

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

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

(Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

1 received by the home is confidential and may not be disclosed, except to the applicant as  
2 provided in subsection (b) of this section.

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

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

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

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

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

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

38 (g) Immunity From Liability. – An entity and officers and employees of an entity  
39 shall be immune from liability for failure to consider criminal history information not  
40 contained in the criminal history record check requested and received by the entity  
41 pursuant to this section."

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

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

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

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

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

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

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

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

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

31 (g) Immunity From Liability. – An entity and officers and employees of an entity  
32 shall be immune from liability for failure to consider criminal history information not  
33 contained in the criminal history record check requested and received by the entity  
34 pursuant to this section."

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

37 **"ARTICLE 3A.**

38 **"MISCELLANEOUS PROVISIONS.**

39 **"§ 122C-80. Criminal history record check required for certain applicants for**  
40 **employment.**

41 (a) Definition. – As used in this section, 'area authority' means an area mental  
42 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 liability for:

- 38 (1) The failure of the area authority to employ an individual on the basis of  
39 information provided in the criminal history record check of the  
40 individual.
- 41 (2) Failure to consider criminal history information not contained in the  
42 criminal history record check requested and received by the entity  
43 pursuant to this section.

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

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

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

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

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

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

39       "(a) Authority. – The Department of Justice may provide to any of the following  
40 entities a criminal record check of an individual who is employed by that entity, has  
41 applied for employment with that entity, or has volunteered to provide direct care on  
42 behalf of that entity:

43           (1) Hospitals licensed under Chapter 131E of the General Statutes.

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

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

22   "**§ 131E-113. Special care units; disclosure of information required.**

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

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

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

- 35           (1) A statement of the overall philosophy and mission of the licensed  
36 facility and how it reflects the special needs of residents with dementia.
- 37           (2) The process and criteria for placement, transfer, or discharge to or from  
38 the special care unit.
- 39           (3) The process used for assessment and establishment of the plan of care  
40 and its implementation, as required under State and federal law.
- 41           (4) Typical staffing patterns and how the patterns reflect the resident's need  
42 for increased care and supervision.
- 43           (5) Dementia-specific staff training.

1           (6) Physical environment features designed specifically for the special care  
2           unit.

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

4           (8) Opportunities for family involvement.

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

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

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

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

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

21 **"§ 131E-104. Rules and enforcement.**

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

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

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