

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 991 of the Regular Session

1 State of Arkansas

As Engrossed: H3/16/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

HOUSE BILL 2295

4
5 By: Representative Garner

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8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE CRIMINAL BACKGROUND CHECK
10 LAW; AND FOR OTHER PURPOSES.

11
12 **Subtitle**

13 TO AMEND THE CRIMINAL BACKGROUND CHECK
14 LAW.

15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code § 21-15-101(5) regarding the definition of
20 "designated position" is amended to read as follows:

21 (5) "Designated position" means a position in which a person is
22 employed by a state agency to provide care, supervision, treatment, or any
23 other services to the elderly, to mentally ill or developmentally disabled
24 persons, to persons with mental illnesses, or to children who reside in any
25 state-operated facility or a position in which the applicant or employee will
26 have direct contact with a child; a person who is elderly, mentally ill or
27 developmentally disabled;

28
29 SECTION 2. Arkansas Code § 21-15-102(a) and (b) are amended to read as
30 follows:

31 (a)(1)(A) When a person applies for employment with a state agency in
32 a designated position and if the state agency intends to make an offer of
33 employment to the applicant, the applicant shall complete a criminal history
34 check form and a central registry check form obtained from the state agency
35 and shall submit the form to the state agency as part of the application



1 process.

2 (B) If the state agency intends to make an offer of
3 employment to the applicant, the state agency within five (5) days of the
4 decision shall ~~forward~~:

5 (i)(a) Use the Online Criminal Background Check
6 System to obtain the criminal history or forward the ~~The~~ criminal history
7 check form to the Identification Bureau of the Department of Arkansas State
8 Police and request the bureau to review the bureau's database of criminal
9 history.

10 (b) Within three (3) days of the receipt of a
11 request to review the database, the bureau shall notify the state agency if
12 the database contains any criminal history records on the applicant; and

13 (ii)(a) Forward the ~~The~~ central registry check form
14 to the Child Maltreatment Central Registry, and the Adult and Long-Term Care
15 Facility Resident Maltreatment Central Registry, ~~and the Certified Nursing~~
16 ~~Assistant/Employment Clearance Registry~~ for a central registry check.

17 (b) The state agency shall pay any fee
18 associated with the central registry check on behalf of the applicant.

19 (c) Within three (3) days of the receipt of a
20 request for a central registry check, the central registry shall notify the
21 state agency if the database contains any information naming the applicant as
22 an offender or perpetrator of child or adult abuse.

23 (2) If no criminal history or central registry records regarding
24 the applicant are found in the database, then the state agency may make an
25 offer of temporary employment to the applicant while the bureau completes a
26 criminal history check and the state agency determines whether the applicant
27 is disqualified from employment under subsection (f) of this section.

28 (3)(A) If a criminal history record regarding the applicant is
29 found in the bureau's database, then the applicant is temporarily
30 disqualified from employment until the state agency determines whether the
31 applicant is disqualified from employment under subsection (f) of this
32 section.

33 (B) If the state agency determines that the applicant is
34 not disqualified, then the state agency may continue to temporarily employ
35 the applicant while the bureau completes a criminal history check.

36 (4) If an applicant has been named as an offender or perpetrator

1 in a true, substantiated, or founded report from the Child Maltreatment
2 Central Registry, or the Adult and Long-Term Care Facility Resident
3 Maltreatment Central Registry, ~~or the Certified Nursing Assistant/Employment~~
4 ~~Clearance Registry~~, the applicant shall be immediately disqualified.

5 (b)(1) Except as provided in subdivision (b)(2) of this section, the
6 bureau shall conduct a state criminal history check and a national criminal
7 history check on an applicant upon receiving a criminal history check request
8 from a state agency.

9 (2)(A) If the state agency can verify that the applicant ~~has~~
10 ~~been employed by a state agency in a designated position within sixty (60)~~
11 ~~days before the application or~~ has lived continuously in the State of
12 Arkansas for the past five (5) years, the bureau shall conduct only a state
13 criminal history check on the applicant.

14 (B) If the state agency can verify that the selected
15 applicant currently works for a state agency in a designated position or a
16 designated financial or information technology position and the state agency
17 can provide verification that a criminal history check for that position has
18 been completed in the last five (5) years, the state agency does not need to
19 conduct another criminal history check on the employee until the criminal
20 history check is five (5) years old.

21
22 *SECTION 3. Arkansas Code § 21-15-103(a) is amended to read as follows:*

23 (a)(1)~~(A)~~ ~~State agencies shall ensure that all employees in designated~~
24 ~~positions will have applied for criminal history checks by October 1, 2000,~~
25 ~~and shall adopt a rule that prescribes how criminal background checks on~~
26 ~~incumbent employees will be phased in over the period of time prior to July~~
27 ~~1, 2000.~~

28 ~~(B)~~ An incumbent employee in a designated position shall
29 have a subsequent criminal background check completed within five (5) years
30 of the initial criminal background check and every five (5) years thereafter.

31 ~~(2)(A)~~ ~~State agencies shall ensure that all employees in~~
32 ~~designated positions will have applied for central registry checks by October~~
33 ~~1, 2002, and shall adopt a rule that prescribes how central registry checks~~
34 ~~on incumbent employees will be phased in over the period of time prior to~~
35 ~~July 1, 2002.~~

36 ~~(B)~~ An incumbent employee in a designated position shall

1 have subsequent central registry ~~checks~~ check completed within five (5) years
2 of the initial central registry check and every five (5) years thereafter.

3 (3) In accordance with subdivisions (a)(1) and (2) of this
4 section, each employee of a state agency in a designated position shall
5 complete a criminal history check form and a central registry check form
6 obtained from the state agency and shall submit the form to the state agency.
7 The state agency shall ~~forward~~:

8 (A)(i) Use the Online Criminal Background Check System to
9 obtain a criminal history check or forward the ~~The~~ criminal history check
10 form to the Identification Bureau of the Department of Arkansas State Police.

11 (ii) The state agency shall pay any fee associated
12 with the criminal history check on behalf of the employee; and

13 (B)(i) Forward the ~~The~~ central registry check to the Child
14 Maltreatment Central Registry, and the Adult and Long-Term Care Facility
15 Resident Maltreatment Central Registry, ~~and the Certified Nurses Assistants~~
16 ~~Central Registry~~ for a review of the registry databases.

17 (ii) The state agency shall pay any fee associated
18 with the central registry checks.

19
20 SECTION 4. Arkansas Code § 21-15-104 9(a)(2) regarding a central
21 registry check for an application for ~~wavier~~ waiver of exclusion or discharge
22 requirement for a person in designated position is amended to read as
23 follows:

24 (a)(1) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-
25 103(e), 21-15-103(g), and 21-15-110(b) may be waived by the director of a
26 state agency upon the request of:

27 (A) A supervisor or other managerial employee in the state
28 agency;

29 (B) An affected applicant for employment; or

30 (C) The person in a designated position who is subject to
31 discharge.

32 (2) Application for a waiver must be made within five (5) days
33 of receipt of the criminal background check or central registry check.

34 (3) If the crime is a misdemeanor and more than five (5) years
35 have ~~lapsed~~ elapsed since the conviction, the state agency is not required to
36 discharge an incumbent employee if a request for a waiver is timely made and

1 if the waiver is ultimately granted.

2 (4) If the waiver is not granted and the waiver applicant is an
3 incumbent employee who was not immediately discharged, the state agency shall
4 immediately discharge the employee.

5 (5) If the waiver is not granted and the waiver applicant is an
6 applicant for employment, the state agency is prohibited from hiring the
7 applicant.

8 (6) If an incumbent employee was immediately discharged but was
9 subsequently granted a waiver, the employee shall be immediately reinstated
10 but shall not be entitled to retroactive relief, including back pay.

11
12 SECTION 5. Arkansas Code § 21-15-106(b) regarding the Certified
13 Nursing Assistant/Employment Clearance Registry and records maintained by
14 agencies on applicants and employees is amended to read as follows:

15 (b) Each state agency shall maintain on file, subject to inspection by
16 the Arkansas Crime Information Center, the Identification Bureau of the
17 Department of Arkansas State Police, ~~or~~ the Child Maltreatment Central
18 Registry, and the Adult and Long-Term Care Facility Resident Maltreatment
19 Central Registry ~~or the Certified Nursing Assistant/Employment Clearance~~
20 ~~Registry~~ evidence that criminal history and central registry checks required
21 by this subchapter have been initiated on all applicants and employees.

22
23 SECTION 6. Arkansas Code § 21-15-107(d)(2) regarding the Certified
24 Nursing Assistant/Employment Clearance Registry is amended to read as
25 follows:

26 (d)(1) The Identification Bureau of the Department of Arkansas State
27 Police shall develop a form to be used for criminal history checks conducted
28 under this subchapter. The form shall require the notarized signature of the
29 person who is the subject of the check.

30 (2) The Child Maltreatment Central Registry, and the Adult and
31 Long-Term Care Facility Resident Maltreatment Central Registry, ~~and the~~
32 ~~Certified Nursing Assistant/Employment Clearance Registry~~ shall work together
33 to develop a form to be used for central registry checks conducted under this
34 subchapter. The form shall require the notarized signature of the person who
35 is the subject of the check.

36

1 SECTION 7. Arkansas Code § 21-15-111(a) and (b) are amended to read as
2 follows:

3 (a)(1)(A) When a person applies for employment with a state agency in
4 a designated financial or information technology position and if the state
5 agency intends to make an offer of employment to the applicant, the applicant
6 shall complete a criminal history check form and shall submit the form to the
7 state agency as part of the application process.

8 (B) Within five (5) days of the state agency's decision to
9 make an offer of employment to the applicant, the state agency shall use the
10 Online Criminal Background Check System to obtain the criminal history or
11 forward the criminal history check form to the Identification Bureau of the
12 Department of Arkansas State Police and request the bureau to review the
13 database of criminal history.

14 (C) Within three (3) days of the receipt of a request to
15 review the database, the bureau shall notify the state agency if the database
16 contains any criminal history record on the applicant.

17 (2) If no criminal history record regarding the applicant is
18 found in the database, then the state agency may make an offer of temporary
19 employment to the applicant while the bureau completes a criminal history
20 check and the state agency determines whether the applicant is disqualified
21 from employment under subsection (f) of this section.

22 (3)(A) If a criminal history record regarding the applicant is
23 found in the database, then the applicant is temporarily disqualified from
24 employment until the state agency determines whether the applicant is
25 disqualified from employment under subsection (f) of this section.

26 (B) If the state agency determines that the applicant is
27 not disqualified, then the state agency may continue to temporarily employ
28 the applicant while the bureau completes a criminal history check.

29 (b)(1) Except as provided in subdivision (b)(2) of this section, the
30 bureau shall conduct a state criminal history check and a national criminal
31 history check on an applicant upon receiving a criminal history check request
32 from a state agency.

33 (2)(A) If the state agency can verify that the applicant has been
34 employed by a state agency in a designated financial or information
35 technology position within sixty (60) days before the application or has
36 lived continuously in the State of Arkansas for the past five (5) years, the

1 bureau shall conduct only a state criminal history check on the applicant.

2 (B) If the state agency can verify that the selected
3 applicant currently works for a state agency in a designated position or a
4 designated financial or information technology position and the state agency
5 can provide verification that a criminal history check for that position has
6 been completed in the last five (5) years, the state agency does not need to
7 conduct another criminal history check on the employee until the criminal
8 history check is five (5) years old.

9
10 *SECTION 8. Arkansas Code § 21-15-112(a) is amended to read as follows:*

11 (a)(1) State agencies shall ensure that all employees in designated
12 financial or information technology positions apply for criminal history
13 checks by December 1, 2005.

14 (2) An incumbent employee in a designated financial or
15 information technology position shall have a subsequent criminal background
16 check within five (5) years of the initial criminal background check and
17 every five (5) years thereafter.

18 (3)(A) In accordance with subdivisions (a)(1) and (2) of this
19 section, each employee of a state agency in a designated financial or
20 information technology position shall complete a criminal history check form
21 and shall submit the form to the state agency.

22 (B) The state agency shall:

23 (i) ~~Forward~~ Use the Online Criminal Background Check
24 System to obtain the criminal history or forward the Identification Bureau of
25 the Department of Arkansas State Police; and

26 (ii) Pay any fee associated with the criminal
27 history check on behalf of the employee.

28
29 /s/ Garner

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31 *APPROVED: 4/3/2007*