

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 336\*

Short Title: Day Care Provider Records.

(Public)

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Sponsors: Senators Plexico, Forrester, Richardson, Walker; Edwards, Gulley, Odom, Lee, Tally, Conder, Martin of Guilford, Ballance, Marshall, Hartsell, Daniel, Ward, and Albertson.

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Referred to: Judiciary II.

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February 24, 1993

A BILL TO BE ENTITLED

AN ACT TO MANDATE CRIMINAL RECORD CHECKS OF CHILD DAY CARE PROVIDERS AND SPOUSES OF CHILD DAY CARE OPERATORS.

The General Assembly of North Carolina enacts:

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

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

(a) For purposes of this section, 'day care provider' means any employee, prospective employee, or operator directly providing day care. 'Day care provider' does not mean a day care employer, if that employer does not provide direct day care but employs an operator and employees to provide that care or if the day care is provided in a child day care home that does not receive State purchase-of-care funds.

This section mandates criminal record checks of all day care facilities, including church-sponsored day care facilities and those child day care homes that receive State purchase-of-care funds.

(b) Effective December 1, 1993, the Department shall ensure that no applicant to provide day care may be employed in or may operate a day care facility or a State-subsidized child day care home who has been convicted of the crime of felony or misdemeanor child abuse, as defined in G.S. 14-318.2 and G.S. 14-318.4, respectively, or of a comparable crime in another state.

Effective December 1, 1993, the Department shall also ensure that no applicant to become a day care operator may operate a day care facility or a State-subsidized child

1 day care home if the operator or the operator's spouse has been convicted of the crime of  
2 felony or misdemeanor child abuse.

3 This section does not apply to a corporation that applies to operate day care. It does  
4 apply to any natural person providing direct day care to children who (i) is an  
5 employee of that corporation, (ii) is an officer of that corporation, or (iii) is a  
6 shareholder of that corporation.

7 (c) All applicants to provide day care in any day care facility or State-subsidized  
8 child day care home shall be fingerprinted on two cards by the local sheriff or the  
9 municipal police, depending on where the home or facility is located, in the manner  
10 prescribed by the State Bureau of Investigation.

11 All spouses of applicants to operate a day care facility or State-subsidized child day  
12 care home shall be fingerprinted in the manner prescribed by the first paragraph of this  
13 subsection.

14 The local sheriff or the municipal police may charge a fee not to exceed five dollars  
15 (\$5.00) for the fingerprinting under this subsection. The applicant's or operator's  
16 employer, prospective or actual, shall pay this cost. If the employer is the operator, the  
17 operator shall pay the cost.

18 The employer, prospective or actual, shall submit to the Department:

19 (1) The two fingerprint cards; and

20 (2) A completed standardized record check form from the clerk of  
21 superior court reflecting a check of any conviction of misdemeanor or  
22 felony child abuse within the county of the applicant's residence.

23 (d) Upon receipt of required forms prescribed by subsection (c) of this section,  
24 the Department shall:

25 (1) Forward both fingerprint cards, fees required by the State Bureau of  
26 Investigation and the Federal Bureau of Investigation, and record  
27 check form to the State Bureau of Investigation for a Police  
28 Information Network (PIN) check and manual fingerprint check for a  
29 conviction of crimes prescribed in subsection (b) of this section. The  
30 State Bureau of Investigation shall forward one fingerprint card to the  
31 Federal Bureau of Investigation for a manual national check for  
32 conviction of crimes prescribed in subsection (b) of this section; and

33 (2) Notify the employer as to whether the applicant qualifies for continued  
34 employment under this section. If the employer is the operator-  
35 applicant and if the procedures under this section reveal that the  
36 operator-applicant does not qualify for continued employment, the  
37 Department shall remove the day care license, registration, or notice of  
38 approval pursuant to G.S. 110-106, or shall refuse to issue such.

39 The Department shall notify the employer as to whether the spouse  
40 of an applicant to operate a child day care facility or a State-subsidized  
41 child day care home has been convicted of a crime prescribed by  
42 subsection (b) of this section. If the spouse of a day care operator has  
43 such a conviction, the employer shall terminate the operator's  
44 employment. If the employer is the operator, the Department shall

1 remove the day care license, registration, or notice of approval  
2 pursuant to G.S. 110-106, or shall refuse to issue such.

3 Fingerprint cards used by the State Bureau of Investigation and the  
4 Federal Bureau of Investigation are returned to the Department after  
5 the checks.

6 The applicant's or operator's employer, prospective or actual, shall pay the cost of the  
7 record checks. If the employer is the operator, the operator shall pay the cost.

8 (e) The employer may employ an otherwise qualified applicant for the period of  
9 time pending the outcome of the State and federal record checks. The employer shall  
10 terminate this provisional employment immediately upon the Department's notification  
11 that the provisional provider or the day care operator's spouse has a State or federal  
12 record of conviction of a crime prescribed by subsection (b) of this section. If the  
13 employer is the operator, the Department shall terminate the employment and revoke  
14 the day care license, registration, or notice of approval pursuant to G.S. 110-106.

15 (f) When a new day care facility seeks a license, or reports pursuant to G.S. 110-  
16 106, or a new State-subsidized child day care home seeks registration, or when a facility  
17 seeks relicensure or notice of approval annually pursuant to G.S. 110-106, or a new  
18 State-subsidized child day care home seeks reregistration, the Department shall make it  
19 a condition of the issuance of the license, of the notice of approval pursuant to G.S. 110-  
20 106, registration, renewal of license, or renewal of registration, that all applicants to  
21 provide day care and all spouses of applicants to operate a day care facility or State-  
22 subsidized day care home have their State and federal records checked pursuant to the  
23 process mandated by this section. The Commission shall adopt rules to establish a  
24 procedure to permit new providers of day care to receive a provisional license, notice of  
25 compliance pursuant to G.S. 110-106, or registration pending the outcome of these  
26 checks. The Department shall terminate this license, notice of approval, or registration  
27 immediately upon finding that the provisional provider or spouse of a provisional day  
28 care operator has a State or federal record of a crime prescribed by subsection (b) of this  
29 section.

30 (g) Any person who fails to disclose a criminal conviction of misdemeanor or  
31 felony child abuse is guilty of a misdemeanor and shall be punished as prescribed by  
32 G.S. 110-103."

33 Sec. 2. The North Carolina Child Day Care Commission shall adopt rules to  
34 implement this act, in consultation with the Day Care Section of the Division of Facility  
35 Services, Department of Human Resources, and the State Bureau of Investigation.

36 Sec. 3. The Social Services Commission, in consultation with the North  
37 Carolina Child Day Care Commission, shall adopt rules to provide the protection to  
38 children in day care provided by this act to children in "nonregistered" care. The  
39 Commission shall report to the General Assembly by April 1, 1994, on the need for any  
40 legislative action needed to provide this protection fully.

41 Sec. 4. There is appropriated from the General Fund to the Department of  
42 Human Resources the sum of fifty thousand dollars (\$50,000) for the 1993-94 fiscal  
43 year and the sum of fifty thousand dollars (\$50,000) for the 1994-95 fiscal year to  
44 implement Section 1 of this act.

1           Sec. 5. This act becomes effective July 1, 1993. This act applies to persons  
2 applying or reapplying for work as day care providers and spouses of persons applying  
3 or reapplying for work as day care operators on or after this date. This act also applies to  
4 persons employed as day care providers and spouses of persons employed as day care  
5 operators as of this date when this provider or operator changes the place of  
6 employment.