

**PUBLIC CHAPTER NO. 1084**

**HOUSE BILL NO. 2284**

**By Representatives Ferguson, Mike Turner, Gilmore, Moore, Lois DeBerry, Tindell, Maggart, Pruitt, Coley, Fincher, Pitts, Hardaway, Curtis Johnson, McCormick, Carr, Cooper, Lollar, Campfield, Todd, Faulkner, Bone, Eldridge, Litz, McCord, Weaver, Rich, Shipley, Brown, Harrison, Watson, Ulysses Jones, Barker, Maddox, Montgomery, Jim Cobb, Ramsey, Hill, Ty Cobb, Sherry Jones, Bass, Coleman, Miller, Hawk, Ford, Dunn, Fraley, Sontany, Fitzhugh, McDonald, Richardson, McManus, Armstrong, Kevin Brooks, Shepard, Winningham, Yokley, Roach, White, Evans, Marsh, Sargent, Haynes, Towns, Harry Brooks, Hackworth, Halford, Lundberg, Stewart, Swafford, Phillip Johnson, McDaniel, Dean and Mr. Speaker Williams**

Substituted for: Senate Bill No. 2297

By Senators Kyle, Finney, Marrero, Burks, Yager, Harper, Black, Ford, Barnes, Stewart, Berke, Tate

AN ACT to amend Tennessee Code Annotated, Title 33; Title 34; Title 63; Title 68 and Title 71, relative to the protection of elderly and disabled adults.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following as a new section:

63-1-149.

(a) On and after October 1, 2010, before employing or contracting with any person who would be providing direct patient care, for whom a background check has not been completed, a health care professional licensed under any chapter of title 63 or title 68, chapters 24 and 140, shall initiate and perform a "registry check" which for the purposes of this section is defined as:

(1) A state-by-state look in any state in which the person has lived in the previous seven (7) years of the national sex offender public registry website coordinated by the United States department of justice, including but not limited to the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and

(2) Any adult abuse registry maintained for any state in which the person has lived in the previous seven (7) years; and

(3) The department of health's elder abuse registry established pursuant to title 68, chapter 11, part 10.

(b) Should an applicant be listed on any of the registries listed above in subdivisions (a)(1)-(3), the health care professional shall not employ or contract with the person if the person would be providing direct patient care.

(c) A health care professional who complies with the requirements to perform registry checks under subsection (a), or relies on a documented representation provided by an entity with which the health care professional contracts that the person who will work in the office is not on any of these registries, shall not be subject to civil or criminal liability solely based upon the information provided through a registry check under this section. This immunity shall extend to a claim related to the professional's refusal to employ or contract with a person based on information obtained from a registry check.

(d) This section is not intended to apply to contracted, external staff who provide such services as cleaning services, maintenance of office or medical equipment or other services where direct patient contact is not intended.

(e) This section shall not apply to health care professionals licensed under title 63, chapter 12.

(f) The department of health shall post no later than October 1, 2010 in a conspicuous location on its website as well as the website of each applicable licensing board a link to all potential databases the health care professional would be required to check pursuant to subsection (a) above. In addition, each applicable licensing board shall notify all of its licensees at least annually through board newsletters of their obligations under this statute.

SECTION 2. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

68-11-271.

(a) Prior to employing or contracting with any person providing direct care to a resident or patient, for whom a background check has not been completed, a health care facility licensed under title 68 shall initiate and perform a "registry check" which for the purposes of this section is defined as:

(1) A state-by-state look in any state in which the person has lived in the previous seven (7) years of the national sex offender public registry website coordinated by the United States department of justice; and

(2) Any adult abuse registry maintained for any state in which the person has lived during the previous seven (7) years; and

(3) The department of health's elder abuse registry established pursuant to title 68, chapter 11, part 10.

(b) A health care facility may not employ or contract with any person providing direct care to a resident or patient if that individual is listed on any of the registries listed above in sections (a)(1)-(3).

(c) If a health care facility contracts with a company, organization, or agency that provides or arranges for the provision of direct care to a resident or patient, the facility satisfies the requirements of subsection (a) by:

(1) Receiving and retaining written documentation that an individual supplied by that company, organization, or agency is not listed on any of those registries, or;

(2) Relying on a written contractual representation that such company, organization, or agency conducts the name searches required by subdivisions (a)(1)-(3), and any individual supplied by that company, organization, or agency is not listed on any of those registries; or

(3) Satisfying both (1) and (2).

(d) This section is not intended to apply to contracted, external staff who provide such services as cleaning services, maintenance of office or medical equipment or other services where direct patient contact is not intended.

(e) A health care facility that complies with the requirements to perform a "registry check" under subsection (a), (c), or both, shall not be subject to civil or criminal liability solely based upon the information provided through a registry check under this section. This immunity shall extend to a claim related to the facility's refusal to employ or contract with a person based on information obtained from a registry check.

(f) The department of health shall post no later than October 1, 2010 in a conspicuous location on its website as well as the website of the board for licensing health care facilities a link to all databases listed in subdivisions (a)(1)-(3) above. In addition, the department of health shall notify all health care facilities annually through licensure renewals of their obligations under this section.

(g) The requirements of this section shall become effective on and after October 1, 2010.

SECTION 3. Tennessee Code Annotated, Section 33-2-1202, is amended by adding the following as a new subsection (e):

(e)

(1) Notwithstanding the provisions of subsection (b), only with respect to organizations which contract with the division of intellectual disabilities services for residential services, day services or supported employment services, each such organization shall have a criminal background check completed prior to employing any person who will be in a position that involves providing direct care to a service recipient. If a current employee of such organization has a change of responsibilities that includes direct care to a service recipient, then the organization shall have a criminal background check completed prior to such change. The organization shall inform the employee that it will conduct a background check. The employee shall:

(A) Provide past work history containing a continuous description of activities over the past five (5) years;

(B) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years;

(C) Release all investigative records to the organization for examination for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization; and

(D)

(i) Supply fingerprint samples to be submitted for a criminal history records check to be conducted by the Tennessee bureau of investigation or the federal bureau of investigation; or

(ii) Release information for a criminal background investigation by a state licensed private investigation company.

(2) An organization which contracts with the division of intellectual disabilities services for residential services, day services or supported employment services shall check past work and personal references prior to employment of applicants. At a minimum such organization shall communicate directly with the most recent employer and each employer identified by the applicant as having employed the applicant for more than six (6) months in the past five (5) years. The organization shall communicate directly with at least two (2) of the personal references identified by the applicant. Prior to employment, the organization shall submit the information required to be provided by this subsection (e) to the entity that will conduct the criminal background check.

SECTION 4. Tennessee Code Annotated, Section 33-2-1202(c), is amended by designating the existing language as subdivision (a) and by adding the following language as a new subdivision (2):

(2) The provisions of this subsection and subsection (b) shall not apply to organizations which contract with the division of intellectual disabilities services for residential services, day services or supported employment services and such organizations shall comply with the provisions of subsection (e).

SECTION 5. This act shall take effect on October 1, 2010, the public welfare requiring it.

**PASSED: June 3, 2010**



KENT WILLIAMS, SPEAKER  
HOUSE OF REPRESENTATIVES



RON RAMSEY  
SPEAKER OF THE SENATE

**APPROVED this 23rd day of June 2010**



PHIL BREDESEN, GOVERNOR