

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 41*
Judiciary I Committee Substitute Adopted 2/23/05

Short Title: Criminal Record Checks/LTC Changes.

(Public)

Sponsors:

Referred to:

February 3, 2005

A BILL TO BE ENTITLED

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

7 The General Assembly of North Carolina enacts:

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

9 "(a) Definition. – As used in this section, "~~area authority~~" means ~~an area mental~~
10 ~~health, developmental disabilities, and substance abuse services area authority,~~
11 ~~including a contract agency of an area authority that is subject to the provisions of~~
12 ~~Article 4 of this Chapter.~~ the term "providers" applies to area authority/county programs,
13 and providers of mental health, developmental disability, and substance abuse services
14 that are licensable under Article 2 of this Chapter."

15 **SECTION 2.** G.S. 122C-80(b) reads as rewritten:

16 "(b) Requirement. – An offer of employment by ~~an area authority~~ a provider
17 licensed under this Chapter to an applicant to fill a position that does not require the
18 applicant to have an occupational license is conditioned on consent to a State and
19 national criminal history record check of the applicant. If the applicant has been a
20 resident of this State for less than five years, then the offer of employment is
21 conditioned on consent to a State and national criminal history record check of the
22 applicant. The national criminal history record check shall include a check of the
23 applicant's fingerprints. If the applicant has been a resident of this State for five years or
24 more, then the offer is conditioned on consent to a State criminal history record check of
25 the applicant. ~~An area authority~~ A provider shall not employ an applicant who refuses to
26 consent to a criminal history record check required by this section. Except as otherwise
27 provided in this subsection, within five business days of making the conditional offer of
28 employment, ~~an area authority~~ a provider shall submit a request to the Department of
29 Justice under G.S. 114-19.10 to conduct a criminal history record check required by this

1 section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the
2 results of national criminal history record checks for employment positions not covered
3 by Public Law 105-277 to the Department of Health and Human Services, ~~Division of~~
4 ~~Facility Services, Criminal Records Check Unit~~. Within five business days of receipt of
5 the national criminal history of the person, the Department of Health and Human
6 Services, ~~Division of Facility Services, Criminal Records Check Unit~~, shall ~~provide to~~
7 ~~the area authority the results of the national criminal history check, notify the provider as~~
8 ~~to whether the information received may affect the employability of the applicant. In no~~
9 ~~case shall the results of the national criminal history record check be shared with the~~
10 ~~provider. Area authorities~~ Providers shall make available upon request verification that a
11 criminal history check has been completed on any staff covered by this section. A
12 county that has adopted an appropriate local ordinance and has access to the Division of
13 Criminal Information data bank may conduct on behalf of ~~an area authority~~ a provider a
14 State criminal history record check required by this section without the ~~area~~
15 ~~authority~~ provider having to submit a request to the Department of Justice. In such a
16 case, the county shall commence with the State criminal history record check required
17 by this section within five business days of the conditional offer of employment by the
18 ~~area authority~~ provider. All criminal history information received by the ~~area~~
19 ~~authority~~ provider is confidential and may not be disclosed, except to the applicant as
20 provided in subsection (c) of this section."

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

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

1 history record check be shared with the adult care home. Adult care homes shall make
2 available upon request verification that a criminal history check has been completed on
3 any staff covered by this section. All criminal history information received by the home
4 is confidential and may not be disclosed, except to the applicant as provided in
5 subsection (b) of this section."

6 **SECTION 4.** G.S. 131D-40(a1) reads as rewritten:

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

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

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

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

41 **SECTION 6.** G.S. 131E-265(a1) reads as rewritten:

42 "(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –
43 An offer of employment by a contract agency of a nursing home or home care agency
44 licensed under this Chapter to an applicant to fill a position that does not require the

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

29 **SECTION 7.** This act is effective when it becomes law.