

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 403\*

Short Title: Day Care Provider Records/AB.

(Public)

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Sponsors: Representatives Shubert; Thompson, Clary, and Buchanan.

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Referred to: Welfare Reform & Human Resources, if favorable, Appropriations.

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March 9, 1995

1 A BILL TO BE ENTITLED  
AN ACT TO MANDATE CRIMINAL HISTORY CHECKS OF CHILD DAY CARE  
PROVIDERS, TO STUDY THE USE OF THE CENTRAL REGISTRY ON CHILD  
ABUSE AND NEGLECT, AND TO APPROPRIATE FUNDS.

2 The General Assembly of North Carolina enacts:

3 Section 1. Article 7 of Chapter 110 of the General Statutes is amended by  
4 adding a new section to read:

5 "**§ 110-90.2. Mandatory day care providers' criminal history checks.**

6 (a) For purposes of this section:

7 (1) 'Child day care', notwithstanding the definition in G.S. 110-86, means  
8 any child day care provided in child day care facilities and child day  
9 care homes, including child day care facilities and child day care homes  
10 required to be licensed or registered under this Article and nonregistered  
11 child day care homes approved to receive or receiving State or federal  
12 funds for providing child day care.

13 (2) 'Child day care provider' means a person who:

14 a. Is employed by or seeks to be employed by a child day care  
15 facility or child day care home providing child day care as  
16 defined in subdivision (1) of this subsection and by G.S. 110-86;

17 or

1           b. Owns or operates or seeks to own or operate a child day care  
2           facility or child day care home providing child day care as  
3           defined in subdivision (1) of this subsection and by G.S. 110-86.

4           (3) 'Criminal history' means a county or State criminal history of conviction  
5           of a crime, whether a misdemeanor or a felony, that bears upon an  
6           individual's fitness to have responsibility for the safety and well-being  
7           of children, including homicide, rape and other sex offenses, assaults,  
8           kidnapping and abduction, malicious injury or damage by the use of  
9           incendiary device or material, offenses against public morality and  
10           decency, prostitution, a crime against children, and a crime against the  
11           family, as prescribed respectively in Articles 6, 7A, 8, 10, 13, 26, 27,  
12           39, and 40 of Chapter 14 of the General Statutes, a violation of the  
13           North Carolina Controlled Substances Act, as prescribed in Article 5 of  
14           Chapter 90 of the General Statutes, a violation of the law prohibiting  
15           driving while impaired, as prescribed in G.S. 20-138.1 through G.S. 20-  
16           138.5, a violation of the law forbidding sales of alcohol to, or purchases  
17           of alcohol by, minors, as prescribed in G.S. 18B-302(c), and a violation  
18           of the law prohibiting public intoxication, as prescribed in G.S. 14-444.

19           (b) Effective January 1, 1996, the Department shall ensure that child day care  
20           providers are checked for any criminal history and may prohibit a child day care provider  
21           from providing child day care if that child day care provider has a criminal history.

22           (c) The Department of Justice may provide to the Division of Child Development,  
23           Department of Human Resources, the criminal history of any child day care provider  
24           from the State Repository of criminal histories. The Division shall provide to the  
25           Department of Justice, along with the request, the fingerprints of the provider to be  
26           checked, any additional information required by the Department of Justice, and a form  
27           consenting to the check of the criminal record and to the use of fingerprints and other  
28           identifying information required by the State Repository signed by the child day care  
29           provider to be checked. Refusal to consent is grounds for the Department to prohibit the  
30           child day care provider from providing child day care.

31           (d) The Department shall notify in writing the child day care provider and that  
32           child day care provider's employer, if any, of any disqualifying information resulting  
33           from the check of the criminal history, and of the Department's action under subsection  
34           (b) of this section.

35           A child day care provider who disagrees with the Department's decision may file a  
36           civil action in the district court of the county of residence of the child day care provider.

37           (e) All the information that the Department receives through the checking of the  
38           criminal history is privileged information and for the exclusive use of the Department and  
39           those persons authorized under this section to receive the information. The Department  
40           may destroy the information after it is used for the purposes authorized by this section  
41           after one calendar year.

42           (f) No action for civil or criminal liability shall be brought against an employer of  
43           a child day care provider, a child day care, or a State or local agency as a result of the

1 check of the criminal history, if the employer, child day care provider, or State or local  
2 agency was acting in good faith and in accordance with this section and the rules  
3 established under this section.

4 (g) The child day care provider who seeks to be employed in child day care and  
5 the child day care provider who seeks to own or operate child day care shall pay the cost  
6 of the fingerprinting and the local check at the time the child day care provider seeks to  
7 provide child day care. The Department of Justice shall perform the State check, using  
8 funds appropriated to it for that purpose, if the Department considers that the additional  
9 check is necessary."

10 Sec. 2. G.S. 114-19 reads as rewritten:

11 **"§ 114-19. Criminal statistics.**

12 (a) It shall be the duty of the State Bureau of Investigation to receive and collect  
13 police information, to assist in locating, identifying, and keeping records of criminals in  
14 this State, and from other states, and to compare, classify, compile, publish, make  
15 available and disseminate any and all such information to the sheriffs, constables, police  
16 authorities, courts or any other officials of the State requiring such criminal identification,  
17 crime statistics and other information respecting crimes local and national, and to conduct  
18 surveys and studies for the purpose of determining so far as is possible the source of any  
19 criminal conspiracy, crime wave, movement or cooperative action on the part of the  
20 criminals, reporting such conditions, and to cooperate with all officials in detecting and  
21 preventing.

22 ♦(b) The State Bureau of Investigation shall, on a daily basis, notify the Department  
23 of Revenue of all reports it receives pursuant to G.S. 114-18.1 of arrests and seizures  
24 involving non-tax-paid controlled substances and counterfeit controlled substances. The  
25 Bureau shall also, as soon as practicable, provide the Department with any additional  
26 information it receives regarding such arrests and seizures.

27 (c) The Department of Justice may provide to the Division of Child  
28 Development, Department of Human Resources, the criminal history from the State  
29 Repository of criminal histories of any child day care provider. The Division shall  
30 provide to the Department of Justice, along with the request, the fingerprints of the  
31 provider to be checked, any additional information required by the Department of Justice,  
32 and a form consenting to the check of the criminal record and to the use of fingerprints  
33 and other identifying information required by the State Repository signed by the child  
34 day care provider to be checked. Refusal to consent is grounds for the Department to  
35 prohibit the child day care provider from providing child day care.

36 (d) The child day care provider who seeks to be employed in child day care and  
37 the child day care provider who seeks to own or operate child day care shall pay the cost  
38 of the fingerprinting and the local check at the time the child day care provider seeks to  
39 provide child day care. The Department of Justice shall perform the State check, using  
40 funds appropriated to it for that purpose, if the Department considers that the additional  
41 check is necessary."

42 Sec. 3. The North Carolina Child Day Care Commission shall adopt rules to  
43 implement this act, in consultation with the Divisions of Child Development and Social

1 Services of the Department of Human Resources, and the Division of Criminal  
2 Information of the Department of Justice.

3         Sec. 4. The Legislative Research Commission shall study the issue of using  
4 the records in the Central Registry on Child Abuse and Neglect for the purpose of  
5 conducting records checks of child day care providers. In its study, the Commission shall  
6 evaluate current procedures for substantiating claims of child abuse or neglect and for  
7 maintaining records in the Central Registry, and shall determine what procedures should  
8 be implemented to (i) ensure that records are accurate, (ii) provide appropriate notice to  
9 interested parties, (iii) provide for expungement or correction of information, and (iv)  
10 provide for release of information. The Commission shall report its findings and  
11 recommendations to the 1997 General Assembly.

12         Sec. 5. There is appropriated from the General Fund to the Department of  
13 Human Resources the sum of one hundred ninety-one thousand seven hundred nine  
14 dollars (\$191,709) for the 1995-96 fiscal year and the sum of two hundred ninety-seven  
15 thousand three hundred twenty-four dollars (\$297,324) for the 1996-97 fiscal year to  
16 implement this act.

17         Sec. 6. Section 4 of this act is effective upon ratification. Section 5 of this act  
18 becomes effective July 1, 1995. The remainder of this act becomes effective January 1,  
19 1996, and applies to child day care providers newly hired in child day care employment  
20 and to child day care providers newly owning or operating child day care on or after that  
21 date.