

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.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 1466

4
5 By: Representative Verkamp
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For An Act To Be Entitled

9 AN ACT TO PROVIDE THAT CERTAIN EXPUNGED OFFENSES
10 DO NOT CAUSE DISQUALIFICATION FROM EMPLOYMENT FOR
11 PERSONS CARING FOR THE ELDERLY; TO REDUCE THE
12 PERIOD OF DISQUALIFICATION FOR CERTAIN
13 MISDEMEANOR OFFENSES; AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT TO PROVIDE THAT RECORDS OF
16 CERTAIN CRIMINAL OFFENSES OF PERSONS
17 CARING FOR THE ELDERLY DO NOT CAUSE
18 DISQUALIFICATION FROM EMPLOYMENT IF THE
19 RECORDS HAVE BEEN EXPUNGED.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 20-33-205 is amended to read as follows:

26 20-33-205. Provisional licenses - Disqualification from employment -
27 Resubmission of applications - Denial or revocation - Penalties.

28 (a) Except as provided in ~~subsection (e)~~ subsections (c), (d), or (f)
29 of this section:

30 (1) A licensing agency shall issue a forty-five-day provisional
31 license to a qualified entity whose operator has been found guilty or has
32 pleaded guilty or nolo contendere to any of the offenses listed in subsection
33 (b) of this section;

34 (2) A licensing agency shall issue a determination that a person
35 is disqualified from employment with a qualified entity if the person has
36 been found guilty or pleaded guilty or nolo contendere to any of the offenses



1 listed in subsection (b) of this section; and

2 (3)(A) A qualified entity shall not knowingly employ a person
3 who has pleaded guilty or nolo contendere to or has been found guilty of any
4 of the offenses listed in subsection (b) of this section by any court in the
5 State of Arkansas or of any similar offense by a court in another state or of
6 any similar offense by a federal court.

7 (B) Except as provided in ~~subsection (e)~~ subsections (c),
8 (d), or (f) of this section:

9 (i) A licensing agency shall issue a forty-five-day
10 provisional license to a qualified entity whose operator has been found
11 guilty of or pleaded guilty or nolo contendere to any of the offenses listed
12 in subsection (b) of this section; and

13 (ii) A licensing agency shall issue a determination
14 that a person is disqualified from employment with a qualified entity if the
15 person has been found guilty of or pleaded guilty or nolo contendere to any
16 of the offenses listed in subsection (b) of this section. A requesting agency
17 shall issue a determination that a person or ElderChoices provider is
18 disqualified from providing care to the elderly or to an individual with a
19 disability, or both, if the person or provider has been found guilty of or
20 pleaded guilty or nolo contendere to any of the offenses listed in subsection
21 (b) of this section.

22 (b)(1) Capital murder, as prohibited in § 5-10-101;

23 (2) Murder in the first degree and second degree, as prohibited
24 in §§ 5-10-102 and 5-10-103;

25 (3) Manslaughter, as prohibited in § 5-10-104;

26 (4) Negligent homicide, as prohibited in § 5-10-105;

27 (5) Kidnapping, as prohibited in § 5-11-102;

28 (6) False imprisonment in the first degree, as prohibited in §
29 5-11-103;

30 (7) Permanent detention or restraint, as prohibited in § 5-11-
31 106;

32 (8) Robbery, as prohibited in § 5-12-102;

33 (9) Aggravated robbery, as prohibited in § 5-12-103;

34 (10) Battery, as prohibited in §§ 5-13-201 - 5-13-203;

35 (11) Aggravated assault, as prohibited in § 5-13-204;

36 (12) Introduction of controlled substance into body of another

- 1 person, as prohibited in § 5-13-210;
- 2 (13) Terroristic threatening in the first degree, as prohibited
- 3 in § 5-13-301;
- 4 (14) Rape, as prohibited in § 5-14-103;
- 5 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 6 (16) Sexual assault in the first degree, second degree, third
- 7 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- 8 (17) Incest, as prohibited in § 5-26-202;
- 9 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
- 10 5-26-306;
- 11 (19) Endangering the welfare of incompetent person in the first
- 12 degree, as prohibited in § 5-27-201;
- 13 (20) Endangering the welfare of a minor in the first degree, as
- 14 prohibited in § 5-27-203;
- 15 (21) Permitting child abuse, as prohibited in § 5-27-221(a)(1)
- 16 and (3);
- 17 (22) Engaging children in sexually explicit conduct for use in
- 18 visual or print media, transportation of minors for prohibited sexual
- 19 conduct, pandering or possessing visual or print medium depicting sexually
- 20 explicit conduct involving a child, or use of a child or consent to use of a
- 21 child in a sexual performance by producing, directing, or promoting a sexual
- 22 performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,
- 23 and 5-27-403;
- 24 (23) Felony adult abuse, as prohibited by § 5-28-103;
- 25 (24) Theft of property, as prohibited in § 5-36-103;
- 26 (25) Theft by receiving, as prohibited in § 5-36-106;
- 27 (26) Arson, as prohibited in § 5-38-301;
- 28 (27) Burglary, as prohibited in § 5-39-201;
- 29 (28) Felony violation of the Uniform Controlled Substances Act,
- 30 § 5-64-101 et seq., as prohibited in § 5-64-401;
- 31 (29) Promotion of prostitution in the first degree, as
- 32 prohibited in § 5-70-104;
- 33 (30) Stalking, as prohibited in § 5-71-229;
- 34 (31) Criminal attempt, criminal complicity, criminal
- 35 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
- 36 5-3-301, and 5-3-401, to commit any of the offenses listed in this

1 subsection;

2 (32) Forgery, as prohibited in § 5-37-201;

3 (33) Breaking or entering, as prohibited in § 5-39-202;

4 (34) Obtaining a controlled substance by fraud, as prohibited in
5 § 5-64-403;

6 (35) Computer child pornography, as prohibited in § 5-27-603;

7 and

8 (36) Computer exploitation of a child in the first degree, as
9 prohibited in § 5-27-605.

10 (c) A qualified entity that is issued a provisional license based on
11 the criminal history of the operator may resubmit the application for
12 licensure with a new operator. If the qualified entity does not resubmit the
13 application within fifteen (15) days of the issuance of the provisional
14 license, then the qualified entity's license shall be immediately denied or
15 revoked.

16 (d)(1) The provisions of this section shall not be waived by the
17 licensing or requesting agency.

18 (2)(A) Except as provided in subdivision (d)(2)(B) of this
19 section, a conviction ~~for an~~ or plea of guilty or nolo contendere for a
20 felony offense listed in subsection (b) of this section shall not disqualify
21 an applicant for employment if the date of conviction of the offense is at
22 least ten (10) years from the date of the application and the individual has
23 no criminal convictions of any type or nature during the ten-year period. ~~To~~
24 ~~the extent that there is any conflict with § 17-1-103, this section shall be~~
25 ~~deemed to supersede § 17-1-103.~~

26 (B) Because of the serious nature of the offenses and the
27 close relationship to the type of work that is to be performed, the following
28 shall result in permanent disqualification of employment:

29 (i) Capital murder, as prohibited in § 5-10-101;

30 (ii) Murder in the first degree and murder in the
31 second degree, as prohibited in §§ 5-10-102 and 5-10-103;

32 (iii) Kidnapping, as prohibited in § 5-11-102;

33 (iv) Rape, as prohibited in § 5-14-103;

34 (v) Sexual assault in the first degree and second
35 degree, as prohibited in §§ 5-14-124 and 5-14-125;

36 (vi) Endangering the welfare of incompetent person

1 in the first degree, as prohibited in § 5-27-201;

2 (vii) Felony adult abuse, as prohibited by § 5-28-
3 103; and

4 (viii) Arson, as prohibited in § 5-38-301.

5 (e)(1) A qualified entity shall not be disqualified from licensure
6 when the operator has been found guilty of or has pleaded guilty or nolo
7 contendere to a misdemeanor if the offense did not involve exploitation of an
8 adult, abuse of a person, neglect of a person, theft, or sexual contact.

9 (2) An applicant, ElderChoices provider, or employee shall not
10 be disqualified from permanent employment or providing care to the elderly or
11 an individual with a disability, or both, when the applicant, provider, or
12 employee has been found guilty of or has pleaded guilty or nolo contendere to
13 a misdemeanor if the offense did not involve exploitation of an adult, abuse
14 of a person, neglect of a person, theft, or sexual contact.

15 (f) For purposes of this section, an expunged record of a conviction
16 or plea of guilty or nolo contendere to an offense listed in subsection (b)
17 of this section shall not be considered a conviction, guilty plea, or nolo
18 contendere plea unless the offense is also listed in subdivision (d)(2)(B).

19 ~~(f)~~ (g) If an operator or qualified entity fails or refuses to
20 cooperate in obtaining criminal records checks, such circumstances shall be
21 grounds to deny or revoke the qualified entity’s license or other operating
22 authority, provided the process of obtaining criminal records checks shall
23 not delay the process of the application for a license or other operational
24 authority.

25 ~~(g)~~ (h) Any unlicensed qualified entity violating this subchapter
26 shall be guilty of a Class A misdemeanor for each violation.

27 (i) To the extent that there is any conflict with § 17-1-103, this
28 section shall supersede § 17-1-103.

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