

25 10. <sup>1</sup>[In fiscal year 2001, the]The<sup>1</sup> Legislature shall <sup>1</sup>annually<sup>1</sup>  
26 appropriate from the General Fund to the Department of Health and  
27 Senior Services and the Department of Law and Public Safety such  
28 funds as the State Treasurer recommends to effectuate the purposes  
29 of this act.

30

31 11. This act shall take effect on the 90th day after enactment.

32

33

34

35

36 \_\_\_\_\_  
37 Requires criminal history record checks for all certified nurse aides,  
38 personal care assistants and homemaker-home health aides; requires  
39 plan for similar checks to be conducted on other providers of home  
care services.



## CHAPTER 20

**AN ACT** requiring criminal history record background checks for certain providers of institutional and home health care services, and amending P.L.1997, c.100 and P.L.1947, c.262.

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

1. Section 2 of P.L.1997, c.100 (C.26:2H-83) is amended to read as follows:

C.26:2H-83 Background checks for nurse aide, personal care assistant certification.

2. a. The Department of Health and Senior Services shall not issue a nurse aide or personal care assistant certification to any applicant, except on a conditional basis as provided for in subsection d. of section 3 of P.L.1997, c.100 (C.26:2H-84), unless the Commissioner of Health and Senior Services first determines, consistent with the requirements of sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being certified. A nurse aide or personal care assistant certified by the department prior to the effective date of P.L.2000, c.20 upon whom a criminal history record background check has not been conducted pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87), shall be required to undergo that criminal history record background check as a condition of that individual's initial recertification following the effective date of P.L.2000, c.20.

In addition, a follow-up criminal history record background check of federal records shall be conducted at least once every two years as a condition of recertification for every certified nurse aide and personal care assistant; except that the commissioner, in lieu of conducting follow-up criminal history record background checks for purposes of recertification, may provide for an alternative means of determining whether a certified nurse aide or personal care assistant has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, including, but not limited to, a match of a person's Social Security number or other identifying information with records of criminal proceedings in this and other states. If the commissioner elects to implement this alternative means of determining whether a certified nurse aide or personal care assistant has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, the commissioner shall report to the Governor and the Legislature prior to its implementation on the projected costs and procedures to be followed with respect to its implementation and setting forth the rationale therefor.

A person shall be disqualified from certification if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

- (1) In New Jersey, any crime or disorderly persons offense:
  - (a) involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., 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 N.J.S.2C:15-1 et seq.; or
  - (b) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.; or
  - (c) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or
  - (d) 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.2C:35-10.
- (2) In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from certification on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 2 through 6 and section 14 of P.L.1997, c.100 (C.26:2H-83 through 87 and C.53:1-20.9a) if the person has affirmatively demonstrated to the Commissioner of Health and Senior Services clear and convincing evidence of the person's rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

- (1) the nature and responsibility of the position which the convicted person would

hold, has held or currently holds, as the case may be;

- (2) the nature and seriousness of the offense;
- (3) the circumstances under which the offense occurred;
- (4) the date of the offense;
- (5) the age of the person when the offense was committed;
- (6) whether the offense was an isolated or repeated incident;
- (7) any social conditions which may have contributed to the offense; and
- (8) 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 person under their supervision.

c. If a person subject to the provisions of sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87) refuses to consent to, or cooperate in, the securing of a criminal history record background check, the commissioner shall, as applicable:

- (1) not issue a nurse aide or personal care assistant certification and shall notify the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of section 3 of P.L.1997, c.100 (C.26:2H-84) or the applicant's prospective employer if known, of that denial; or
- (2) revoke the person's current nurse aide or personal care assistant certification and notify the person, and the person's employer, if known, of that revocation.

2. Section 3 of P.L.1997, c.100 (C.26:2H-84) is amended to read as follows:

C.26:2H-84 Qualification, disqualification for certification; petition for hearing.

3. a. An applicant for certification, or a certified nurse aide or personal care assistant who is required to undergo a criminal history record background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-83), shall submit to the Commissioner of Health and Senior Services that individual's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the commissioner shall immediately notify, in writing, the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of this section or the applicant's prospective employer if known, or a certified nurse aide or personal care assistant who is required to undergo a criminal history record background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-83) and that person's employer, as applicable, of the person's qualification or disqualification for certification under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87). If the person is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the notice to the person, but shall not be identified in the notice to the person's employer or prospective employer.

c. The person who is the subject of the background check shall have 30 days from the date of the written notice of disqualification to petition the commissioner for a hearing on the accuracy of the person's criminal history record information or to establish the person's rehabilitation under subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83). The commissioner shall notify the person's employer or prospective employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the commissioner pursuant to this subsection, the commissioner shall notify the person and the person's employer or prospective employer as to whether the person remains disqualified from certification under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

d. An applicant for certification may be issued conditional certification and may be employed as a nurse aide or a personal care assistant conditionally for a period not to exceed 60 days,

pending completion of a criminal history record background check required under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87) by the Division of State Police in the Department of Law and Public Safety based upon an examination of its own files in accordance with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for an additional period not to exceed 60 days pending completion of a criminal history record background check by federal authorities as arranged for by the Division of State Police pursuant to section 14 of P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the commissioner a sworn statement attesting that the person has not been convicted of any crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83). A person who submits a false sworn statement shall be disqualified from certification as a nurse aide or a personal care assistant, as the case may be, and shall not have an opportunity to establish rehabilitation pursuant to subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83).

A conditionally employed person, or an employed person certified as a nurse aide or a personal care assistant, who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed by that person's employer until the commissioner rules on the person's petition but, pending the commissioner's ruling, the employer shall not permit the person to have unsupervised contact with patients, residents or clients, as the case may be, who are 60 years of age or older.

e. (1) A licensed health care facility or other entity that has received an application from or conditionally employs an applicant for nurse aide or personal care assistant certification, or employs a certified nurse aide or personal care assistant, and:

(a) receives notice from the Commissioner of Health and Senior Services that the applicant or certified nurse aide or personal care assistant, as applicable, has been determined by the commissioner to be disqualified from certification as a nurse aide or personal care assistant pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87); or

(b) terminates its employment of a conditionally employed applicant for nurse aide or personal care assistant certification or a certified nurse aide or personal care assistant because the person was disqualified from employment at the health care facility or other entity on the basis of a conviction of a crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83) after commencing employment at the health care facility or other entity;

shall be immune from liability for disclosing that disqualification or termination in good faith to another licensed health care facility or other entity that is qualified by statute or regulation to employ the person as a nurse aide or personal care assistant.

(2) A licensed health care facility or other entity which discloses information pursuant to paragraph (1) of this subsection shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the health care facility or other entity acted with actual malice toward the person who is the subject of the information.

f. (1) A licensed health care facility or other entity, upon receiving notice from the Commissioner of Health and Senior Services that a person employed by it as a nurse aide or personal care assistant, including a conditionally employed person, has been convicted of a crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83) after commencing employment at the health care facility or other entity, shall:

(a) immediately terminate the person's employment as a nurse aide or personal care assistant; and

(b) report information about the termination to the Commissioner of Health and Senior Services in a manner prescribed by the commissioner, who shall thereupon deem the person to be disqualified from certification as a nurse aide or personal care assistant, subject to the provisions of paragraph (3) of this subsection.

(2) A licensed health care facility or other entity shall be immune from liability for any actions taken in good faith pursuant to paragraph (1) of this subsection and shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the health care facility or other entity acted with actual malice toward the employee.

(3) The person terminated from employment pursuant to paragraph (1) of this subsection shall have 30 days from the date of the termination to petition the commissioner for

a hearing on the accuracy of the information about the conviction reported to the commissioner or to establish why the person should not be terminated from employment, and disqualified from certification, as a nurse aide or personal care assistant. The commissioner shall notify the person's employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the commissioner pursuant to this paragraph, the commissioner shall notify the person and the person's employer as to whether:

(a) the person is to be reinstated in his employment as a nurse aide or personal care assistant and retain his certification; or

(b) the person's termination from employment as a nurse aide or personal care assistant stands and the person remains disqualified from certification.

g. The commissioner shall provide for a registry of all persons who have successfully completed all training and competency evaluation requirements for certification as a nurse aide or personal care assistant and shall provide for the inclusion in the registry of information about the disqualification of any person from certification pursuant to sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87); for which purposes, the commissioner may use an existing registry established pursuant to statute or regulation, subject to the requirements of federal law. The registry shall include the specific documented findings constituting the basis for that disqualification, except that the information shall indicate that the person was convicted of a crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83), but shall not identify the conviction or convictions which constitute the basis for the disqualification.

3. Section 4 of P.L.1997, c.100 (C.26:2H-85) is amended to read as follows:

C.26:2H-85 Assumption of cost of background checks.

4. The Department of Health and Senior Services shall assume the cost of the criminal history record background check conducted on an applicant for nurse aide or personal care assistant certification, or a certified nurse aide or personal care assistant, as the case may be, pursuant to sections 2 through 6 and section 14 of P.L.1997,c.100 (C.26:2H-83 through 87 and C.53:1-20.9a).

4. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to read as follows:

C.45:11-24 The board; appointment; terms; qualifications; duties; compensation.

2. a. The board; appointment; terms. In addition to the members appointed to represent the interests of the public pursuant to P.L.1971, c.60 as amended by P.L.1977, c.285 (C.45:1-2.2) the New Jersey Board of Nursing shall consist of 10 members, six of whom shall be registered professional nurses, two of whom shall be licensed practical nurses, one of whom shall be an advanced practice nurse, and one of whom shall be an additional public member, all to be appointed by the Governor. Appointments to the board shall be for terms of five years or for the unexpired portion of a term in the case of a vacancy for any cause within a term, and until a successor shall be appointed and qualified. In making appointments the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the various nurses' professional associations of this State. Upon notice and hearing, the Governor may remove from office any member of the board for neglect of duty, incompetency, unprofessional or dishonorable conduct.

b. Qualifications for appointment. The advanced practice nurse member shall be a resident of this State, shall be a graduate of an accredited advanced practice nurse program, shall have had at least five years' experience in professional nursing, shall at the time of appointment be actively working as an advanced practice nurse, and, except for the member first appointed, shall hold a certification as an advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et al.). Each registered professional nurse member of the board shall be a citizen of the United States and a resident of this State; shall be a graduate of an accredited school of nursing within the United States; shall be a registered nurse in this State; shall have had at least five years'

experience in professional nursing following graduation from an accredited school of nursing; and shall at the time of appointment be actively engaged in nursing or work relating thereto. The licensed practical nurse members of the board shall be citizens of the United States and residents of this State; shall hold a valid license to practice practical nursing in this State; shall have had at least three years' experience in practical nursing; and shall at the time of appointment be actively engaged in practical nursing or work related thereto.

c. Oath or affirmation of office. Within 30 days after receipt of the commission, each appointee shall take, subscribe and file in the office of the Secretary of State the oath or affirmation prescribed by law.

d. Duties and powers. The board shall have the following duties and powers: (1) It shall hold annual meetings and such other meetings as it may deem necessary at such times and places as the board shall prescribe and a majority of the board including one officer shall constitute a quorum. (2) It shall elect from its members and prescribe the duties of a president and secretary-treasurer, each of whom shall serve for one year and until a successor is elected. (3) It shall appoint and prescribe the duties of an executive secretary to the board who need not be a member thereof but who shall be a citizen of the United States, a graduate of a college or university with a major in nursing education, a registered nurse of this State with at least five years' experience in teaching or administration or both in an accredited school of professional nursing, or have equivalent qualifications as determined by the board. The executive secretary shall hold office during the will and pleasure of the board. (4) It shall employ and prescribe the duties of such persons as in its judgment shall be necessary for the proper performance and execution of the duties and powers of the board. (5) It shall determine and pay reasonable compensation and necessary expenses of the executive secretary and all employees of the board. (6) It shall pay to each member of the board the compensation hereinafter provided. (7) It shall have a common seal, keep an official record of all its meetings, and through its secretary-treasurer report annually to the Governor the work of the board. (8) It shall examine applicants for a license or renewals thereof, issue, renew, revoke and suspend licenses, as hereinafter provided. (9) It shall in its discretion investigate and prosecute all violations of provisions of this act. (10) It shall keep an official record which shall show the name, age, nativity and permanent place of residence of each applicant and licensee and such further information concerning each applicant and licensee as the board shall deem advisable. The record shall show also whether the applicant was examined, licensed or rejected under this and any prior act. Copies of any of the entries of the record or of any certificate issued by the board may be authenticated by any member of the board under its seal and when so authenticated shall be evidence in all courts of this State of the same weight and force as the original thereof. For authenticating a copy of any entry or entries contained in its record the board shall be paid a fee of \$3.00, but such authentication, if made at the request of any public agency of this or any other jurisdiction, may be without fee. (11) In its discretion it may publish at such times as it shall determine a list of nurses licensed under this act, a list of schools of nursing accredited or approved under this act, and such other information as it shall deem advisable. (12) It shall prescribe standards and curricula for schools of nursing and evaluate and approve courses for affiliation. (13) It shall hear and determine applications for accreditation of schools of professional nursing, conduct investigations before and after accreditation of such schools and institutions with which they are affiliated, and issue, suspend or revoke certificates of accreditation as hereinafter provided. (14) It shall approve schools of practical nursing which shall conform to the standards, curricula, and requirements prescribed by the board, and suspend or revoke approval for violations thereof; provided, that this power shall not extend to schools operated by any board of education in this State. (15) It may consult with the Medical Society of New Jersey and the New Jersey Hospital Association with respect to any matter relating to the administration of this act and shall consult with those associations with respect to standards and curricula and any change thereof for schools of nursing. (16) It shall issue subpoenas for the attendance of witnesses and production of documents at any hearing before the board authorized by this act and any member of the board shall administer an oath or affirmation to persons appearing to give testimony at such hearings. (17) It may conduct any investigations, studies of nursing and nursing education and related matters, and prepare and issue such

publications as in the judgment of the board will advance the profession of nursing and its service to the public. (18) It shall perform all other functions which are provided in this act to be performed by it or which in the judgment of the board are necessary or proper for the administration of this act. (19) It shall from time to time prescribe rules and regulations not inconsistent with this act. (20) It shall prescribe standards and curricula for homemaker-home health aide education and training programs which a homemaker-home health aide shall complete in order to work in this State. (21) It shall review applications to provide homemaker-home health aide training programs and shall issue, suspend or revoke program approval. (22) It shall establish and maintain a registry of all individuals who have successfully completed a homemaker-home health aide training and competency evaluation program. The board shall provide for the inclusion in the registry of information about the disqualification of any person from certification as a homemaker-home health aide pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), including the specific documented findings constituting the basis for that disqualification; except that the information shall indicate that the person was convicted of a crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3), but shall not identify the conviction or convictions which constitute the basis for the disqualification. (23) It shall prescribe standards and requirements for a competency evaluation program resulting in certification of the homemaker-home health aide, and the renewal, revocation, and suspension of that certification. (24) It shall review applications for homemaker home-health aide certification and shall issue, suspend, revoke, or fail to renew certifications and conduct investigations pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.). (25) It shall require that nursing school curricula include, and shall prescribe standards for, the training of registered professional nurses in the supervision of, and the delegation of nursing tasks to, unlicensed assistive personnel, and shall further prescribe standards establishing the criteria for determining those tasks which registered professional nurses may delegate to unlicensed assistive personnel working under their supervision and the type of supervision required with respect to those personnel. (26) It shall prescribe standards and requirements for unlicensed assistive personnel, including initial education and continuing education and a competency evaluation program, which these personnel shall satisfy in order to work in this State. As used in this paragraph and in paragraph (25) of this subsection, "unlicensed assistive personnel" means any unlicensed or uncertified personnel employed by a licensed health care facility that perform nursing tasks which do not require the skill or judgment of a registered professional nurse and which are assigned to them by, and carried out under the supervision of, a registered professional nurse.(27) It may require licensees to meet continuing education requirements as a condition of relicensure.

e. Compensation. Each member of the board shall receive \$15.00 per day for each day in which such member is actually engaged in the discharge of duties and traveling and other expenses necessarily incurred in the discharge of duties.

5. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read as follows:

C.45:11-24.3 Background checks for homemaker-home health aide certification applicant.

7. a. The New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety shall not issue a homemaker-home health aide certification to any applicant, except on a conditional basis as provided for in subsection d. of section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the board first determines, consistent with the requirements of sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being certified. A homemaker-home health aide certified by the board prior to the effective date of P.L.2000, c.20 and upon whom a criminal history record background check has not been conducted pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), shall be required to undergo that criminal history record background check as a condition of that individual's initial recertification following the effective date of P.L.2000, c.20.

In addition, a follow-up criminal history record background check of federal records shall

be conducted at least once every two years as a condition of recertification for every certified homemaker-home health aide; except that the board, in lieu of conducting follow-up criminal history record background checks for purposes of recertification, may provide for an alternative means of determining whether a certified homemaker-home health aide has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, including, but not limited to, a match of a person's Social Security number or other identifying information with records of criminal proceedings in this and other states. If the board elects to implement this alternative means of determining whether a certified homemaker-home health aide has been convicted of a crime or disorderly persons offense which would disqualify that person from certification, the board shall report to the Governor and the Legislature prior to its implementation on the projected costs and procedures to be followed with respect to its implementation and setting forth the rationale therefor.

A person shall be disqualified from certification if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

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

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

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

(c) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or

(d) 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.2C:35-10.

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

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from certification on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 7 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a) if the person has affirmatively demonstrated to the New Jersey Board of Nursing in the Division of Consumer Affairs clear and convincing evidence of the person's rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

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

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the person when the offense was committed;

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

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

(8) 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 person under their supervision.

c. If a person subject to the provisions of sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9) refuses to consent to, or cooperate in, the securing of a criminal history record background check, the New Jersey Board of Nursing shall, as applicable:

(1) not issue a homemaker-home health aide certification and shall notify the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of section 8 of P.L.1997, c.100 (C.45:11-24.4) or the applicant's prospective employer if known, of that denial; or

(2) revoke the person's current homemaker-home health aide certification and notify the person, and the person's employer, if known, of that revocation.

6. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read as follows:

C.45:11-24.4 Qualification, disqualification for certification; petition for hearing.

8. a. An applicant for homemaker-home health aide certification, or a certified person who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), shall submit to the New Jersey Board of Nursing that individual's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The board is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the New Jersey Board of Nursing shall immediately notify, in writing, the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of this section or the applicant's prospective employer, if known, or the certified person who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3) and that person's employer, as applicable, of the person's qualification or disqualification for homemaker-home health aide certification under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9). If the person is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the notice to the person, but shall not be identified in the notice to the person's employer or prospective employer.

c. The person who is the subject of the background check shall have 30 days from the date of the written notice of disqualification to petition the New Jersey Board of Nursing for a hearing on the accuracy of the person's criminal history record information or to establish the person's rehabilitation under subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3). The board shall notify the person's employer or prospective employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the board pursuant to this subsection, the board shall notify the person and the person's employer or prospective employer as to whether the person remains disqualified from certification under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

d. An applicant for certification may be issued conditional certification and may be employed as a homemaker-home health aide conditionally for a period not to exceed 60 days, pending completion of a criminal history record background check required under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9) by the Division of State Police in the Department of Law and Public Safety based upon an examination of its own files in accordance with section 14 of P.L.1997, c.100 (C.53:1-20.9a), and for an additional period not to exceed 60 days pending completion of a criminal history record background check by federal authorities as arranged for by the Division of State Police pursuant to section 14 of P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the New Jersey Board of Nursing a sworn statement attesting that the person has not been convicted of any crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A person who submits a false sworn statement shall be disqualified from certification as a homemaker-home health aide and shall not have an opportunity to establish rehabilitation pursuant to subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3).

A conditionally employed person, or an employed person certified as a homemaker-home health aide, who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed by that person's employer until the board rules on the person's petition but, pending the board's ruling, the employer shall not permit the person to have unsupervised contact with patients or clients who are 60 years of age or older.

e. (1) A home care services agency that has received an application from or conditionally employed an applicant for homemaker-home health aide certification, or has employed a certified homemaker-home health aide, and

(a) receives notice from the board that the applicant or certified homemaker-home health



aide, as applicable, has been determined by the board to be disqualified from certification as a homemaker-home health aide pursuant to sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9); or

(b) terminates its employment of a conditionally employed applicant for homemaker-home health aide certification or a certified homemaker-home health aide because the person was disqualified from employment at the home care services agency on the basis of a conviction of a crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3) after commencing employment at the home care services agency;

shall be immune from liability for disclosing that disqualification or termination in good faith to another home care services agency.

(2) A home care services agency which discloses information pursuant to paragraph (1) of this subsection shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the home care services agency acted with actual malice toward the person who is the subject of the information.

f. (1) A home care services agency, upon receiving notice from the board that a person employed by it as a homemaker-home health aide, including a conditionally employed person, has been convicted of a crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3) after commencing employment at the home health care agency or other entity, shall:

(a) immediately terminate the person's employment as a homemaker-home health aide; and

(b) report information about the conviction and termination to the board in a manner prescribed by the board, which shall thereupon deem the person to be disqualified from certification as a homemaker-home health aide, subject to the provisions of paragraph (3) of this subsection.

(2) A home care services agency shall be immune from liability for any actions taken in good faith pursuant to paragraph (1) of this subsection and shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the home care services agency acted with actual malice toward the employee.

(3) The person terminated from employment pursuant to paragraph (1) of this subsection shall have 30 days from the date of the termination to petition the board for a hearing on the accuracy of the information about the conviction reported to the board or to establish why the person should not be terminated from employment, and disqualified from certification, as a homemaker-home health aide. The board shall notify the person's employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the board pursuant to this paragraph, the board shall notify the person and the person's employer as to whether:

(a) the person is to be reinstated in his employment as a homemaker-home health aide and retain his certification; or

(b) the person's termination from employment as a homemaker-home health aide stands and the person remains disqualified from certification.

7. Section 9 of P.L.1997, c.100 (C.45:11-24.5) is amended to read as follows:

C.45:11-24.5 Assumption of cost of background checks.

9. The Department of Law and Public Safety shall assume the cost of the criminal history record background check conducted on an applicant for homemaker-home health aide certification pursuant to sections 7 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a), or a certified homemaker-home health aide who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3), as applicable.

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

C.53:1-20.9a Applicant background check for nurse aide, personal care assistant, homemaker-home health aide certification.

14. a. In accordance with the provisions of sections 2 through 6 and sections 7 through 13

of P.L.1997, c.100 (C.26:2H-83 through 87 and C.45:11-24.3 through 24.9), the Division of State Police in the Department of Law and Public Safety shall conduct a criminal history record background check, including a name and fingerprint identification check, of:

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

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

b. For the purpose of conducting a criminal history record background check pursuant to subsection a. of this section, the Division of State Police shall examine its own files and arrange for a similar examination by federal authorities. The division shall immediately forward the information obtained as a result of conducting the check to the Commissioner of Health and Senior Services, in the case of an applicant for nurse aide or personal care assistant certification, and to the New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety, in the case of an applicant for homemaker-home health aide certification.

9. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Health and Senior Services, shall report to the Governor and the Legislature no later than one year after the effective date of this act on the feasibility and cost of implementing a criminal history record background check requirement for all persons employed by home health agencies licensed by the Department of Health and Senior Services or by health care service firms, employment agencies or registries, temporary help service firms or personnel consultants regulated by the Division of Consumer Affairs, who are assigned to provide health care services in a home-based or other community setting and are not required to undergo a criminal history record background check pursuant to P.L.1997, c.100 (C.26:2H-83 et al.). The report shall include a detailed plan for implementation of a criminal history record background check requirement.

10. The Legislature shall annually appropriate from the General Fund to the Department of Health and Senior Services and the Department of Law and Public Safety such funds as the State Treasurer recommends to effectuate the purposes of this act.

11. This act shall take effect on the 90th day after enactment.

Approved May 3, 2000.

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*Office of the Governor*  
**NEWS RELEASE**

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**GOVERNOR SIGNS LEGISLATION REQUIRING BACKGROUND CHECKS  
FOR ALL HOME HEALTH AIDES**

Implementing an initiative she announced in her State of the State address in January, Gov. Christie Whitman today signed legislation that will better protect seniors by requiring background checks for all home health aides. The bill requires background checks for more than 50,000 workers certified before November, 1997 when legislation was enacted requiring background checks for all new home health aides.

"In my State of the State address this past January, I made a promise that I would work to enact a bill that protects all of our senior and disabled citizens who require home health care services. I am keeping my promise. With this bill we are requiring a criminal background check for every nurse aide, personal care assistant, and homemaker-home health aide," the Governor said in a ceremony at the Ocean County Vocational School in Lakewood.

"We have had a law on the books since 1997 that requires all new home health aides to undergo state and federal background checks. This law has served its purpose well, protecting seniors from criminals who might exploit the special situation of home health care and possibly put someone in danger," she said. "Until now, however, that law had not extended to the more than 50,000 home health aides already on the job."

The Governor said her proposed fiscal 2001 budget includes an allocation of \$1.1 million for the background checks. This amount, coupled with anticipated federal funds, will pay for the checks.

"This is one more way we are using our state's Prosperity Dividend to protect senior citizens who have contributed so much to New Jersey's success over the years. It also complements all of our other efforts to help seniors maintain independence at home or in the community as much as possible," Gov. Whitman said.

The Governor signed the bill at the Ocean County Vocational School before an audience that included seniors. The school offers a Culinary Arts Program which uses donated federal commodities from the New Jersey Department of Agriculture's Food Distribution Program to produce prepared foods for distribution to community agencies that feed needy populations, including the elderly.

The legislation, S-116, requires criminal history record checks by the State Police for all certified nurses aides, personal care assistants, and homemaker-home health aides certified prior to November, 1997 as a condition of re-certification. In addition, the bill requires that these persons undergo a follow-up federal background check every two years as a condition of re-certification. Previous law required criminal background checks for all newly hired nurse aides, personal care assistants, and homemaker-home health aides.

The bill was sponsored by Senators Anthony R. Bucco (R-Morris), Bernard F. Kenny, Jr. (D-Hudson), Richard J. Codey (D-Essex/Union), John A. Girgenti (D-Passaic), Diane B. Allen (R-Burlington/Camden), John J. Matheussen (R-Camden/Gloucester) and Norman M. Robertson (R-Essex/Passaic), and Assembly Members Charlotte Vandervalk (R-Bergen) and Rose Marie Heck (R-Bergen).

**From Governor Whitman's 2000 State of the State address:**

...Let me turn to E Number Three -- the elderly.

Think about this for a moment: when baby Patti Ann is ready to retire, the year may be 2070. You and I probably won't be around. But our work on senior issues will give Patti Ann's older relatives more security in the near future.

As Patti Ann grows, she will find that her grandmother, Pat, is a very special person. While Pat has not yet reached her senior years, she has the proud distinction of becoming a grandmother for the third time. She is with us today, along with her daughter-in-law and new mom, Elaine. Congratulations, Pat and Elaine Van Meter.

I'm proud of our efforts on the third E. Working together with legislators like Assemblywomen Carol Murphy and Rose Heck, and the late Senator Wynona Lipman, we've helped New Jersey's senior citizens lead independent, productive lives. We expanded senior services and protected PAAD. We froze property taxes for qualified seniors and improved on the homestead rebate program.

Just as important, we have given families more options for long-term care, whether it's assisted living or alternate family care. Our seniors are no longer being automatically shuttled from hospitals into nursing homes.

The \$60 million initiative we started last year is helping more seniors stay in their homes and communities. Today, we're supporting caregivers and screening seniors to ensure that a nursing home plan is right for them.

We must do even more. The New Jersey Advisory Council on Elder Care, which I created in 1998, looked closely at the needs of the elderly and their caregivers. Its report echoed many of the concerns I hear when I talk with people around the state.

The message is clear: seniors want to maintain their independence as long as possible. As Patti Ann's grandmother and fellow baby boomers age, this desire will only increase.

So this year, to further help older citizens remain independent, we will dedicate another \$5 million to six important initiatives.

First, we will expand home-delivered meals to the elderly. Meals on Wheels helps countless New Jersey seniors get the daily nutrition they need. This year, we will expand Meals on Wheels to entirely eliminate the waiting list for this vital program.

But we can't stop there. We need more community assistance for frail elderly on low incomes. Congregate housing services can help. They include housekeeping, personal assistance, case management, and meals in a group setting. This year, we will expand these services to 15 new senior housing sites across the state.

Of course, some seniors who stay at home can suffer from neglect or abuse. This is particularly true for those who can't care for themselves. Let's keep our seniors safe, and give their caregivers the help they need. This year, we will enable local adult protective agencies to serve hundreds more at-risk seniors.

We will also address a concern that I know is on your minds: ensuring that all home health aides are the kind of people we want caring for our most vulnerable citizens. Assemblywomen Charlotte Vandervalk and Loretta Weinberg have led the way on this issue. With thanks for their efforts, I will propose in my budget that we combine state and federal funds to pay the cost of all background checks -- not just for new aides but for every single person in the system.

Helping seniors remain independent also means providing a hassle-free way to get information and services. Our toll-free New Jersey EASE hotline connects them to all the services our state offers.

To strengthen the program, I propose we award grants to help all New Jersey EASE counties improve the quality of the care management they provide.

There's another step we can take: ensuring that younger citizens like Patti Ann's mom and grandmother can buy some peace of mind by planning now for their senior years. Buying long-term care insurance today will enable them to choose from among the widest range of options tomorrow -- from home care to assisted living to a nursing home.

That's why we will begin a program this year that will offer this insurance to State employees and their families on a voluntary basis. I hope private employers will follow our example by offering it to their employees as well.