

26:2H-83

LEGISLATIVE HISTORY CHECKLIST

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(Criminal background checks)

NJSA: 26:2H-83 et al

LAWS OF: 1997 CHAPTER: 284

BILL NO: A2962

SPONSOR(S): Moran and Connors

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[Passed Both Houses]

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2962

STATE OF NEW JERSEY

ADOPTED JUNE 9, 1997

Sponsored by Assemblymen MORAN, CONNORS, Asselta,
Cottrell, Assemblywoman Gill, Assemblyman Greenwald,
Assemblywoman Heck, Assemblyman LeFevre, Senators
Bubba and Connors

1 AN ACT concerning criminal history record background checks of
2 applicants for certain certifications, amending the title and body of
3 P.L.1997, c.100, and repealing section 1 thereof.

4

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

7

8 1. The title of P.L.1997, c.100 is amended to read as follows:
9 AN ACT concerning criminal history record background checks for
10 certain persons **[who care for the elderly]** and supplementing Title
11 26, Title 45, and Title 53 of the Revised Statutes.

12 (cf: P.L.1997, c.100, title)

13

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

16 2. a. **[A facility for the institutionalized elderly, as defined in**
17 **section 1 of P.L.1997, c.100 (C.26:2H-82), shall not hire any**
18 **unlicensed person serving in a position which involves regular contact**
19 **with a patient, resident or client as the case may be,] The Department**
20 **of Health and Senior Services shall not issue a nurse aide or personal**
21 **care assistant certification to any applicant,** except on a conditional
22 basis as provided for in subsection d. of section 3 of P.L.1997, c.100

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:

¹ Senate SJU committee amendments adopted November 17, 1997.

1 (C.26:2H-84), unless the Commissioner of Health and Senior Services
2 first determines, consistent with the requirements of sections 2 through
3 6 of P.L.1997, c.100 ([C.26:2H-82 et al.] C.26:2H-83 through 87),
4 that no criminal history record information exists on file in the Federal
5 Bureau of Investigation, Identification Division, or in the State Bureau
6 of Identification in the Division of State Police, which would disqualify
7 that person from being **[employed or utilized in such capacity or**
8 **position]** certified. A person shall be disqualified from **[employment**
9 **under P.L.1997, c.100 (C.26:2H-82 et al.)]** certification if that
10 person's 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 **[employment under P.L.1997,**
32 **c.100 (C.26:2H-82 et al.)]** certification on the basis of any conviction
33 disclosed by a criminal history record background check performed
34 pursuant to sections 2 through 6 and section 14 of P.L.1997, c.100
35 ([C.26:2H-82 et al.] C.26:2H-83 through 87 and C.53:1-20.9a) if the
36 person has affirmatively demonstrated to the Commissioner of Health
37 and Senior Services clear and convincing evidence of the person's
38 rehabilitation. In determining whether a person has affirmatively
39 demonstrated rehabilitation, the following factors shall be considered:

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

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

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

44 (4) the date of the offense;

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

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

10 c. If a person subject to the provisions of sections 2 through 6 of
11 P.L.1997, c.100 ([C.26:2H-82 et al.] C.26:2H-83 through 87) refuses
12 to consent to, or cooperate in, the securing of a criminal history record
13 background check, the commissioner shall **[direct the principal**
14 **administrator of the facility not to consider the person for**
15 **employment]** not issue a nurse aide or personal care assistant
16 certification and shall notify the applicant, and the applicant's employer
17 if the applicant is conditionally employed as provided in subsection d.
18 of section 3 of P.L.1997, c.100 (C.26:2H-84) or the applicant's
19 prospective employer if known, of that denial.
20 (cf: P.L.1997, c.100, s.2)

21
22 3. Section 3 of P.L.1977, c.100 (C.26:2H-84) is amended to read
23 as follows:

24 3. a. An applicant for **[employment at a facility]** certification
25 shall submit to the Commissioner of Health and Senior Services the
26 applicant's name, address and fingerprints taken on standard
27 fingerprint cards by a State or municipal law enforcement agency. The
28 commissioner is authorized to exchange fingerprint data with and
29 receive criminal history record information from the Federal Bureau
30 of Investigation and the Division of State Police for use in making the
31 determinations required by sections 2 through 6 of P.L.1997,c.100
32 ([C.26:2H-82 et al.] 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[, in writing,] if known, of the person's
39 qualification or disqualification for **[employment]** certification under
40 sections 2 through 6 of P.L.1997,c.100 ([C.26:2H-82 et al.] C.26:2H-
41 83 through 87). If the applicant is disqualified, the conviction or
42 convictions which constitute the basis for the disqualification shall be
43 identified in the notice to the applicant, but shall not be identified in
44 the notice to the applicant's employer or prospective employer.

45 c. The applicant shall have 30 days from the date of the written

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

13 d. **[A facility may employ a person]** An applicant may be issued
14 conditional certification and may be employed as a nurse aide or a
15 personal care assistant conditionally for a period not to exceed 180
16 days, pending completion of a criminal history record background
17 check required under sections 2 through 6 of P.L.1997,c.100
18 ([C.26:2H-82 et al.] C.26:2H-83 through 87), if the person submits
19 to the commissioner a sworn statement attesting that the person has
20 not been convicted of any crime or disorderly persons offense as
21 described in section 2 of P.L.1997, c.100 (C.26:2H-83). A person
22 who submits a false sworn statement shall be disqualified from
23 **[employment by any facility, home health care agency, nurses' registry,**
24 **employment agency, or temporary help agency,]** certification as a
25 nurse aide or a personal care assistant, as the case may be, and shall
26 not have an opportunity to establish rehabilitation pursuant to
27 subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83). A
28 conditionally employed person who disputes the accuracy of the
29 criminal history record information and who files a petition requesting
30 a hearing pursuant to subsection c. of this section may remain
31 employed **[at the facility]** by the employer until the commissioner
32 rules on the applicant's petition but, pending the commissioner's ruling,
33 the **[facility]** employer shall not permit the applicant to have
34 unsupervised contact with **[elderly]** patients, residents or clients, as
35 the case may be, who are 60 years of age or older.

36 **[A person who is to be employed in any substitute capacity or**
37 **position, who is rehired annually, shall only be required to undergo a**
38 **criminal history record check upon initial employment. A person who**
39 **has been qualified for employment as a result of a criminal history**
40 **record background check pursuant to P.L.1997, c.100 (C.26:2H-82 et**
41 **al.) may use that qualification to obtain employment with a**
42 **simultaneous or subsequent employer without having to undergo**
43 **another check required by P.L.1997,c.100 (C.26:2H-82 et al.) for a**
44 **period of 12 months from the date of the initial notice of qualification**
45 **from the commissioner. The person may request and the**

1 commissioner shall send a notice of qualification upon request to
2 simultaneous or subsequent employers within 12 months following the
3 date of the initial qualification notice.

4 Prospective and conditionally employed persons shall retain any
5 available right of review provided to applicants under Title 11A of the
6 New Jersey Statutes.]

7 (cf: P.L.1997, c.100, s.3)

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

11 4. ~~【The】 An applicant's employer if the applicant is conditionally~~
12 ~~employed as provided in subsection d. of section 3 of P.L.1997, c.100~~
13 ~~(C.26:2H-84) or an applicant's prospective employer may assume the~~
14 ~~cost of 【all】 the criminal history record background 【checks】 check~~
15 ~~conducted on 【prospective employees】 an applicant for nurse aide or~~
16 ~~personal care assistant certification, as the case may be, pursuant to~~
17 ~~sections 2 through 6 and section 14 of P.L.1997,c.100 (【C.26:2H-82~~
18 ~~et al.】 C.26:2H-83 through 87 and C.53:1-20.9a); or the employer or~~
19 ~~prospective employer may require the 【prospective employee】~~
20 ~~applicant to pay the cost of the criminal history record background~~
21 ~~【checks】 check.~~

22 (cf: P.L.1997,c.100,s.4)

23
24 5. Section 6 of P.L.1997, c.100 (C.26:2H-87) is amended to read
25 as follows:

26 6. Any ~~【employer subject to the provisions of sections 1 through~~
27 ~~5 of P.L.1997, c.100 (C.26:2H-82 through C.26:2H-86) who fails to~~
28 ~~comply with those provisions or any】 person submitting a false sworn~~
29 ~~statement pursuant to section 3 of P.L.1997, c.100 (C.26:2H-84) shall~~
30 ~~be subject to a fine of not more than \$1,000, which may be assessed~~
31 ~~by the Commissioner of Health and Senior Services.~~

32 (cf: P.L.1997,c.100,s.6)

33
34 6. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read
35 as follows:

36 7. ~~a. 【A home health care agency, nurses' registry, employment~~
37 ~~agency, or temporary help agency which is licensed or regulated by】~~
38 ~~The New Jersey Board of Nursing in the Division of Consumer Affairs~~
39 ~~in the Department of Law and Public Safety【,】 shall not 【hire a home~~
40 ~~health aide or other health care employee to serve in a position which~~
41 ~~involves regular contact with a patient or client who is 60 years of age~~
42 ~~or older,】 issue a homemaker-home health aide certification to any~~
43 ~~applicant, except on a conditional basis as provided for in subsection~~
44 ~~d. of section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the~~

1 **【director】 board** first determines, consistent with the requirements of
2 sections 7 through 13 of P.L.1997, c.100 (【C.26:2H-82 et al.】
3 C.45:11-24.3 through 24.9), that no criminal history record
4 information exists on file in the Federal Bureau of Investigation,
5 Identification Division, or in the State Bureau of Identification in the
6 Division of State Police, which would disqualify that person from
7 being **【employed or utilized in such capacity or position】-certified**. A
8 person shall be disqualified from **【employment under P.L.1997, c.100**
9 **(C.26:2H-82 et al.)】 certification** if that person's criminal history
10 record background check reveals a record of conviction of any of the
11 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 **【employment under P.L.1997,**
32 **c.100 (C.26:2H-82 et al.)】 certification** on the basis of any conviction
33 disclosed by a criminal history record background check performed
34 pursuant to sections 7 through 13 and section 14 of P.L.1997, c.100
35 (【C.26:2H-82 et al.】 C.45:11-24.3 through 24.9 and C.53:1-20.9a) if
36 the person has affirmatively demonstrated to the **【Director of】 New**
37 **Jersey Board of Nursing** in the Division of Consumer Affairs clear and
38 convincing evidence of the person's rehabilitation. In determining
39 whether a person has affirmatively demonstrated rehabilitation, the
40 following factors shall be considered:

- 41 (1) the nature and responsibility of the position which the
42 convicted person would hold or has held, as the case may be;
43 (2) the nature and seriousness of the offense;
44 (3) the circumstances under which the offense occurred;
45 (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 7 through 13 of
12 P.L.1997, c.100 ([C.26:2H-82 et al.] C.45:11-24.3 through 24.9)
13 refuses to consent to, or cooperate in, the securing of a criminal
14 history record background check, the [director] New Jersey Board of
15 Nursing shall [direct the home health care agency, nurses' registry,
16 employment agency, or temporary help agency not to consider the
17 person for employment] not issue a homemaker-home health aide
18 certification and shall notify the applicant, and the applicant's employer
19 if the applicant is conditionally employed as provided in subsection d.
20 of section 8 of P.L.1997, c.100 (C.45:11-24.4) or the applicant's
21 prospective employer if known, of that denial.
22 (cf: P.L.1977, c.100, s.7)

23
24 7. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read
25 as follows:

26 8. a. ~~【A home health aide or other health care employee who is~~
27 ~~an】 An applicant for [employment with a home health care agency,~~
28 ~~nurses' registry, employment agency, or temporary help agency which~~
29 ~~is licensed or regulated by the Division of Consumer Affairs】~~
30 homemaker-home health aide certification shall submit to the
31 [Director of the Division of Consumer Affairs] New Jersey Board of
32 Nursing the applicant's name, address and fingerprints taken on
33 standard fingerprint cards by [the] a State or municipal law
34 enforcement agency. The [director] board is authorized to exchange
35 fingerprint data with and receive criminal history record information
36 from the Federal Bureau of Investigation and the Division of State
37 Police for use in making the determinations required by sections 7
38 through 13 of P.L.1997, c.100 ([C.26:2H-82 et al.] C.45:11-24.3
39 through 24.9).

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 ~~【director】~~ New Jersey Board of Nursing shall
43 immediately notify, in writing, the applicant, and the applicant's
44 employer if the applicant is conditionally employed as provided in

1 subsection d. of this section or the applicant's prospective employer [,
2 in writing,] if known, of the person's qualification or disqualification
3 for [employment] homemaker-home health aide certification under
4 sections 7 through 13 of P.L.1997, c.100 ([C.26:2H-82 et al.]
5 C.45:11-24.3 through 24.9). If the applicant is disqualified, the
6 conviction or convictions which constitute the basis for the
7 disqualification shall be identified in the notice to the applicant, but
8 shall not be identified in the notice to the applicant's employer or
9 prospective employer.

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

23 d. [A home health care agency, nurses' registry, employment
24 agency, or temporary help agency] An applicant may [employ a home
25 health aide or other health care employee] be issued conditional
26 certification and may be employed as a homemaker-home health aide
27 conditionally for a period not to exceed 180 days, pending completion
28 of a criminal history record background check required under sections
29 7 through 13 of P.L.1997, c.100 ([C.26:2H-82 et al.] C.45:11-24.3
30 through 24.9), if the person submits to the [director] New Jersey
31 Board of Nursing a sworn statement attesting that the person has not
32 been convicted of any crime or disorderly persons offense as described
33 in section 7 of P.L.1997, c.100 (C.45:11-24.3). A person who submits
34 a false sworn statement shall be disqualified from [employment by any
35 facility as defined in section 1 of P.L.1997, c.100 (C.26:2H-82),
36 agency or registry,] certification as a homemaker-home health aide
37 and shall not have an opportunity to establish rehabilitation pursuant
38 to subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3). A
39 conditionally employed person who disputes the accuracy of the
40 criminal history record information and who files a petition requesting
41 a hearing pursuant to subsection c. of this section may remain
42 employed by the [employing agency or registry] employer until the
43 [director] board rules on the applicant's petition but, pending the
44 [director's] board's ruling, the [employing agency or registry]

1 ~~employer~~ shall not permit the applicant to have unsupervised contact
2 with patients or clients who are 60 years of age or older.

3 **【A person who is to be employed in any substitute capacity or**
4 **position, who is rehired annually, shall only be required to undergo a**
5 **criminal history record check upon initial employment. A home health**
6 **aide or other health care employee who has been qualified for**
7 **employment as a result of a criminal history record background check**
8 **pursuant to P.L.1997, c.100 (C.26:2H-82 et al.) may use that**
9 **qualification to obtain employment with a simultaneous or subsequent**
10 **employer without having to undergo another check required by**
11 **P.L.1997, c.100 (C.26:2H-82 et al.) for a period of 12 months from**
12 **the date of the initial notice of qualification from the director. The**
13 **aide or employee may request and the director shall send a notice of**
14 **qualification upon request to simultaneous or subsequent employers**
15 **within 12 months following the date of the initial qualification notice.】**
16 (cf: P.L.1997, c.100, s.8)

17

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

20 9. **【The】** ~~A home health~~ **【care】** agency**【,** nurses' registry,
21 employment agency, or temporary help agency**】** ~~or a health care~~
22 ~~service firm, as defined in regulations of the Division of Consumer~~
23 ~~Affairs,~~ may assume the cost of **【all】** ~~the~~ criminal history record
24 background **【checks】** ~~check~~ conducted on **【prospective employees】**
25 ~~an applicant for homemaker-home health aide certification pursuant to~~
26 ~~sections 7 through 13 and section 14 of P.L.1997, c.100 (【C.26:2H-82~~
27 ~~et al.】 C.45:11-24.3 through 24.9 and C.53:1-20.9a); or it may require~~
28 ~~the~~ **【prospective employee】** applicant to pay the cost of the criminal
29 history record background **【checks】** ~~check~~.
30 (cf: P.L.1997, c.100, s.9)

31

32 9. Section 10 of P.L.1997, c.100 (C.45:11-24.6) is amended to
33 read as follows:

34 10. The Division of Consumer Affairs shall require that the New
35 Jersey Board of Nursing issue biennial recertifications to homemaker-
36 home health aides only upon receiving documented proof from a home
37 health **【care】** agency or health care service firm that the homemaker-
38 home health aide is currently employed and regularly supervised by a
39 registered professional nurse.
40 (cf: P.L.1997, c.100, s.10)

41

42 10. Section 11 of P.L.1997, c.100 (C.45:11-24.7) is amended to
43 read as follows:

44 11. The Division of Consumer Affairs shall require that a New

1 Jersey Board of Nursing certificate issued to a homemaker-home
2 health aide contain the following statement: "Valid only if certified
3 homemaker-home health aide is employed by a home **[care services]**
4 health agency or health care service firm and is performing delegated
5 nursing regimen or nursing tasks delegated through the authority of a
6 duly licensed registered professional nurse."

7 (cf: P.L.1997, c.100, s.11)

8

9 11. Section 12 of P.L.1997, c.100 (C.45:11-24.8) is amended to
10 read as follows:

11 12. In accordance with the "Administrative Procedure Act,"
12 P.L.1968, c.410 (C.52:14B-1 et seq.), the **[Director of]** New Jersey
13 Board of Nursing in the Division of Consumer Affairs shall adopt rules
14 and regulations necessary to implement the provisions of sections 7
15 through 9 and section 13 of P.L.1997, c.100 (C.45:11-24.3 through
16 24.5 and C.45:11-24.9).

17 (cf: P.L.1997, c.100, s.12)

18

19 12. Section 13 of P.L.1997, c.100 (C.45:11-24.9) is amended to
20 read as follows:

21 13. Any **[employer subject to the provisions of sections 7 through**
22 **9 and section 12 of P.L.1997, c.100 (C.45:11-24.3 through**
23 **C.45:11-24.5 and C.45:11-24.8) who fails to comply with those**
24 **provisions or any]** person submitting a false sworn statement pursuant
25 to section 8 of P.L.1997, c.100 (C.45:11-24.4) shall be subject to a
26 fine of not more than \$1,000, which may be assessed by the New
27 Jersey Board of Nursing.

28 (cf: P.L.1997,c.100,s.13)

29

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

32 14. **[The]** In accordance with the provisions of sections 2 through
33 6 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through
34 87; C.45:11-24.3 through 24.9), the Division of State Police in the
35 Department of Law and Public Safety shall conduct a criminal history
36 record background check, including a name and fingerprint
37 identification check, of each **[prospective employee of a facility as**
38 **defined in section 1 of P.L.1997, c.100 (C.26:2H-82) or of a home**
39 **health care agency, nurses' registry, employment agency, or temporary**
40 **help agency licensed or regulated by the Director of]** applicant for
41 nurse aide or personal care assistant certification submitted to the
42 Department of Health and Senior Services and of each applicant for
43 homemaker-home health aide certification submitted to the New Jersey
44 Board of Nursing in the Division of Consumer Affairs. **[The**
45 requirement of a criminal history record background check shall apply

1 only to a prospective employee who is or would be serving in a
2 position which involves regular contact with a patient, resident or
3 client as the case may be, who is 60 years of age or older.】

4 For the purpose of conducting the criminal history record
5 background check, the Division of State Police shall examine its own
6 files and arrange for a similar examination by federal authorities. The
7 division shall immediately forward the information obtained as a result
8 of conducting the check to the Commissioner of Health and Senior
9 Services, in the case of 【a facility】 an applicant for nurse aide or
10 personal care assistant certification, and to the 【Director of】 New
11 Jersey Board of Nursing in the Division of Consumer Affairs in the
12 Department of Law and Public Safety, in the case of 【a home health
13 care agency, nurses' registry, employment agency, or temporary help
14 agency】 an applicant for homemaker-home health aide certification.
15 (cf: P.L.1997, c.100, s.14)

16

17 14. Section 1 of P.L.1997, c.100 (C.26:2H-82) is repealed.

18

19 15. This act shall take effect¹ 【on the first day of the sixth month
20 after enactment】 immediately¹.

21

22

23

24

25 _____
26 Requires criminal background checks for nurse aide, personal care
assistant, and homemaker-home health aide certification applicants.

1 Nursing in the Division of Consumer Affairs shall adopt rules and
2 regulations necessary to implement the provisions of sections 7
3 through 9 of P.L. , c. (C.) (pending before the Legislature as
4 this bill).

5
6 13. The Division of State Police in the Department of Law and
7 Public Safety shall conduct a criminal history record background check
8 including a name and fingerprint identification check of each
9 prospective employee of a facility as defined in section 1 of
10 P.L. , c. (C.) (pending before the Legislature as this bill) or of
11 each applicant for homemaker-home health aide certification submitted
12 to the New Jersey Board of Nursing in the Division of Consumer
13 Affairs. The requirement of a criminal history record background
14 check shall apply only to a prospective employee or an applicant who
15 is or would be serving in a position which involves regular contact
16 with a patient, resident or client as the case may be, who is 60 years
17 of age or older.

18 For the purpose of conducting the criminal history record
19 background check, the Division of State Police shall examine its own
20 files and arrange for a similar examination by federal authorities. The
21 division shall immediately forward the information obtained as a result
22 of conducting the check to the Commissioner of Health and Senior
23 Services, in the case of a facility, and to the Board of Nursing in the
24 Division of Consumer Affairs in the Department of Law and Public
25 Safety, in the case of an applicant for homemaker-home health aide
26 certification.

27
28 14. This act shall take effect on the first day of the sixth month
29 after enactment.

30
31
32 STATEMENT

33
34 This bill bars persons who have been convicted of certain disorderly
35 persons offenses or crimes from employment with certain facilities that
36 provide care for the elderly. The bill defines "facility" to mean any
37 facility or institution offering health or health related services for the
38 institutionalized elderly, and which is subject to regulation, visitation,
39 inspection, or supervision by any government agency, As defined in
40 the bill, "facility" does not mean a licensed home health agency. The
41 bill also bars the New Jersey Board of Nursing from issuing any
42 applicant for homemaker-home health aide certification a certificate
43 unless that applicant first passes a criminal background check.

44 Under the provisions of the bill, a person could not: (1) be hired by
45 a facility for a position which involves regular contact with patients or
46 clients 60 years of age or older; or (2) receive a homemaker-home

1 health aide certificate or provide home health care services to such
2 elderly individuals, until the Commissioner of Health and Senior
3 Services (in the case of a facility), or the New Jersey Board of Nursing
4 in the Division of Consumer Affairs in the Department of Law and
5 Public Safety (in the case of homemaker-home health aides),
6 determines that the person has not been convicted of any of the crimes
7 or offenses set forth in the bill.

8

9

10

11

12 _____
13 Requires criminal history record checks of certain persons seeking to
provide care for the elderly.

ASSEMBLY SENIOR ISSUES, TOURISM AND GAMING
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2962

STATE OF NEW JERSEY

DATED: JUNE 9, 1997

The Assembly Senior Issues, Tourism and Gaming Committee reports favorably an Assembly Committee Substitute for Assembly, No. 2962.

This committee substitute prohibits (1) the Department of Health and Senior Services from issuing a nurse aide or personal care assistant certification to an applicant unless the applicant first passes a criminal background check, and (2) the New Jersey Board of Nursing from issuing a homemaker-home health aide certification to an applicant unless the applicant first passes a criminal background check.

Current law prohibits persons who have been convicted of certain disorderly persons offenses or crimes from employment with certain facilities, a home health care agency, nurses' registry, employment agency, or temporary help agency in any position involving regular contact with a person 60 or more years of age. The committee substitute replaces this prohibition on employment and instead disqualifies from certification as a nurse aide, personal care assistant, or homemaker-home health aide any person who has been convicted of those disorderly persons offenses or crimes and has not "affirmatively demonstrated" rehabilitation.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2962**

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 17, 1997

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Committee Substitute for Assembly Bill No. 2962.

Recently enacted P.L.1997, c.100 was aimed at preventing persons convicted of certain criminal offenses from being employed by home health care agencies, nurses' registries, employment agencies and certain facilities which employ persons to serve the elderly. ACS for A-2962 would replace the language providing for an employment ban with language providing that a person convicted of a criminal offense listed in P.L. 1997, c.110 would be disqualified from certification as a nurse aide, personal care assistant or homemaker-home health aide. Under the provisions of ACS for A-2962, unless an applicant first passes a criminal background check, the Department of Health and Senior Services could not issue a nurse aide or personal care assistant certification and the Board of Nursing could not issue a homemaker-home health aide certification. The committee amendments change the effective date of the bill from "the first day of the sixth month after enactment" to "immediately."

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2962

STATE OF NEW JERSEY

DATED: JULY 16, 1997

Bill Summary:

Assembly Committee Substitute for Assembly Bill No. 2962 of 1997 prohibits the Department of Health and Senior Services (DHSS) from issuing a nurse aide or personal care assistant certification and prohibits the New Jersey Board of Nursing from issuing a homemaker-home health aide certification to applicants who have not successfully completed a criminal history record background check. The cost of conducting the criminal history record background check may be paid for by either the employer or the applicant. An applicant may receive conditional certification in certain situations. An applicant who submits a false sworn statement is subject to a fine of not more than \$1,000.

Agency Comments:

DHSS and the Office of Management and Budget have not provided any fiscal information on the legislation.

Office of Legislative Services Comments:

There is no direct cost to the State as a result of this legislation as the cost of a criminal history record background check will be paid by either the employer or the applicant. An employer may be able to pass this cost on to the Medicaid program, though the extent to which the Medicaid program would reimburse for this cost would depend on the type of Medicaid service provided by the employer. An employer that provides nursing home services may be able to have the cost of a criminal history record background check reimbursed by Medicaid as nursing home reimbursement is based on the reasonable cost of providing nursing home services. An employer that provides home care services may not be able to have the cost of a criminal history record background check reimbursed by Medicaid as home care reimbursement is set at a fixed dollar amount irrespective of the actual cost of providing the service.

Finally, any additional administrative costs that DHSS may incur should be minimal as Assembly Committee Substitute for Assembly Bill No. 2964 of 1997 affects many of the same persons that are affected by P.L.1997, c.100. (P.L.1997, c.100 would bar persons who have been convicted of certain offenses or crimes from employment in various settings that serve person 60 years of age or older.)

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

FISCAL NOTE TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2962

STATE OF NEW JERSEY

DATED: DECEMBER 17, 1997

Bill Summary:

The Assembly Committee Substitute for Assembly Bill No. 2962(1R) of 1997 provides that a person convicted of a criminal offense listed in P.L. 1997, c.110 would be disqualified from certification as a nurse aide, personal care assistant or homemaker-home health aide. Under the provisions of the Senate Committee Substitute, the Department of Health and Senior Services (DHSS) and the Board of Nursing could not certify a person as either a nurse aide, personal care assistant or homemaker-home health aide unless the applicant passes a criminal history record background check. The applicant or the prospective employer may assume the cost of the criminal history record background check.

Agency Comments:

DHSS and the Office of Management and Budget (OMB) have estimated that it would cost \$308,000, \$264,000 and \$276,000, respectively, in each of the next three fiscal years to implement the legislation. The majority of estimated costs are related to personnel.

Office of Legislative Services Comments:

Under the terms of the legislation, the cost of the criminal history background check would be assumed by either the applicant or the prospective employer. It is unclear whether the cost of the criminal history background check includes DHSS' administrative costs.

If the cost of the criminal history background check is interpreted to include DHSS' administrative costs, then there is no cost to the State as DHSS' administrative costs would be included in the fee paid by either the applicant or the prospective employer.

If, however, the cost of the criminal history background check is interpreted not to include DHSS' administrative costs, then DHSS will incur some additional administrative costs. In this event, the estimates provided by DHSS and OMB appear high. While the projected personnel related costs (including fringe benefit costs that would be absorbed by the various interdepartmental accounts) of \$138,000, \$145,000 and \$152,000, respectively, in each of the next three fiscal years are not unreasonable, non-personal costs of \$170,000, \$119,000 and \$124,000, respectively, appear high, particularly in regards to unspecified "Special Purpose" costs of between \$80,000 and \$88,000 annually.

[1R] ACS for A2962

2

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