

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 176*

Short Title: Criminal Records Checks/LTC Changes. (Public)

Sponsors: Representatives Clary, Nye (Primary Sponsors); Weiss, Wilson, Alexander, B. Allen, Allred, Bordsen, Coates, Current, England, Faison, Farmer-Butterfield, Glazier, Insko, Jeffus, LaRoque, Lucas, Luebke, McLawhorn, and Warren.

Referred to: Judiciary IV.

February 10, 2005

A BILL TO BE ENTITLED

1 AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING
2 NATIONAL CRIMINAL HISTORY RECORDS CHECKS FOR LONG-TERM
3 CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS
4 RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON
5 AGING.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 122C-80(b) reads as rewritten:

9 "(b) Requirement. – An offer of employment by an area authority licensed under
10 this Chapter to an applicant to fill a position that does not require the applicant to have
11 an occupational license is conditioned on consent to a State and national criminal
12 history record check of the applicant. If the applicant has been a resident of this State
13 for less than five years, then the offer of employment is conditioned on consent to a
14 State and national criminal history record check of the applicant. The national criminal
15 history record check shall include a check of the applicant's fingerprints. If the applicant
16 has been a resident of this State for five years or more, then the offer is conditioned on
17 consent to a State criminal history record check of the applicant. An area authority shall
18 not employ an applicant who refuses to consent to a criminal history record check
19 required by this section. Except as otherwise provided in this subsection, within five
20 business days of making the conditional offer of employment, an area authority shall
21 submit a request to the Department of Justice under G.S. 114-19.10 to conduct a
22 criminal history record check required by this section. Notwithstanding G.S. 114-19.10,
23 the Department of Justice shall return the results of national criminal history record
24 checks for employment positions not covered by Public Law 105-277 to the Department
25 of Health and Human Services, ~~Division of Facility Services, Criminal Records Check~~
26 Unit. Within five business days of receipt of the national criminal history of the person,

1 the Department of Health and Human Services, ~~Division of Facility Services, Criminal~~
2 ~~Records Check Unit~~, shall ~~provide to notify~~ the area authority ~~the results of the national~~
3 ~~criminal history check~~, as to whether the information received may affect the
4 employability of the applicant. In no case shall the results of the national criminal
5 history record check be shared with the area authority. Area authorities shall make
6 available upon request verification that a criminal history check has been completed on
7 any staff covered by this section. A county that has adopted an appropriate local
8 ordinance and has access to the Division of Criminal Information data bank may
9 conduct on behalf of an area authority a State criminal history record check required by
10 this section without the area authority having to submit a request to the Department of
11 Justice. In such a case, the county shall commence with the State criminal history record
12 check required by this section within five business days of the conditional offer of
13 employment by the area authority. All criminal history information received by the area
14 authority is confidential and may not be disclosed, except to the applicant as provided in
15 subsection (c) of this section."

16 **SECTION 2.** G.S. 131D-40(a) reads as rewritten:

17 "(a) Requirement; Adult Care Home. – An offer of employment by an adult care
18 home licensed under this Chapter to an applicant to fill a position that does not require
19 the applicant to have an occupational license is conditioned on consent to a criminal
20 history record check of the applicant. If the applicant has been a resident of this State
21 for less than five years, then the offer of employment is conditioned on consent to a
22 State and national criminal history record check of the applicant. The national criminal
23 history record check shall include a check of the applicant's fingerprints. If the applicant
24 has been a resident of this State for five years or more, then the offer is conditioned on
25 consent to a State criminal history record check of the applicant. An adult care home
26 shall not employ an applicant who refuses to consent to a criminal history record check
27 required by this section. Within five business days of making the conditional offer of
28 employment, an adult care home shall submit a request to the Department of Justice
29 under G.S. 114-19.10 to conduct a State or national criminal history record check
30 required by this section, or shall submit a request to a private entity to conduct a State
31 criminal history record check required by this section. Notwithstanding G.S. 114-19.10,
32 the Department of Justice shall return the results of national criminal history record
33 checks for employment positions not covered by Public Law 105-277 to the Department
34 of Health and Human Services, ~~Division of Facility Services, Criminal Records Check~~
35 ~~Unit~~. Within five business days of receipt of the national criminal history of the person,
36 the Department of Health and Human Services, ~~Division of Facility Services, Criminal~~
37 ~~Records Check Unit~~, shall ~~provide to notify~~ the adult care home ~~the results of the~~
38 ~~national criminal history check~~, as to whether the information received may affect the
39 employability of the applicant. In no case shall the results of the national criminal
40 history record check be shared with the adult care home. Adult care homes shall make
41 available upon request verification that a criminal history check has been completed on
42 any staff covered by this section. All criminal history information received by the home
43 is confidential and may not be disclosed, except to the applicant as provided in
44 subsection (b) of this section."

1 **SECTION 3.** G.S. 131D-40(a1) reads as rewritten:

2 "(a1) Requirement; Contract Agency of Adult Care Home. – An offer of
3 employment by a contract agency of an adult care home licensed under this Chapter to
4 an applicant to fill a position that does not require the applicant to have an occupational
5 license is conditioned upon consent to a criminal history record check of the applicant.
6 If the applicant has been a resident of this State for less than five years, then the offer of
7 employment is conditioned on consent to a State and national criminal history record
8 check of the applicant. The national criminal history record check shall include a check
9 of the applicant's fingerprints. If the applicant has been a resident of this State for five
10 years or more, then the offer is conditioned on consent to a State criminal history record
11 check of the applicant. A contract agency of an adult care home shall not employ an
12 applicant who refuses to consent to a criminal history record check required by this
13 section. Within five business days of making the conditional offer of employment, a
14 contract agency of an adult care home shall submit a request to the Department of
15 Justice under G.S. 114-19.10 to conduct a State or national criminal history record
16 check required by this section, or shall submit a request to a private entity to conduct a
17 State criminal history record check required by this section. Notwithstanding
18 G.S. 114-19.10, the Department of Justice shall return the results of national criminal
19 history record checks for employment positions not covered by Public Law 105-277 to
20 the Department of Health and Human Services, ~~Division of Facility Services~~. Criminal
21 Records Check Unit. Within five business days of receipt of the national criminal
22 history of the person, the Department of Health and Human Services, ~~Division of~~
23 ~~Facility Services~~, Criminal Records Check Unit, shall ~~provide to notify~~ the contract
24 agency of the adult care home ~~the results of the national criminal history check~~, as to
25 whether the information received may affect the employability of the applicant. In no
26 case shall the results of the national criminal history record check be shared with the
27 contract agency of the adult care home. Contract agencies of adult care homes shall
28 make available upon request verification that a criminal history check has been
29 completed on any staff covered by this section. All criminal history information
30 received by the contract agency is confidential and may not be disclosed, except to the
31 applicant as provided by subsection (b) of this section."

32 **SECTION 4.** G.S. 131E-265(a) reads as rewritten:

33 "(a) Requirement; Nursing Home or Home Care Agency. – An offer of
34 employment by a nursing home licensed under this Chapter to an applicant to fill a
35 position that does not require the applicant to have an occupational license is
36 conditioned on consent to a criminal history record check of the applicant. If the
37 applicant has been a resident of this State for less than five years, then the offer of
38 employment is conditioned on consent to a State and national criminal history record
39 check of the applicant. The national criminal history record check shall include a check
40 of the applicant's fingerprints. If the applicant has been a resident of this State for five
41 years or more, then the offer is conditioned on consent to a State criminal history record
42 check of the applicant. An offer of employment by a home care agency licensed under
43 this Chapter to an applicant to fill a position that requires entering the patient's home is
44 conditioned on consent to a criminal history record check of the applicant. In addition,

1 employment status change of a current employee of a home care agency licensed under
2 this Chapter from a position that does not require entering the patient's home to a
3 position that requires entering the patient's home shall be conditioned on consent to a
4 criminal history record check of that current employee. If the applicant for employment
5 or if the current employee who is changing employment status has been a resident of
6 this State for less than five years, then the offer of employment or change in
7 employment status is conditioned on consent to a State and national criminal history
8 record check. The national criminal history record check shall include a check of the
9 applicant's or current employee's fingerprints. If the applicant or current employee 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 or current employee
12 applying for a change in employment status. A nursing home or a home care agency
13 shall not employ an applicant who refuses to consent to a criminal history record check
14 required by this section. In addition, a home care agency shall not change a current
15 employee's employment status from a position that does not require entering the
16 patient's home to a position that requires entering the patient's home who refuses to
17 consent to a criminal history record check required by this section. Within five business
18 days of making the conditional offer of employment, a nursing home or home care
19 agency shall submit a request to the Department of Justice under G.S. 114.19.10 to
20 conduct a State or national criminal history record check required by this section, or
21 shall submit a request to a private entity to conduct a State criminal history record check
22 required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice
23 shall return the results of national criminal history record checks for employment
24 positions not covered by Public Law 105-277 to the Department of Health and Human
25 Services, ~~Division of Facility Services, Criminal Records Check Unit~~. Within five
26 business days of receipt of the national criminal history of the person, the Department of
27 Health and Human Services, ~~Division of Facility Services, Criminal Records Check~~
28 ~~Unit~~, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the~~
29 ~~national criminal history check as to whether the information received may affect the~~
30 employability of the applicant. In no case shall the results of the national criminal
31 history record check be shared with the nursing home or home care agency. Nursing
32 homes and home care agencies shall make available upon request verification that a
33 criminal history check has been completed on any staff covered by this section. All
34 criminal history information received by the home or agency is confidential and may
35 not be disclosed, except to the applicant as provided in subsection (b) of this section."

36 **SECTION 5.** G.S. 131E-265(a1) reads as rewritten:

37 "(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –
38 An offer of employment by a contract agency of a nursing home or home care agency
39 licensed under this Chapter to an applicant to fill a position that does not require the
40 applicant to have an occupational license is conditioned upon consent to a criminal
41 history record check of the applicant. If the applicant has been a resident of this State
42 for less than five years, then the offer of employment is conditioned on consent to a
43 State and national criminal history record check of the applicant. The national criminal
44 history record check shall include a check of the applicant's fingerprints. If the applicant

1 has been a resident of this State for five years or more, then the offer is conditioned on
2 consent to a State criminal history record check of the applicant. A contract agency of a
3 nursing home or home care agency shall not employ an applicant who refuses to consent
4 to a criminal history record check required by this section. Within five business days of
5 making the conditional offer of employment, a contract agency of a nursing home or
6 home care agency shall submit a request to the Department of Justice under
7 G.S. 114-19.10 to conduct a State or national criminal history record check required by
8 this section, or shall submit a request to a private entity to conduct a State criminal
9 history record check required by this section. Notwithstanding G.S. 114-19.10, the
10 Department of Justice shall return the results of national criminal history record checks
11 for employment positions not covered by Public Law 105-277 to the Department of
12 Health and Human Services, ~~Division of Facility Services, Criminal Records Check~~
13 Unit. Within five business days of receipt of the national criminal history of the person,
14 the Department of Health and Human Services, ~~Division of Facility Services, Criminal~~
15 Records Check Unit, shall ~~provide to~~ notify the contract agency of the nursing home or
16 home care agency ~~the results of the national criminal history check, as to whether the~~
17 information received may affect the employability of the applicant. In no case shall the
18 results of the national criminal history record check be shared with the contract agency
19 of the nursing home or home care agency. Contract agencies of nursing homes and
20 home care agencies shall make available upon request verification that a criminal
21 history check has been completed on any staff covered by this section. All criminal
22 history information received by the contract agency is confidential and may not be
23 disclosed, except to the applicant as provided by subsection (b) of this section."

24 **SECTION 6.** This act is effective when it becomes law.