

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1192*

Judiciary I Committee Substitute Adopted 6/27/00
Finance Committee Substitute No. 2 Adopted 7/6/00
House Committee Substitute Favorable 7/12/00

Short Title: Crim. Record Checks/Long-Term Care.

(Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FROM STATE AND
2 NATIONAL REPOSITORIES OF CRIMINAL HISTORY FOR CERTAIN
3 APPLICANTS FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING
4 HOMES, HOME CARE AGENCIES, AND CERTAIN MENTAL HEALTH,
5 DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES
6 FACILITIES; TO IMPOSE A CRIMINAL PENALTY FOR FALSIFYING
7 INFORMATION ON EMPLOYMENT APPLICATIONS; TO REQUIRE CERTAIN
8 DISCLOSURES BY NURSING HOMES; AND PERTAINING TO RULES FOR
9 THE OPERATION OF THE ADULT CARE PORTION OF NURSING HOMES.
10

11 The General Assembly of North Carolina enacts:

12 Section 1. Article 4 of Chapter 114 of the General Statutes is amended by
13 adding the following new section to read:

14 "**§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home**
15 **care agencies, and area mental health, developmental disabilities, and**
16 **substance abuse services authorities.**

1 The Department of Justice may provide to the following entities the criminal history
2 from the State and National Repositories of Criminal Histories:

- 3 (1) Nursing homes or combination homes licensed under Chapter 131E of
4 the General Statutes.
5 (2) Adult care homes licensed under Chapter 131D of the General Statutes.
6 (3) Home care agencies licensed under Chapter 131E of the General
7 Statutes.
8 (4) Area mental health, developmental disabilities, and substance abuse
9 services authorities licensed under Chapter 122C of the General
10 Statutes, including a contract agency of an area authority that is subject
11 to the provisions of Article 4 of that Chapter.

12 The criminal history shall be provided to nursing homes and home care agencies in
13 accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40,
14 and to area mental health, developmental disabilities, and substance abuse services
15 authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the
16 Department of Justice, along with the request, the fingerprints of the individual to be
17 checked if a national criminal history record check is required, any additional information
18 required by the Department of Justice, and a form signed by the individual to be checked
19 consenting to the check of the criminal record and to the use of fingerprints and other
20 identifying information required by the State or National Repositories of Criminal
21 Histories. If a national criminal history record check is required, the fingerprints of the
22 individual shall be forwarded to the State Bureau of Investigation for a search of the
23 State's criminal history record file, and the State Bureau of Investigation shall forward a
24 set of fingerprints to the Federal Bureau of Investigation for a national criminal history
25 record check. All information received by the entity shall be kept confidential in
26 accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department
27 of Justice shall charge a reasonable fee for conducting the checks authorized by this
28 section. The fee for the State check may not exceed fourteen dollars (\$14.00)."

29 Section 2.(a) Subsections (a) and (a1) of G.S. 131D-40 read as rewritten:

30 "(a) Requirement; Adult Care Home. – An offer of employment by an adult care
31 home licensed under this Chapter to an applicant to fill a position that does not require
32 the applicant to have an occupational license is conditioned on consent to a criminal
33 history record check of the applicant. If the applicant has been a resident of this State for
34 less than five years, then the offer of employment is conditioned on consent to a State and
35 national criminal history record check of the applicant. The national criminal history
36 record check shall include a check of the applicant's fingerprints. If the applicant has
37 been a resident of this State for five years or more, then the offer is conditioned on
38 consent to a State criminal history record check of the applicant. An adult care home shall
39 not employ an applicant who refuses to consent to a criminal history record check
40 required by this section. Within five business days of making the conditional offer of
41 employment, an ~~An~~ adult care home shall submit a request to the Department of Justice
42 under ~~G.S. 114-19.3~~ G.S. 114-19.10 to conduct a State or national criminal history record
43 ~~check~~ check required by this section, or shall submit a request to a private entity to

1 ~~conduct a State criminal history record check required by this section. within five business~~
2 ~~days of making the conditional offer of employment.~~—All criminal history information
3 received by the home is confidential and may not be disclosed, except to the applicant as
4 provided in subsection (b) of this section.

5 (a1) Requirement; Contract Agency of Adult Care Home. – An offer of
6 employment by a contract agency of an adult care home licensed under this Chapter to an
7 applicant to fill a position that does not require the applicant to have an occupational
8 license is conditioned upon consent to a criminal history record check of the applicant. If
9 the applicant has been a resident of this State for less than five years, then the offer of
10 employment is conditioned on consent to a State and national criminal history record
11 check of the applicant. The national criminal history record check shall include a check
12 of the applicant's fingerprints. If the applicant has been a resident of this State for five
13 years or more, then the offer is conditioned on consent to a State criminal history record
14 check of the applicant. A contract agency of an adult care home shall not employ an
15 applicant who refuses to consent to a criminal history record check required by this
16 section. Within five business days of making the conditional offer of employment, a
17 contract agency of an adult care home shall submit a request to the Department of Justice
18 under G.S. ~~44-19.3~~ 114-19.10 to conduct a State or national criminal history record
19 check required by this section, or shall submit a request to a private entity to conduct a
20 State criminal history record check required by this section. eriminal history record check
21 ~~within five business days of making the conditional offer of employment.~~—All criminal history
22 information received by the contract agency is confidential and may not be disclosed,
23 except to the applicant as provided by subsection (b) of this section."

24 Section 2.(b) G.S. 131D-40 is amended by adding the following new
25 subsections to read:

26 "(e) Penalty for Furnishing False Information. – Any applicant for employment
27 who willfully furnishes, supplies, or otherwise gives false information on an employment
28 application that is the basis for a criminal history record check under this section shall be
29 guilty of a Class A1 misdemeanor.

30 (f) Conditional Employment. – An adult care home may employ an applicant
31 conditionally prior to obtaining the results of a criminal history record check regarding
32 the applicant if both of the following requirements are met:

33 (1) The adult care home shall not employ an applicant prior to obtaining the
34 applicant's consent for a criminal history record check as required in
35 subsection (a) of this section or the completed fingerprint cards as
36 required in G.S. 114-19.10.

37 (2) The adult care home shall submit the request for a criminal history
38 record check not later than five business days after the individual begins
39 conditional employment.

40 (g) Immunity From Liability. – An entity and officers and employees of an entity
41 shall be immune from civil liability for failure to check an employee's history of criminal
42 offenses if the employee's criminal history record check is requested and received in
43 compliance with this section."

1 Section 3.(a) Subsections (a) and (a1) of G.S. 131E-265 read as rewritten:

2 "(a) Requirement; Nursing Home or Home Care Agency. – An offer of
3 employment by a nursing home licensed under this Chapter to an applicant to fill a
4 position that does not require the applicant to have an occupational license is conditioned
5 on consent to a criminal history record check of the applicant. If the applicant has been a
6 resident of this State for less than five years, then the offer of employment is conditioned
7 on consent to a State and national criminal history record check of the applicant. The
8 national criminal history record check shall include a check of the applicant's
9 fingerprints. If the applicant has been a resident of this State for five years or more, then
10 the offer is conditioned on consent to a State criminal history record check of the
11 applicant. An offer of employment by a home care agency licensed under this Chapter to
12 an applicant to fill a position that requires entering the patient's home is conditioned on
13 consent to a criminal history record check of the applicant. In addition, employment
14 status change of a current employee of a home care agency licensed under this Chapter
15 from a position that does not require entering the patient's home to a position that requires
16 entering the patient's home shall be conditioned on consent to a criminal history record
17 check of that current employee. If the applicant for employment or if the current
18 employee who is changing employment status has been a resident of this State for less
19 than five years, then the offer of employment or change in employment status is
20 conditioned on consent to a State and national criminal history record check. The
21 national criminal history record check shall include a check of the applicant's or current
22 employee's fingerprints. If the applicant or current employee has been a resident of this
23 State for five years or more, then the offer is conditioned on consent to a State criminal
24 history record check of the applicant or current employee applying for a change in
25 employment status. A nursing home or a home care agency shall not employ an applicant
26 who refuses to consent to a criminal history record check required by this section. In
27 addition, a home care agency shall not change a current employee's employment status
28 from a position that does not require entering the patient's home to a position that requires
29 entering the patient's home who refuses to consent to a criminal history record check
30 required by this section. Within five business days of making the conditional offer of
31 employment, ~~A~~ a nursing home or home care agency shall submit a request to the
32 Department of Justice under G.S. ~~114-19.3-114.19.10~~ to conduct a ~~criminal history record~~
33 ~~check within five business days of making the conditional offer of employment.~~ State or
34 national criminal history record check required by this section, or shall submit a request
35 to a private entity to conduct a State criminal history record check required by this
36 section. All criminal history information received by the home or agency is confidential
37 and may not be disclosed, except to the applicant as provided in subsection (b) of this
38 section.

39 (a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An
40 offer of employment by a contract agency of a nursing home or home care agency
41 licensed under this Chapter to an applicant to fill a position that does not require the
42 applicant to have an occupational license is conditioned upon consent to a criminal
43 history record check of the applicant. If the applicant has been a resident of this State for

1 less than five years, then the offer of employment is conditioned on consent to a State and
2 national criminal history record check of the applicant. The national criminal history
3 record check shall include a check of the applicant's fingerprints. If the applicant has
4 been a resident of this State for five years or more, then the offer is conditioned on
5 consent to a State criminal history record check of the applicant. A contract agency of a
6 nursing home or home care agency shall not employ an applicant who refuses to consent
7 to a criminal history record check required by this section. Within five business days of
8 making the conditional offer of employment, A-a contract agency of a nursing home or
9 home care agency shall submit a request to the Department of Justice under G.S. 114-19.3
10 114-19.10 to conduct a criminal history record check within five business days of making the
11 conditional offer of employment. to conduct a State or national criminal history record
12 check required by this section, or shall submit a request to a private entity to conduct a
13 State criminal history record check required by this section. All criminal history
14 information received by the contract agency is confidential and may not be disclosed,
15 except to the applicant as provided by subsection (b) of this section."

16 Section 3.(b) G.S. 131E-265 is amended by adding the following new
17 subsections to read:

18 "(e) Penalty for Furnishing False Information. – Any applicant for employment
19 who willfully furnishes, supplies, or otherwise gives false information on an employment
20 application that is the basis for a criminal history record check under this section shall be
21 guilty of a Class A1 misdemeanor.

22 (f) Conditional Employment. – A nursing home or home care agency may employ
23 an applicant conditionally prior to obtaining the results of a criminal history record check
24 regarding the applicant if both of the following requirements are met:

25 (1) The nursing home or home care agency shall not employ an applicant
26 prior to obtaining the applicant's consent for a criminal history record
27 check as required in subsection (a) of this section or the completed
28 fingerprint cards as required in G.S. 114-19.10.

29 (2) The nursing home or home care agency shall submit the request for a
30 criminal history record check not later than five business days after the
31 individual begins conditional employment.

32 (g) Immunity From Liability. – An entity and officers and employees of an entity
33 shall be immune from civil liability for failure to check an employee's history of criminal
34 offenses if the employee's criminal history record check is requested and received in
35 compliance with this section."

36 Section 4. Chapter 122C of the General Statutes is amended by adding the
37 following new Article to read:

38 **"ARTICLE 3A.**

39 **"MISCELLANEOUS PROVISIONS.**

40 **"§ 122C-80. Criminal history record check required for certain applicants for**
41 **employment.**

42 (a) Definition. – As used in this section, 'area authority' means an area mental
43 health, developmental disabilities, and substance abuse services area authority, including

1 a contract agency of an area authority that is subject to the provisions of Article 4 of this
2 Chapter.

3 (b) Requirement. – An offer of employment by an area authority licensed under
4 this Chapter to an applicant to fill a position that does not require the applicant to have an
5 occupational license is conditioned on consent to a State and national criminal history
6 record check of the applicant. If the applicant has been a resident of this State for less
7 than five years, then the offer of employment is conditioned on consent to a State and
8 national criminal history record check of the applicant. The national criminal history
9 record check shall include a check of the applicant's fingerprints. If the applicant has
10 been a resident of this State for five years or more, then the offer is conditioned on
11 consent to a State criminal history record check of the applicant. An area authority shall
12 not employ an applicant who refuses to consent to a criminal history record check
13 required by this section. Within five business days of making the conditional offer of
14 employment, an area authority shall submit a request to the Department of Justice under
15 G.S. 114-19.10 to conduct a criminal history record check required by this section. All
16 criminal history information received by the area authority is confidential and may not be
17 disclosed, except to the applicant as provided in subsection (c) of this section.

18 (c) Action. – If an applicant's criminal history record check reveals one or more
19 convictions of a relevant offense, the area authority shall consider all of the following
20 factors in determining whether to hire the applicant:

- 21 (1) The level and seriousness of the crime.
- 22 (2) The date of the crime.
- 23 (3) The age of the person at the time of the conviction.
- 24 (4) The circumstances surrounding the commission of the crime, if known.
- 25 (5) The nexus between the criminal conduct of the person and the job duties
26 of the position to be filled.
- 27 (6) The prison, jail, probation, parole, rehabilitation, and employment
28 records of the person since the date the crime was committed.
- 29 (7) The subsequent commission by the person of a relevant offense.

30 The fact of conviction of a relevant offense alone shall not be a bar to employment;
31 however, the listed factors shall be considered by the area authority. If the area authority
32 disqualifies an applicant after consideration of the relevant factors, then the area authority
33 may disclose information contained in the criminal history record check that is relevant to
34 the disqualification, but may not provide a copy of the criminal history record check to
35 the applicant.

36 (d) Limited Immunity. – An area authority and an officer or employee of an area
37 authority that, in good faith, complies with this section shall be immune from civil
38 liability for:

- 39 (1) The failure of the area authority to employ an individual on the basis of
40 information provided in the criminal history record check of the
41 individual.

1 (2) Failure to check an employee's history of criminal offenses if the
2 employee's criminal history record check is requested and received in
3 compliance with this section.

4 (e) Relevant Offense. – As used in this section, 'relevant offense' means a State
5 crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have
6 responsibility for the safety and well-being of persons needing mental health,
7 developmental disabilities, or substance abuse services. These crimes include the criminal
8 offenses set forth in any of the following Articles of Chapter 14 of the General Statutes:
9 Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering
10 Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex
11 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
12 Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material;
13 Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings;
14 Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False
15 Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent
16 Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime
17 Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality
18 and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28,
19 Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35,
20 Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39,
21 Protection of Minors; Article 40, Protection of the Family; Article 59, Public
22 Intoxication; and Article 60, Computer-Related Crime. These crimes also include
23 possession or sale of drugs in violation of the North Carolina Controlled Substances Act,
24 Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale
25 to underage persons in violation of G.S. 18B-302 or driving while impaired in violation
26 of G.S. 20-138.1 through G.S. 20-138.5.

27 (f) Penalty for Furnishing False Information. – Any applicant for employment
28 who willfully furnishes, supplies, or otherwise gives false information on an employment
29 application that is the basis for a criminal history record check under this section shall be
30 guilty of a Class A1 misdemeanor.

31 (g) Conditional Employment. – An area authority may employ an applicant
32 conditionally prior to obtaining the results of a criminal history record check regarding
33 the applicant if both of the following requirements are met:

34 (1) The area authority shall not employ an applicant prior to obtaining the
35 applicant's consent for criminal history record check as required in
36 subsection (b) of this section or the completed fingerprint cards as
37 required in G.S. 114-19.10.

38 (2) The area authority shall submit the request for a criminal history record
39 check not later than five business days after the individual begins
40 conditional employment."

41 Section 5. G.S. 114-19.3(a) reads as rewritten:

42 "(a) Authority. – The Department of Justice may provide to any of the following
43 entities a criminal record check of an individual who is employed by that entity, has

1 applied for employment with that entity, or has volunteered to provide direct care on
2 behalf of that entity:

- 3 (1) Hospitals licensed under Chapter 131E of the General Statutes.
- 4 ~~(2) Nursing homes or combination homes licensed under Chapter 131E of~~
5 ~~the General Statutes.~~
- 6 ~~(3) Adult care homes licensed under Chapter 131D of the General Statutes.~~
- 7 (4) ~~Home care agencies or hospices~~ Hospices licensed under Chapter 131E of
8 the General Statutes.
- 9 (5) Child placing agencies licensed under Chapter 131D of the General
10 Statutes.
- 11 (6) Residential child care facilities licensed under Chapter 131D of the
12 General Statutes.
- 13 (7) Hospitals licensed under Chapter 122C of the General Statutes.
- 14 ~~(8) Area mental health, developmental disabilities, and substance abuse~~
15 ~~authorities licensed under Chapter 122C of the General Statutes,~~
16 ~~including a contract agency of an area authority that is subject to the~~
17 ~~provisions of Article 4 of that Chapter.~~
- 18 (9) Licensed child care facilities and nonlicensed child care homes
19 regulated by the State.
- 20 (10) Any other organization or corporation, whether for profit or nonprofit,
21 that provides direct care or services to children, the sick, the disabled, or
22 the elderly."

23 Section 6. Effective January 1, 2001, Part A of Article 6 of Chapter 131E of
24 the General Statutes is amended by adding the following new section to read:

25 **§ 131E-113. Special care units; disclosure of information required.**

26 (a) A nursing home or combination home licensed under this Part that provides
27 special care for persons with Alzheimer's disease or other dementias in a special care unit
28 shall make the following disclosures pertaining to the special care provided that
29 distinguishes the special care unit as being especially designed for residents with
30 Alzheimer's disease or other dementias. The disclosure shall be made annually, in
31 writing, to all of the following:

- 32 (1) The Department, as part of its licensing procedures.
- 33 (2) Each person seeking placement within a special care unit, or the
34 person's authorized representative, prior to entering into an agreement
35 with the person to provide special care.

36 (b) Information that must be disclosed in writing shall include, but is not limited
37 to, all of the following:

- 38 (1) A statement of the overall philosophy and mission of the licensed
39 facility and how it reflects the special needs of residents with dementia.
- 40 (2) The process and criteria for placement, transfer, or discharge to or from
41 the special care unit.
- 42 (3) The process used for assessment and establishment of the plan of care
43 and its implementation, as required under State and federal law.

1 (4) Typical staffing patterns and how the patterns reflect the resident's need
2 for increased care and supervision.

3 (5) Dementia-specific staff training.

4 (6) Physical environment features designed specifically for the special care
5 unit.

6 (7) Alzheimer's disease and other dementia-specific programming.

7 (8) Opportunities for family involvement.

8 (9) Additional costs or fees to the resident for special care.

9 (c) As part of its license renewal procedures and inspections, the Department shall
10 examine for accuracy the written disclosures made by each licensed facility subject to
11 this section.

12 (d) Nothing in this section shall be construed as prohibiting a nursing home or
13 combination home that does not offer a special care unit from admitting a person with
14 Alzheimer's disease or other dementias. The disclosures required by this section apply
15 only to a nursing home or combination home that advertises, markets, or otherwise
16 promotes itself as providing a special care unit for persons with Alzheimer's disease or
17 other dementias.

18 (e) As used in this section, the term 'special care unit' means a wing or hallway
19 within a nursing home, or a program provided by a nursing home, that is designated
20 especially for residents with Alzheimer's disease or other dementias, or other special
21 needs disease or condition, as determined by the Medical Care Commission, which may
22 include mental disabilities."

23 Section 6.1. G.S. 131E-104 reads as rewritten:

24 **"§ 131E-104. Rules and enforcement.**

25 (a) The Commission is authorized to adopt, amend, and repeal all rules necessary
26 for the implementation of this Part.

27 (b) ~~The Commission shall adopt rules for the operation of the adult care portion of~~
28 ~~a combination home that are equal to the rules adopted by the Social Services~~
29 ~~Commission for the operation of freestanding adult care homes. The adult care portion of~~
30 ~~a combination home in existence on January 1, 1982, shall be exempt from physical plant~~
31 ~~minimum standards, unless the Department determines the exemption to be an imminent~~
32 ~~hazard to health, safety and welfare of the residents. home. The rules shall provide that~~
33 ~~for each requirement applicable to freestanding adult care homes or freestanding nursing~~
34 ~~homes, the combination home may choose to operate the adult care portion of the home~~
35 ~~in compliance with either the requirement applicable to freestanding adult care homes or~~
36 ~~the higher standard applicable to freestanding nursing homes."~~

37 Section 7. Sections 1 through 5 of this act become effective January 1, 2001,
38 and apply to offenses committed and offers of employment made on and after that date.
39 The remainder of this act is effective when it becomes law.