

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 165

Short Title: Day Care Provider Records/AB.

(Public)

Sponsors: Senators Odom; Hobbs, Plexico, Jordan, Conder, Plyler, Parnell, Sherron, Lucas, Edwards, Ballance, Winner, Warren, Hoyle, Forrester, Albertson, Carpenter, and Gulley.

Referred to: Judiciary I/Constitution.

February 9, 1995

1 A BILL TO BE ENTITLED
AN ACT TO MANDATE CRIMINAL HISTORY CHECKS OF CHILD DAY CARE PROVIDERS, TO STUDY THE USE OF THE CENTRAL REGISTRY ON CHILD ABUSE AND NEGLECT, AND TO APPROPRIATE FUNDS.

2 The General Assembly of North Carolina enacts:

3 Section 1. Article 7 of Chapter 110 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 110-90.2. Mandatory day care providers' criminal history checks.**

6 (a) For purposes of this section:

7 (1) 'Child day care', notwithstanding the definition in G.S. 110-86, means
8 any child day care provided in child day care facilities and child day
9 care homes, including child day care facilities and child day care homes
10 required to be licensed or registered under this Article and nonregistered
11 child day care homes approved to receive or receiving State or federal
12 funds for providing child day care.

13 (2) 'Child day care provider' means a person who:

14 a. Is employed by or seeks to be employed by a child day care
15 facility or child day care home providing child day care as

1 defined in subdivision (1) of this subsection and by G.S. 110-86;
2 or

3 b. Owns or operates or seeks to own or operate a child day care
4 facility or child day care home providing child day care as
5 defined in subdivision (1) of this subsection and by G.S. 110-86.

6 (3) 'Criminal history' means a county or State criminal history of conviction
7 of a crime, whether a misdemeanor or a felony, that bears upon an
8 individual's fitness to have responsibility for the safety and well-being
9 of children, including homicide, rape and other sex offenses, assaults,
10 kidnapping and abduction, malicious injury or damage by the use of
11 incendiary device or material, offenses against public morality and
12 decency, prostitution, a crime against children, and a crime against the
13 family, as prescribed respectively in Articles 6, 7A, 8, 10, 13, 26, 27,
14 39, and 40 of Chapter 14 of the General Statutes, a violation of the
15 North Carolina Controlled Substances Act, as prescribed in Article 5 of
16 Chapter 90 of the General Statutes, a violation of the law prohibiting
17 driving while impaired, as prescribed in G.S. 20-138.1 through G.S. 20-
18 138.5, a violation of the law forbidding sales of alcohol to, or purchases
19 of alcohol by, minors, as prescribed in G.S. 18B-302(c), and a violation
20 of the law prohibiting public intoxication, as prescribed in G.S. 14-444.

21 (b) Effective January 1, 1996, the Department shall ensure that child day care
22 providers are checked for any criminal history and may prohibit a child day care provider
23 from providing child day care if that child day care provider has a criminal history.

24 (c) The Department of Justice may provide to the Division of Child Development,
25 Department of Human Resources, the criminal history of any child day care provider
26 from the State Repository of criminal histories. The Division shall provide to the
27 Department of Justice, along with the request, the fingerprints of the provider to be
28 checked, any additional information required by the Department of Justice, and a form
29 consenting to the check of the criminal record and to the use of fingerprints and other
30 identifying information required by the State Repository signed by the child day care
31 provider to be checked. Refusal to consent is grounds for the Department to prohibit the
32 child day care provider from providing child day care.

33 (d) The Department shall notify in writing the child day care provider and that
34 child day care provider's employer, if any, of any disqualifying information resulting
35 from the check of the criminal history, and of the Department's action under subsection
36 (b) of this section.

37 A child day care provider who disagrees with the Department's decision may file a
38 civil action in the district court of the county of residence of the child day care provider.

39 (e) All the information that the Department receives through the checking of the
40 criminal history is privileged information and for the exclusive use of the Department and
41 those persons authorized under this section to receive the information. The Department
42 may destroy the information after it is used for the purposes authorized by this section
43 after one calendar year.

1 (f) No action for civil or criminal liability shall be brought against an employer of
2 a child day care provider, a child day care, or a State or local agency as a result of the
3 check of the criminal history, if the employer, child day care provider, or State or local
4 agency was acting in good faith and in accordance with this section and the rules
5 established under this section.

6 (g) The child day care provider who seeks to be employed in child day care and
7 the child day care provider who seeks to own or operate child day care shall pay the cost
8 of the fingerprinting and the local check at the time the child day care provider seeks to
9 provide child day care. The Department of Justice shall perform the State check, using
10 funds appropriated to it for that purpose, if the Department considers that the additional
11 check is necessary."

12 Sec. 2. G.S. 114-19 reads as rewritten:

13 **"§ 114-19. Criminal statistics.**

14 (a) It shall be the duty of the State Bureau of Investigation to receive and collect
15 police information, to assist in locating, identifying, and keeping records of criminals in
16 this State, and from other states, and to compare, classify, compile, publish, make
17 available and disseminate any and all such information to the sheriffs, constables, police
18 authorities, courts or any other officials of the State requiring such criminal identification,
19 crime statistics and other information respecting crimes local and national, and to conduct
20 surveys and studies for the purpose of determining so far as is possible the source of any
21 criminal conspiracy, crime wave, movement or cooperative action on the part of the
22 criminals, reporting such conditions, and to cooperate with all officials in detecting and
23 preventing.

24 ♦(b) The State Bureau of Investigation shall, on a daily basis, notify the Department
25 of Revenue of all reports it receives pursuant to G.S. 114-18.1 of arrests and seizures
26 involving non-tax-paid controlled substances and counterfeit controlled substances. The
27 Bureau shall also, as soon as practicable, provide the Department with any additional
28 information it receives regarding such arrests and seizures.

29 (c) The Department of Justice may provide to the Division of Child
30 Development, Department of Human Resources, the criminal history from the State
31 Repository of criminal histories of any child day care provider. The Division shall
32 provide to the Department of Justice, along with the request, the fingerprints of the
33 provider to be checked, any additional information required by the Department of Justice,
34 and a form consenting to the check of the criminal record and to the use of fingerprints
35 and other identifying information required by the State Repository signed by the child
36 day care provider to be checked. Refusal to consent is grounds for the Department to
37 prohibit the child day care provider from providing child day care.

38 (d) The child day care provider who seeks to be employed in child day care and
39 the child day care provider who seeks to own or operate child day care shall pay the cost
40 of the fingerprinting and the local check at the time the child day care provider seeks to
41 provide child day care. The Department of Justice shall perform the State check, using
42 funds appropriated to it for that purpose, if the Department considers that the additional
43 check is necessary."

1 Sec. 3. The North Carolina Child Day Care Commission shall adopt rules to
2 implement this act, in consultation with the Divisions of Child Development and Social
3 Services of the Department of Human Resources, and the Division of Criminal
4 Information of the Department of Justice.

5 Sec. 4. The Legislative Research Commission shall study the issue of using
6 the records in the Central Registry on Child Abuse and Neglect for the purpose of
7 conducting records checks of child day care providers. In its study, the Commission shall
8 evaluate current procedures for substantiating claims of child abuse or neglect and for
9 maintaining records in the Central Registry, and shall determine what procedures should
10 be implemented to (i) ensure that records are accurate, (ii) provide appropriate notice to
11 interested parties, (iii) provide for expungement or correction of information, and (iv)
12 provide for release of information. The Commission shall report its findings and
13 recommendations to the 1997 General Assembly.

14 Sec. 5. There is appropriated from the General Fund to the Department of
15 Human Resources the sum of one hundred ninety-one thousand seven hundred nine
16 dollars (\$191,709) for the 1995-96 fiscal year and the sum of two hundred ninety-seven
17 thousand three hundred twenty-four dollars (\$297,324) for the 1996-97 fiscal year to
18 implement this act.

19 Sec. 6. Section 4 of this act is effective upon ratification. Section 5 of this act
20 becomes effective July 1, 1995. The remainder of this act becomes effective January 1,
21 1996, and applies to child day care providers newly hired in child day care employment
22 and to child day care providers newly owning or operating child day care on or after that
23 date.