

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1014

Short Title: Nursing/Rest Home Emp. Checks.

(Public)

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Sponsors: Senators Cooper and Cochrane.

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Referred to: Judiciary I/Constitution

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May 4, 1995

A BILL TO BE ENTITLED

1 AN ACT REQUIRING CRIMINAL HISTORY RECORDS CHECKS OF  
2 UNLICENSED APPLICANTS FOR EMPLOYMENT IN NURSING HOMES AND  
3 DOMICILIARY HOMES.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 114-19.3 reads as rewritten:

7 "**§ 114-19.3. Criminal record checks of personnel of ~~hospitals, nursing homes,~~**  
8 **hospitals and area mental health, developmental disabilities, and**  
9 **substance abuse authorities and their contract agencies.**

10 The Department of Justice may provide a criminal record check to a hospital or  
11 ~~nursing home~~-licensed under Chapter 131E of the General Statutes and to a hospital or an  
12 area mental health, developmental disabilities, and substance abuse authority licensed  
13 under Chapter 122C of the General Statutes, including a contract agency of an area  
14 authority that is subject to the provisions of Article 4 of Chapter 122C of the General  
15 Statutes, of an individual who is employed by the hospital, ~~nursing home~~, area authority,  
16 or contract agency or of an individual who has applied for employment with the hospital,  
17 ~~nursing home~~, area authority, or contract agency if the employee or applicant consents to  
18 the record check. The information shall be kept confidential by the hospital, ~~nursing~~  
19 ~~home~~, area authority, or contract agency that received the information. Upon the  
20 disclosure of confidential information under this section by a hospital, ~~nursing home~~, area

1 authority, or contract agency, the Department may refuse to provide further criminal  
2 record checks to the hospital, ~~nursing home~~, area authority, or contract agency. The  
3 Department shall charge a fee of ten dollars (\$10.00) for conducting a criminal record  
4 check under this section."

5 Sec. 2. Article 4 of Chapter 114 is amended by adding a new section to read:  
6 **"§ 114-19.4. Criminal history record checks of certain applicants for employment at**  
7 **nursing homes and domiciliary homes.**

8 (a) Definitions. As used this section:

9 (1) 'Criminal history' means a county or State history of conviction of a  
10 crime, whether a misdemeanor or felony, that bears upon a covered  
11 person's fitness to have responsibility for the safety and well-being of  
12 aged or disabled persons included among these listed sections of  
13 Chapter 14 of the General Statutes:

14 a. All sections of Articles 5, 5A, 6, 7, 7A, 8, 10, 13, 14, 15, 16, 17,  
15 18, 19, 19A, 19B, 20, 21, 26, 27, 35, 36A, 39, 40, and 60 of the  
16 General Statutes;

17 b. G.S. 14-444.

18 c. G.S. 18B-302.

19 d. G.S. 20-138.1.

20 e. G.S. 20-138.2.

21 f. G.S. 20-138.3.

22 g. G.S. 20-138.4.

23 h. G.S. 20-138.5.

24 i. All sections of Article 5 of Chapter 90 of the General Statutes.

25 (2) 'Covered person' means an individual who is an applicant for  
26 employment with a covered entity for a position that does not require  
27 the applicant to be licensed by a licensing board of this State.

28 (3) 'Covered entity' means a domiciliary home licensed under Chapter 131D  
29 of the General Statutes or a nursing home licensed under Chapter 131E  
30 of the General Statutes.

31 (b) The Department of Justice may provide a criminal history records check of a  
32 covered person to a covered entity. A criminal history records check conducted pursuant  
33 to this section may be obtained by using as identifying information the fingerprints or the  
34 name of the covered person. Before the records check may be conducted, the covered  
35 person must sign a form consenting to the criminal history records check and the use of  
36 identifying information. For a records check using fingerprints, the covered person shall  
37 be fingerprinted by local law enforcement authorities. The covered entity shall forward  
38 the covered person's identifying information to the State Bureau of Investigation for  
39 processing.

40 (c) All releases of criminal history information to a covered entity shall be subject  
41 to, and in compliance with, rules governing the dissemination of criminal history records  
42 checks as adopted by the North Carolina Division of Criminal Information. All the  
43 information that the covered entity receives through the checking of the criminal history

1 is privileged information and for the exclusive use of the covered entity. The information  
2 shall be kept confidential by the covered entity and shall be held securely by the covered  
3 entity. Upon the disclosure of confidential information under this section by a covered  
4 entity, the Department may refuse to provide further criminal record checks to the  
5 covered entity.

6 (d) The Department shall complete each criminal history records check within 10  
7 business days of receiving the covered entity's request, which shall include the  
8 identifying information and written consent of the covered person. The Department shall  
9 charge a reasonable fee for conducting a criminal history record check under this section,  
10 with the costs of a records check to be borne by the covered entity requesting the check.

11 (e) No action for civil or criminal liability shall be brought against any county or  
12 State repository of criminal information, its officers, or its employees, based upon the  
13 performance or nonperformance of duties under this section."

14 Sec. 3. Chapter 131D of the General Statutes is amended by adding a new  
15 Article to read:

16 **"ARTICLE 5.**

17 **"MISCELLANEOUS PROVISIONS.**

18 **"§ 131D-40. Criminal history records checks of certain applicants for employment.**

19 (a) The head of a domiciliary home licensed under this Chapter, upon making a  
20 conditional offer of employment, shall require that an applicant for employment being  
21 considered for a position that does not require the applicant to be licensed by a licensing  
22 board of this State shall consent to a criminal history records check performed pursuant to  
23 G.S. 114-19.4. The request for a records check shall be submitted within five business  
24 days of making the conditional offer of employment. All criminal history information  
25 received by the domiciliary home shall be privileged, kept confidential, and held securely  
26 as provided by G.S. 114-19.4.

27 (b) If the applicant's criminal history records check reveals one or more  
28 convictions covered by G.S. 114-19.4(a)(1), the head of the domiciliary home shall  
29 consider the following factors in determining whether the applicant will be hired:

30 (1) The level and seriousness of the crime;

31 (2) The date of the crime;

32 (3) The age of the person at the time of the conviction;

33 (4) The circumstances surrounding the commission of the crime, if known;

34 (5) The nexus between the criminal conduct of the person and job duties of  
35 the person;

36 (6) The prison, jail, probation, parole, rehabilitation, and employment  
37 records of the person since the date the crime was committed; and

38 (7) The subsequent commission by the person of a crime listed in G.S. 114-  
39 19.3(a)(1).

40 The fact of conviction alone shall not be a bar to employment; however, the listed factors  
41 shall be considered by the head of the domiciliary home.

