

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 41*
Judiciary I Committee Substitute Adopted 2/23/05
House Committee Substitute Favorable 3/7/05

Short Title: Criminal Records Checks/LTC Changes.

(Public)

Sponsors:

Referred to:

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING
NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LONG-TERM
CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS
RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON
AGING, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

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

"(a) Definition. – As used in this section, "~~area authority~~" means ~~an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.~~ the term "provider" applies to an area authority/county program and any provider of mental health, developmental disability, and substance abuse services that is licensable under Article 2 of this Chapter."

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

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

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

22 **SECTION 3.** G.S. 122C-80(c) reads as rewritten:

23 "(c) Action. – If an applicant's criminal history record check reveals one or more
24 convictions of a relevant offense, the ~~area authority~~ provider shall consider all of the
25 following factors in determining whether to hire the applicant:

- 26 (1) The level and seriousness of the crime.
- 27 (2) The date of the crime.
- 28 (3) The age of the person at the time of the conviction.
- 29 (4) The circumstances surrounding the commission of the crime, if known.
- 30 (5) The nexus between the criminal conduct of the person and the job
31 duties of the position to be filled.
- 32 (6) The prison, jail, probation, parole, rehabilitation, and employment
33 records of the person since the date the crime was committed.
- 34 (7) The subsequent commission by the person of a relevant offense.

35 The fact of conviction of a relevant offense alone shall not be a bar to employment;
36 however, the listed factors shall be considered by the ~~area authority~~ provider. If the ~~area~~
37 ~~authority~~ provider disqualifies an applicant after consideration of the relevant factors,
38 then the ~~area authority~~ provider may disclose information contained in the criminal
39 history record check that is relevant to the disqualification, but may not provide a copy
40 of the criminal history record check to the applicant."

41 **SECTION 4.** G.S. 122C-80(d) reads as rewritten:

42 "(d) Limited Immunity. – ~~An area authority~~ A provider and an officer or employee
43 of ~~an area authority~~ a provider that, in good faith, complies with this section shall be
44 immune from civil liability for:

1 (1) The failure of the ~~area authority provider~~ to employ an individual on
2 the basis of information provided in the criminal history record check
3 of the individual.

4 (2) Failure to check an employee's history of criminal offenses if the
5 employee's criminal history record check is requested and received in
6 compliance with this section."

7 **SECTION 5.(a)** G.S. 122C-80(g) reads as rewritten:

8 "(g) Conditional Employment. – ~~An area authority~~ A provider may employ an
9 applicant conditionally prior to obtaining the results of a criminal history record check
10 regarding the applicant if both of the following requirements are met:

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

15 (2) The ~~area authority provider~~ shall submit the request for a criminal
16 history record check not later than five business days after the
17 individual begins conditional employment."

18 **SECTION 5.(b)** G.S. 114-19.10 reads as rewritten:

19 "**§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home**
20 **care agencies, and ~~area mental health, developmental disabilities, and~~**
21 **~~substance abuse services authorities.~~providers of mental health,**
22 **developmental disabilities, and substance abuse services.**

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

25 (1) Nursing homes or combination homes licensed under Chapter 131E of
26 the General Statutes.

27 (2) Adult care homes licensed under Chapter 131D of the General
28 Statutes.

29 (3) Home care agencies licensed under Chapter 131E of the General
30 Statutes.

31 (4) ~~Area mental health, developmental disabilities, and substance abuse~~
32 ~~services authorities~~ Providers licensed under Chapter 122C of the
33 General Statutes, including a contract agency of ~~an area authority a~~
34 ~~provider~~ that is subject to the provisions of Article 4 of that Chapter.

35 The criminal history shall be provided to nursing homes and home care agencies in
36 accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40,
37 and to ~~area mental health, developmental disabilities, and substance abuse services~~
38 ~~authorities~~ a provider in accordance with G.S. 122C-80. The requesting entity shall
39 provide to the Department of Justice, along with the request, the fingerprints of the
40 individual to be checked if a national criminal history record check is required, any
41 additional information required by the Department of Justice, and a form signed by the
42 individual to be checked consenting to the check of the criminal record and to the use of
43 fingerprints and other identifying information required by the State or National
44 Repositories of Criminal Histories. If a national criminal history record check is

1 required, the fingerprints of the individual shall be forwarded to the State Bureau of
2 Investigation for a search of the State's criminal history record file, and the State Bureau
3 of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation
4 for a national criminal history record check. All information received by the entity shall
5 be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as
6 applicable. The Department of Justice shall charge a reasonable fee for conducting the
7 checks authorized by this section. The fee for the State check may not exceed fourteen
8 dollars (\$14.00)."

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

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

38 **SECTION 7.** G.S. 131D-40(a1) reads as rewritten:

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

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

25 **SECTION 8.** G.S. 131E-265(a) reads as rewritten:

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

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

29 **SECTION 9.** G.S. 131E-265(a1) reads as rewritten:

30 "(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –
31 An offer of employment by a contract agency of a nursing home or home care agency
32 licensed under this Chapter to an applicant to fill a position that does not require the
33 applicant to have an occupational license is conditioned upon consent to a criminal
34 history record check of the applicant. If the applicant has been a resident of this State
35 for less than five years, then the offer of employment is conditioned on consent to a
36 State and national criminal history record check of the applicant. The national criminal
37 history record check shall include a check of the applicant's fingerprints. If the applicant
38 has been a resident of this State for five years or more, then the offer is conditioned on
39 consent to a State criminal history record check of the applicant. A contract agency of a
40 nursing home or home care agency shall not employ an applicant who refuses to consent
41 to a criminal history record check required by this section. Within five business days of
42 making the conditional offer of employment, a contract agency of a nursing home or
43 home care agency shall submit a request to the Department of Justice under
44 G.S. 114-19.10 to conduct a State or national criminal history record check required by

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

17 **SECTION 10.** This act is effective when it becomes law.