

S. 1623

A. 4288

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 3, 2009

IN SENATE -- Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

IN ASSEMBLY -- Introduced by M. of A. CAMARA, LANCMAN, ERRIGO, MILLMAN, SPANO, REILLY, FIELDS, CHRISTENSEN, CROUCH, DelMONTE, DIAZ, GIGLIO, HYER-SPENCER, McDONOUGH, ORTIZ, PEOPLES, PHEFFER, TOWNSEND, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the executive law, in relation to the review of criminal history information concerning prospective residents of nursing homes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The public health law is amended by adding a new article
2 28-F to read as follows:

3 ARTICLE 28-F

4 REVIEW OF CRIMINAL HISTORY INFORMATION
5 OF PROSPECTIVE RESIDENTS OF NURSING HOMES

6 SECTION 2899-B. DEFINITIONS.

7 2899-C. REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING
8 PROSPECTIVE RESIDENTS.

9 S 2899-B. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING WORDS
10 AND PHRASES SHALL HAVE THE FOLLOWING MEANINGS:

11 1. "CRIMINAL HISTORY INFORMATION" SHALL MEAN A RECORD OF PENDING CRIM-
12 INAL CHARGES, CRIMINAL CONVICTIONS WHICH HAVE NOT BEEN VACATED OR
13 REVERSED, INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION AS A
14 RESULT OF A NATIONAL CRIMINAL HISTORY RECORD CHECK, AND CERTIFICATES
15 FILED PURSUANT TO SUBDIVISION TWO OF SECTION SEVEN HUNDRED FIVE OF THE
16 CORRECTION LAW AND WHICH THE DIVISION OF CRIMINAL JUSTICE SERVICES IS
17 REQUIRED TO MAINTAIN PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT
18 HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 2. "DETERMINATION" SHALL MEAN THE DECISION MADE BY THE DEPARTMENT
2 AFTER REVIEWING CRIMINAL HISTORY INFORMATION TO APPROVE OR DISAPPROVE A
3 PROSPECTIVE RESIDENT'S ELIGIBILITY FOR RESIDENCE AT A NURSING HOME. ALL
4 SUCH DETERMINATIONS SHALL BE MADE IN ACCORDANCE WITH SECTION EIGHT
5 HUNDRED FORTY-FIVE-C OF THE EXECUTIVE LAW.

6 3. "NURSING HOME" SHALL MEAN A NURSING HOME AS DEFINED IN SECTION
7 TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

8 4. "PERMANENT RECORD" SHALL MEAN A PERMANENT, WRITTEN RECORD OF A
9 DETERMINATION AND THE CRIMINAL HISTORY INFORMATION MAINTAINED BY THE
10 DEPARTMENT FOR A PERIOD NOT TO EXCEED TEN YEARS.

11 5. "PROSPECTIVE RESIDENT" SHALL MEAN ANY INDIVIDUAL, NOT CURRENTLY A
12 RESIDENT, WHO FILES AN APPLICATION FOR RESIDENCE IN A NURSING HOME AND
13 THE NURSING HOME HAS A REASONABLE EXPECTATION TO ACCEPT SUCH INDIVIDUAL
14 AS A RESIDENT.

15 S 2899-C. REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING
16 PROSPECTIVE RESIDENTS. 1. A NURSING HOME SHALL REQUEST THAT THE DEPART-
17 MENT CHECK, AND UPON SUCH REQUEST THE DEPARTMENT SHALL CHECK ITS PERMA-
18 NENT RECORD ACCORDING TO THIS SECTION FOR A DETERMINATION ON A PROSPEC-
19 TIVE RESIDENT. IF A PERMANENT RECORD DOES NOT EXIST FOR THE PROSPECTIVE
20 RESIDENT, THE DEPARTMENT SHALL BE AUTHORIZED TO REQUEST AND RECEIVE
21 CRIMINAL HISTORY INFORMATION CONCERNING THE PROSPECTIVE RESIDENT FROM
22 THE DIVISION OF CRIMINAL JUSTICE SERVICES IN ACCORDANCE WITH THE
23 PROVISIONS OF SECTION EIGHT HUNDRED FORTY-FIVE-C OF THE EXECUTIVE LAW.
24 ACCESS TO AND THE USE OF SUCH INFORMATION SHALL BE GOVERNED BY THE
25 PROVISIONS OF SUCH SECTION. THE DIVISION OF CRIMINAL JUSTICE SERVICES IS
26 AUTHORIZED TO SUBMIT FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION
27 FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK.

28 2. TO THE EXTENT PERMITTED BY LAW, A NURSING HOME SHALL REQUEST AND
29 RECEIVE FROM A PROSPECTIVE RESIDENT A SWORN STATEMENT DISCLOSING ANY
30 PRIOR FINDING AS A SEX OFFENDER, AS DEFINED IN SECTION ONE HUNDRED
31 SIXTY-EIGHT-A OF THE CORRECTION LAW, OR ANY CRIMINAL CONVICTION THE
32 SENTENCE FOR WHICH EXPIRED WITHIN THE PREVIOUS FIVE YEARS. NURSING HOMES
33 SHALL EVALUATE SUCH STATEMENTS IN ALL RESIDENCE DECISIONS, INCLUDING ANY
34 TEMPORARY APPROVALS ALLOWED UNDER SECTION EIGHT HUNDRED FORTY-FIVE-C OF
35 THE EXECUTIVE LAW AND THE PROVISIONS OF THIS SECTION. THE FAILURE OR
36 REFUSAL OF ANY PROSPECTIVE RESIDENT TO PROVIDE ANY CONSENT, INFORMATION
37 OR FINGERPRINTS NECESSARY FOR A DETERMINATION OF SUCH PROSPECTIVE RESI-
38 DENT'S CRIMINAL HISTORY SHALL RESULT IN THE DENIAL OF ELIGIBILITY FOR
39 RESIDENCE AT THE NURSING HOME.

40 3. NO PERSON WHO HAS BEEN FINGERPRINTED PURSUANT TO THIS ARTICLE AND
41 WHOSE FINGERPRINTS REMAIN ON FILE WITH THE DIVISION OF CRIMINAL JUSTICE
42 SERVICES SHALL BE REQUIRED TO UNDERGO FINGERPRINTING FOR PURPOSES OF A
43 NEW STATE CHECK REQUIRED BY THIS ARTICLE.

44 4. THE COMMISSIONER SHALL PROMULGATE ALL RULES AND REGULATIONS NECES-
45 SARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE, WHICH SHALL INCLUDE
46 CONVENIENT PROCEDURES FOR PROSPECTIVE RESIDENTS TO VERIFY THE ACCURACY
47 OF THEIR CRIMINAL HISTORY INFORMATION AND, TO THE EXTENT AUTHORIZED BY
48 LAW, TO HAVE ACCESS TO RELEVANT DOCUMENTS RELATED THERETO.

49 5. THE DEPARTMENT MAY ACCEPT DIGITAL FINGERPRINT IMAGES OR ANY OTHER
50 ACCEPTABLE TECHNOLOGICAL DEVICES USED TO OBTAIN AND/OR TRANSMIT FINGER-
51 PRINT IMAGES FOR THE PURPOSES OF THIS ARTICLE, AS PROVIDED FOR IN THE
52 RULES AND REGULATIONS ESTABLISHED BY THE COMMISSIONER PURSUANT TO SUBDI-
53 VISION FOUR OF THIS SECTION. TO THE EXTENT FUNDS ARE AVAILABLE THEREFOR,
54 GRANTS TO ASSIST AND FACILITATE THE PURCHASE OF TECHNOLOGY SHALL BE
55 AVAILABLE TO NURSING HOMES WHICH DEMONSTRATE THE NEED FOR FINANCIAL
56 ASSISTANCE AS DETERMINED BY THE DEPARTMENT.

6. THE DEPARTMENT PROMPTLY SHALL MAKE ALL DETERMINATIONS AND ACTIONS REQUIRED BY SECTION EIGHT HUNDRED FORTY-FIVE-C OF THE EXECUTIVE LAW UPON RECEIPT OF THE INFORMATION FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF INVESTIGATION. THE DEPARTMENT SHALL CREATE A PERMANENT RECORD, UPDATE THE INFORMATION IN ACCORDANCE WITH SECTION EIGHT HUNDRED FORTY-FIVE-C OF THE EXECUTIVE LAW AND MAKE SUCH RECORDS AVAILABLE TO NURSING HOMES PURSUANT TO THIS SECTION.

7. THE DEPARTMENT SHALL ALLOW ALL NURSING HOMES ACCESS TO ANY DETERMINATION MADE UPON A PROSPECTIVE RESIDENT AT SUCH TIME AS SUCH PROSPECTIVE RESIDENT PRESENTS HIMSELF OR HERSELF TO SUCH NURSING HOME FOR RESIDENCE. IN THE EVENT THAT THE PROSPECTIVE RESIDENT HAS A PERMANENT RECORD ALREADY ON FILE WITH THE DEPARTMENT, THIS INFORMATION PROMPTLY SHALL BE MADE AVAILABLE TO THE NURSING HOME WHICH MAY PROVIDE RESIDENCE TO SUCH PROSPECTIVE RESIDENT.

8. THE APPLICATION FEE FOR RESIDENCE IN A NURSING HOME SHALL INCLUDE AN ADDITIONAL SUM OF MONEY SUFFICIENT TO PAY FOR THE PROJECTED COST OF THE FEE ESTABLISHED BY LAW BY THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR PROCESSING A CRIMINAL HISTORY INFORMATION CHECK, THE FEE IMPOSED BY THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY CHECK, AND COSTS ASSOCIATED WITH OBTAINING FINGERPRINTS.

S 2. The executive law is amended by adding a new section 845-c to read as follows:

S 845-C. REQUESTS FOR CRIMINAL HISTORY INFORMATION; PROSPECTIVE NURSING HOME RESIDENTS. 1. AS USED IN THIS SECTION:

(A) "AUTHORIZED PERSON" MEANS THE ONE INDIVIDUAL DESIGNATED BY A PROVIDER WHO IS AUTHORIZED TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION, EXCEPT THAT WHERE THE NUMBER OF APPLICATIONS RECEIVED BY A PROVIDER IS SO GREAT THAT ONE PERSON CANNOT REASONABLY PERFORM THE FUNCTIONS OF THE AUTHORIZED PERSON, A PROVIDER MAY DESIGNATE ONE OR MORE ADDITIONAL PERSONS TO SERVE AS AUTHORIZED PERSONS PURSUANT TO THIS SECTION.

(B) "CRIMINAL HISTORY INFORMATION" MEANS A RECORD OF PENDING CRIMINAL CHARGES, CRIMINAL CONVICTIONS WHICH ARE NOT VACATED OR REVERSED, AND CERTIFICATES FILED PURSUANT TO SUBDIVISION TWO OF SECTION SEVEN HUNDRED FIVE OF THE CORRECTION LAW, AND WHICH THE DIVISION IS AUTHORIZED TO MAINTAIN PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS ARTICLE. FOR THE PURPOSES OF CRIMINAL HISTORY INFORMATION CHECKS AUTHORIZED PURSUANT TO ARTICLE TWENTY-EIGHT-E OF THE PUBLIC HEALTH LAW, CRIMINAL HISTORY INFORMATION SHALL ALSO INCLUDE INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION AS A RESULT OF A NATIONAL CRIMINAL HISTORY RECORD CHECK.

(C) "NURSING HOME" MEANS A NURSING HOME AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW.

(D) "PROSPECTIVE RESIDENT" MEANS ANY INDIVIDUAL, NOT CURRENTLY A RESIDENT, WHO FILES AN APPLICATION FOR RESIDENCE IN A NURSING HOME AND THE NURSING HOME HAS A REASONABLE EXPECTATION TO ACCEPT SUCH INDIVIDUAL AS A RESIDENT.

2. WHERE A NURSING HOME IS REQUIRED TO REQUEST A CHECK OF CRIMINAL HISTORY INFORMATION BY THE DEPARTMENT OF HEALTH PURSUANT TO ARTICLE TWENTY-EIGHT-F OF THE PUBLIC HEALTH LAW, SUCH NURSING HOME SHALL PROCEED PURSUANT TO THE PROVISIONS OF THIS SECTION AND IN A MANNER CONSISTENT WITH THE PROVISIONS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, SUBDIVISIONS FIFTEEN AND SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THIS CHAPTER AND ALL OTHER APPLICABLE LAWS.

3. (A) A NURSING HOME REQUIRED TO REQUEST A CHECK OF CRIMINAL HISTORY INFORMATION PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL DESIGNATE

1 ONE AUTHORIZED PERSON WHO SHALL REQUEST A CHECK OF CRIMINAL HISTORY
2 INFORMATION ON BEHALF OF SUCH NURSING HOME PURSUANT TO THIS SECTION AND
3 REVIEW THE RESULTS OF SUCH CHECK. ONLY SUCH AUTHORIZED PERSON OR HIS OR
4 HER DESIGNEE AND THE PROSPECTIVE RESIDENT TO WHOM SUCH CRIMINAL HISTORY
5 INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED,
6 HOWEVER, THAT CRIMINAL HISTORY INFORMATION RECEIVED BY A NURSING HOME
7 MAY BE DISCLOSED TO OTHER PERSONS WHO ARE DIRECTLY PARTICIPATING IN ANY
8 DECISION IN REGARD TO SUCH PROSPECTIVE RESIDENT; AND PROVIDED, FURTHER,
9 THAT SUCH OTHER PERSONS SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY
10 REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION. IN THE CASE OF
11 REQUESTS MADE PURSUANT TO ARTICLE TWENTY-EIGHT-F OF THE PUBLIC HEALTH
12 LAW, ONLY INFORMATION AUTHORIZED FOR DISCLOSURE UNDER APPLICABLE FEDERAL
13 LAWS SHALL BE TRANSMITTED TO THE NURSING HOME. EACH NURSING HOME SHALL
14 SPECIFICALLY IDENTIFY TO THE DEPARTMENT OF HEALTH IN WRITING, IN ADVANCE
15 OF DISCLOSURE, THE AUTHORIZED PERSON AND EACH OTHER SUCH AGENT OR
16 EMPLOYEE OF THE NURSING HOME WHO IS AUTHORIZED TO HAVE ACCESS TO THE
17 RESULTS OF A CHECK OF CRIMINAL HISTORY INFORMATION PURSUANT TO THIS
18 SECTION. ANY PERSON WHO WILLFULLY PERMITS THE RELEASE OF ANY CONFIDEN-
19 TIAL CRIMINAL HISTORY INFORMATION CONTAINED IN THE REPORT TO PERSONS NOT
20 PERMITTED BY THIS SECTION TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF
21 A MISDEMEANOR.

22 (B) A NURSING HOME REQUESTING A CHECK OF CRIMINAL HISTORY INFORMATION
23 PURSUANT TO THIS SECTION SHALL DO SO BY COMPLETING A FORM ESTABLISHED
24 FOR SUCH PURPOSE BY THE DEPARTMENT OF HEALTH IN CONSULTATION WITH THE
25 DIVISION. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE AUTHORIZED
26 PERSON CERTIFYING THAT:

27 (I) THE PERSON FOR WHOSE CRIMINAL HISTORY INFORMATION A CHECK IS
28 REQUESTED IS A PROSPECTIVE RESIDENT FOR WHOM CRIMINAL HISTORY INFORMA-
29 TION IS AVAILABLE BY LAW;

30 (II) THE RESULTS OF SUCH CRIMINAL HISTORY INFORMATION CHECK WILL BE
31 USED BY THE NURSING HOME SOLELY FOR PURPOSES AUTHORIZED BY LAW; AND

32 (III) THE NURSING HOME AND ITS AGENTS AND EMPLOYEES ARE AWARE OF AND
33 WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS
34 OF THIS ARTICLE.

35 (C) A NURSING HOME REQUIRED TO REQUEST A CRIMINAL HISTORY INFORMATION
36 CHECK PURSUANT TO THIS SECTION SHALL INQUIRE OF A PROSPECTIVE RESIDENT
37 IN THE MANNER AUTHORIZED BY SUBDIVISION SIXTEEN OF SECTION TWO HUNDRED
38 NINETY-SIX OF THIS CHAPTER. PRIOR TO REQUESTING SUCH INFORMATION, A
39 NURSING HOME SHALL:

40 (I) INFORM THE PROSPECTIVE RESIDENT IN WRITING THAT THE NURSING HOME
41 IS REQUIRED TO REQUEST A CHECK OF HIS OR HER CRIMINAL HISTORY INFORMA-
42 TION AND REVIEW THE RESULTS OF SUCH CHECK PURSUANT TO THIS SECTION;

43 (II) INFORM THE PROSPECTIVE RESIDENT THAT HE OR SHE HAS THE RIGHT TO
44 OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFOR-
45 MATION UNDER REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION;

46 (III) OBTAIN THE SIGNED, INFORMED CONSENT OF THE PROSPECTIVE RESIDENT
47 ON A FORM SUPPLIED BY THE DEPARTMENT OF HEALTH WHICH INDICATES THAT SUCH
48 PROSPECTIVE RESIDENT HAS:

49 (A) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN,
50 REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

51 (B) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMI-
52 NAL HISTORY INFORMATION;

53 (C) CONSENTED TO SUCH REQUEST FOR A REPORT; AND

54 (D) SUPPLIED ON THE FORM A CURRENT MAILING OR HOME ADDRESS.

55 UPON RECEIVING SUCH WRITTEN CONSENT, THE NURSING HOME SHALL RECEIVE OR
56 OBTAIN TWO SETS OF FINGERPRINTS OF SUCH PROSPECTIVE RESIDENT PURSUANT TO

1 SUCH REGULATIONS AS MAY BE NECESSARY TO BE ESTABLISHED BY THE DEPARTMENT
2 OF HEALTH IN CONSULTATION WITH THE DIVISION, AND PROMPTLY TRANSMIT THEM
3 TO SUCH DEPARTMENT.

4 (D) A PROSPECTIVE RESIDENT MAY WITHDRAW HIS OR HER APPLICATION FOR
5 RESIDENCE PURSUANT TO THIS SECTION, WITHOUT PREJUDICE, AT ANY TIME
6 BEFORE RESIDENCE IS PROVIDED, REGARDLESS OF WHETHER THE PROSPECTIVE
7 RESIDENT OR NURSING HOME HAS REVIEWED SUCH PROSPECTIVE RESIDENT'S CRIMI-
8 NAL HISTORY INFORMATION.

9 4. (A) THE DEPARTMENT OF HEALTH SHALL PAY THE PROCESSING FEE IMPOSED
10 PURSUANT TO SUBDIVISION EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF
11 THIS ARTICLE, AND ANY FEE IMPOSED BY THE FEDERAL BUREAU OF INVESTI-
12 GATION, AND SHALL PROMPTLY SUBMIT THE FINGERPRINTS AND THE PROCESSING
13 FEE TO THE DIVISION FOR ITS FULL SEARCH AND RETAIN PROCESSING, AND THE
14 DIVISION SHALL IMMEDIATELY FORWARD THE FINGERPRINTS TO THE FEDERAL
15 BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK.
16 THE DEPARTMENT OF HEALTH SHALL CHARGE A NURSING HOME A FEE, PAYABLE FROM
17 THE APPLICATION FEE OF THE APPROPRIATE PROSPECTIVE RESIDENT, EQUAL TO
18 THE FEE ESTABLISHED BY LAW BY THE DIVISION FOR PROCESSING A CRIMINAL
19 HISTORY INFORMATION CHECK AND THE FEE IMPOSED BY THE FEDERAL BUREAU OF
20 INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY CHECK.

21 (B) THE DIVISION SHALL PROVIDE REQUESTED STATE CRIMINAL HISTORY INFOR-
22 MATION TO THE DEPARTMENT OF HEALTH, WHICH IS ALSO AUTHORIZED ALSO TO
23 RECEIVE CRIMINAL HISTORY INFORMATION FROM THE FEDERAL BUREAU OF INVESTI-
24 GATION, WITHIN THIRTY DAYS OF THE RECEIPT OF A REQUEST PURSUANT TO THIS
25 SECTION IF SUCH REQUEST IS:

26 (I) MADE PURSUANT TO A REQUEST BY AN AUTHORIZED PERSON ON BEHALF OF A
27 NURSING HOME AUTHORIZED TO MAKE SUCH A REQUEST PURSUANT TO SUBDIVISION
28 TWO OF THIS SECTION;

29 (II) ACCOMPANIED BY THE COMPLETED FORM DESCRIBED IN THIS SECTION; AND

30 (III) ACCOMPANIED BY FINGERPRINTS OF THE PROSPECTIVE RESIDENT OBTAINED
31 PURSUANT TO THIS SECTION.

32 (C) THE DIVISION SHALL PROMPTLY FORWARD A SET OF THE PROSPECTIVE RESI-
33 DENT'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR THE
34 PURPOSE OF A NATIONWIDE CRIMINAL HISTORY RECORD CHECK TO DETERMINE
35 WHETHER SUCH APPLICANT HAS BEEN CONVICTED OF A CRIMINAL OFFENSE IN ANY
36 STATE OR FEDERAL JURISDICTION. THE DIVISION SHALL FORWARD THE RESULTS OF
37 SUCH NATIONWIDE SEARCH TO THE DEPARTMENT OF HEALTH IN THE SAME FORM AND
38 MANNER AS THE CRIMINAL HISTORY REPORT CREATED AND PROVIDED BY THE DIVI-
39 SION PURSUANT TO THIS SECTION.

40 (D) CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION PURSUANT TO
41 THIS SECTION SHALL BE FURNISHED ONLY BY CERTIFIED MAIL OR HAND DELIVERY,
42 ADDRESSED TO THE DEPARTMENT OF HEALTH. SUCH INFORMATION AND THE ENVELOPE
43 IN WHICH IT IS ENCLOSED, IF ANY, SHALL BE PROMINENTLY MARKED "CONFIDEN-
44 TIAL", AND SHALL AT ALL TIMES BE MAINTAINED BY THE DEPARTMENT OF HEALTH
45 IN A SECURE PLACE.

46 5. AFTER REVIEWING ANY CRIMINAL HISTORY INFORMATION PROVIDED BY THE
47 DIVISION CONCERNING A SUBJECT INDIVIDUAL, THE DEPARTMENT OF HEALTH SHALL
48 TAKE THE FOLLOWING ACTIONS:

49 (A) WHERE THE CRIMINAL HISTORY INFORMATION CONCERNING A PROSPECTIVE
50 RESIDENT REVEALS A CONVICTION AT ANY TIME FOR A SEX OFFENSE DEFINED IN
51 SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE
52 CORRECTION LAW, UNLESS THE DEPARTMENT OF HEALTH DETERMINES, IN ITS
53 DISCRETION, THAT APPROVAL OF THE APPLICATION WILL NOT IN ANY WAY JEOP-
54 ARDIZE THE HEALTH, SAFETY OR WELFARE OF THE RESIDENTS AND STAFF OF THE
55 NURSING HOME.

1 (B) WHERE THE CRIMINAL HISTORY INFORMATION CONCERNING A PROSPECTIVE
2 RESIDENT REVEALS A CONVICTION FOR A CRIME OTHER THAN ONE SET FORTH IN
3 PARAGRAPH (A) OF THIS SUBDIVISION, AND THE SENTENCE FOR SUCH CRIME WAS
4 COMPLETED LESS THAN FIVE YEARS PRIOR TO THE APPLICATION, THE DEPARTMENT
5 OF HEALTH SHALL INFORM THE NURSING HOME OF SUCH CONVICTION, UNLESS THE
6 DEPARTMENT OF HEALTH DETERMINES, IN ITS DISCRETION, THAT APPROVAL OF THE
7 APPLICATION WILL NOT IN ANY WAY JEOPARDIZE THE HEALTH, SAFETY OR WELFARE
8 OF THE RESIDENTS AND STAFF OF THE NURSING HOME.

9 (C) WHERE THE CRIMINAL HISTORY INFORMATION CONCERNING A PROSPECTIVE
10 RESIDENT REVEALS A CONVICTION FOR A CRIME OTHER THAN ONE SET FOR IN
11 PARAGRAPH (A) OR (B) OF THIS SUBDIVISION, THE DEPARTMENT OF HEALTH SHALL
12 NOT DISCLOSE SUCH INFORMATION TO THE NURSING HOME.

13 (D) WHERE THE DEPARTMENT OF HEALTH PROVIDES CRIMINAL HISTORY INFORMA-
14 TION CONCERNING A PROSPECTIVE RESIDENT TO A NURSING HOME, THE NURSING
15 HOME SHALL NOTIFY THE PROSPECTIVE RESIDENT OF ITS RECEIPT OF SUCH INFOR-
16 MATION.

17 6. ANY CRIMINAL HISTORY INFORMATION PROVIDED BY THE DIVISION, AND ANY
18 SUMMARY OF THE CRIMINAL HISTORY INFORMATION PROVIDED BY THE DEPARTMENT
19 OF HEALTH TO A NURSING HOME PURSUANT TO THIS SECTION IS CONFIDENTIAL AND
20 SHALL NOT BE AVAILABLE FOR PUBLIC INSPECTION. THE SUBJECT OF THE CRIMI-
21 NAL HISTORY INFORMATION CHECK CONDUCTED PURSUANT TO THIS SECTION SHALL
22 BE ENTITLED TO RECEIVE, UPON WRITTEN REQUEST, A COPY OF THE SUMMARY OF
23 THE CRIMINAL HISTORY INFORMATION PROVIDED BY THE DEPARTMENT OF HEALTH TO
24 THE NURSING HOME.

25 7. PROVIDED THAT THE DEPARTMENT OF HEALTH OR A NURSING HOME REASONABLY
26 AND IN GOOD FAITH COMPLIES WITH THE PROVISIONS OF THIS SECTION, THERE
27 SHALL BE NO CRIMINAL OR CIVIL LIABILITY ON THE PART OF AND NO CAUSE OF
28 ACTION FOR DAMAGES SHALL ACCRUE AGAINST THE DEPARTMENT OF HEALTH, ANY
29 NURSING HOME OR EMPLOYEE THEREOF ON ACCOUNT OF, ARISING OUT OF OR RELAT-
30 ING TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION, OR ANY ACT
31 OR OMISSION RELATING TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS
32 SECTION.

33 8. FINGERPRINTS RECEIVED BY THE DIVISION PURSUANT TO THIS SECTION
34 SHALL BE USED ONLY TO ASSIST THE DIVISION IN PROVIDING CRIMINAL HISTORY
35 INFORMATION TO THE DEPARTMENT OF HEALTH UNDER THIS SECTION.

36 9. THE DEPARTMENT OF HEALTH IN CONSULTATION WITH THE COMMISSIONER
37 SHALL PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE
38 PROVISIONS OF THIS SECTION, WHICH SHALL INCLUDE CONVENIENT PROCEDURES
39 FOR PERSONS TO PROMPTLY VERIFY THE ACCURACY OF THEIR CRIMINAL HISTORY
40 INFORMATION AND, TO THE EXTENT AUTHORIZED BY LAW, TO HAVE ACCESS TO
41 RELEVANT DOCUMENTS RELATED THERETO.

42 S 3. This act shall take effect on the first of September next
43 succeeding the date on which it shall have become a law.