

GENERAL ASSEMBLY OF NORTH CAROLINA
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Short Title: Nurs. Home Admin & Gen. Assembly/ Crim. Hist. (Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF
3 EXAMINERS FOR NURSING HOME ADMINISTRATORS TO OBTAIN
4 CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE
5 AS NURSING HOME ADMINISTRATORS, AS RECOMMENDED BY THE
6 NORTH CAROLINA STUDY COMMISSION ON AGING AND TO
7 AUTHORIZE EMPLOYING ENTITIES OF THE GENERAL ASSEMBLY TO
8 OBTAIN CRIMINAL HISTORY RECORD CHECKS OF PROSPECTIVE AND
9 CURRENT EMPLOYEES.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a
12 new section to read:

13 **"§ 90-288.01. Criminal history record checks of applicants for licensure.**

14 (a) The following definitions apply in this section:

15 (1) Applicant. – A person applying for initial licensure pursuant to either
16 G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure
17 pursuant to G.S. 90-286.

18 (2) Criminal history. – A history of conviction of a state or federal crime,
19 whether a misdemeanor or felony, that bears on an applicant's fitness
20 for licensure as a nursing home administrator. The crimes include the
21 criminal offenses set forth in any of the following Articles of Chapter
22 14 of the General Statutes: Article 5, Counterfeiting and Issuing
23 Monetary Substitutes; Article 5A, Endangering Executive and
24 Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other
25 Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and
26 Abduction; Article 13, Malicious Injury or Damage by Use of

1 Explosive or Incendiary Device or Material; Article 14, Burglary and
2 Other Housebreakings; Article 15, Arson and Other Burnings; Article
3 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article
4 19, False Pretenses and Cheats; Article 19A, Obtaining Property or
5 Services by False or Fraudulent Use of Credit Device or Other Means;
6 Article 19B, Financial Transaction Card Crime Act; Article 20,
7 Frauds; Article 21, Forgery; Article 26, Offenses Against Public
8 Morality and Decency; Article 26A, Adult Establishments; Article 27,
9 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
10 Misconduct in Public Office; Article 35, Offenses Against the Public
11 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection
12 of Minors; Article 40, Protection of the Family; Article 59, Public
13 Intoxication; and Article 60, Computer-Related Crime. The crimes
14 also include possession or sale of drugs in violation of the North
15 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the
16 General Statutes, and alcohol-related offenses, including sale to
17 underage persons in violation of G.S. 18B-302 or driving while
18 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

19 (b) Criminal History Record Check. – The Board shall require a criminal history
20 record check of all applicants. Refusal to consent to a criminal history record check may
21 constitute grounds for the Board to deny licensure to an applicant. The Board shall
22 provide to the North Carolina Department of Justice the fingerprints of the applicant to
23 be checked, a form signed by the applicant consenting to the criminal history record
24 check and the use of fingerprints and other identifying information required by the State
25 or National Repositories, and any additional information required by the Department of
26 Justice. The Board shall keep all information obtained pursuant to this section
27 confidential. The Board shall collect any fees required by the Department of Justice and
28 shall remit the fees to the Department of Justice for expenses associated with
29 conducting the criminal history record check.

30 (c) Convictions. – If the applicant's criminal history record check reveals one or
31 more convictions listed under subdivision (2) of subsection (a) of this section, the
32 conviction shall not automatically bar licensure. The Board shall consider all of the
33 following factors regarding the conviction:

- 34 (1) The level of seriousness of the crime.
- 35 (2) The date of the crime.
- 36 (3) The age of the applicant at the time of the conviction.
- 37 (4) The circumstances surrounding the commission of the crime, if known.
- 38 (5) The nexus between the criminal conduct of the applicant and the job
39 duties of the position to be filled.
- 40 (6) The applicant's prison, jail, probation, parole, rehabilitation, and
41 employment records since the date the crime was committed.
- 42 (7) The subsequent commission by the applicant of a crime listed in
43 subsection (a) of this section.

1 (b) An employing entity of the General Assembly may deny employment to or
2 refuse to accept an initial application for employment from any person who refuses to
3 consent to a criminal history check authorized under G.S. 114-19.25. An employing
4 entity of the General Assembly may dismiss a current employee or refuse to extend the
5 employee's period of employment if that employee refuses to consent to a criminal
6 history record check authorized under G.S. 114-19.25."

7 **SECTION 4.** Chapter 114 of the General Statutes is amended by adding a
8 new section to read:

9 **"§ 114-19.25. Criminal record checks for employing entities of the General**
10 **Assembly.**

11 (a) The Department of Justice may provide to an employing entity of the General
12 Assembly from the State and National Repositories of Criminal Histories the criminal
13 history of any current or prospective employee of that employing entity of the General
14 Assembly. The employing entity of the General Assembly shall provide to the
15 Department of Justice, along with the request, the fingerprints of the current or
16 prospective employee, a form signed by the current or prospective employee consenting
17 to the criminal record check and use of fingerprints and other identifying information
18 required by the State and National Repositories, and any additional information required
19 by the Department of Justice. The fingerprints of the current or prospective employee
20 shall be forwarded to the State Bureau of Investigation for a search of the State's
21 criminal history record file, and the State Bureau of Investigation shall forward a set of
22 fingerprints to the Federal Bureau of Investigation for a national criminal history record
23 check. The employing entity of the General Assembly shall keep all information
24 obtained pursuant to this section confidential.

25 (b) The Department of Justice may charge a fee to offset the cost incurred by it to
26 conduct a criminal record check under this section. The fee shall not exceed the actual
27 cost of locating, editing, researching, and retrieving the information."

28 **SECTION 5.** Sections 1 and 2 of this act are effective December 1, 2008
29 and apply to nursing home administrator applications and renewals submitted to the
30 Board on or after this date. The remainder of this act is effective when it becomes law.