

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 826
Health Care Committee Substitute Adopted 4/19/01

Short Title: Criminal Record Check Change/Long-Term Care.

(Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK FOR CERTAIN LONG-TERM CARE FACILITIES BECAUSE OF FEDERAL REQUIREMENTS LIMITING DISTRIBUTION OF RECORD CHECK RESULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-265 reads as rewritten:

"§ 131E-265. Criminal history record checks required for certain applicants for employment.

(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing home 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 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 offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. ~~If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the~~

1 ~~applicant's or current employee's fingerprints. If the applicant or current employee has~~
2 ~~been a resident of this State for five years or more, then the offer is conditioned on~~
3 ~~consent to a State criminal history record check of the applicant or current employee~~
4 ~~applying for a change in employment status. A nursing home or a home care agency~~
5 shall not employ an applicant who refuses to consent to a criminal history record check
6 required by this section. In addition, a home care agency shall not change a current
7 employee's employment status from a position that does not require entering the
8 patient's home to a position that requires entering the patient's home who refuses to
9 consent to a criminal history record check required by this section. Within five business
10 days of making the conditional offer of employment, a nursing home or home care
11 agency shall submit a request to the Department of Justice under G.S. 114.19.10 to
12 conduct a State ~~or national~~ criminal history record check required by this section, or
13 shall submit a request to a private entity to conduct a State criminal history record check
14 required by this section. All criminal history information received by the home or
15 agency is confidential and may not be disclosed, except to the applicant as provided in
16 subsection (b) of this section.

17 (a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –
18 An offer of employment by a contract agency of a nursing home or home care agency
19 licensed under this Chapter to an applicant to fill a position that does not require the
20 applicant to have an occupational license is conditioned upon consent to a criminal
21 history record check of the applicant. ~~If the applicant has been a resident of this State~~
22 ~~for less than five years, then the offer of employment is conditioned on consent to a~~
23 ~~State and national criminal history record check of the applicant. The national criminal~~
24 ~~history record check shall include a check of the applicant's fingerprints. If the applicant~~
25 ~~has been a resident of this State for five years or more, then the offer is conditioned on~~
26 ~~consent to a State criminal history record check of the applicant.~~ A contract agency of a
27 nursing home or home care agency shall not employ an applicant who refuses to consent
28 to a criminal history record check required by this section. Within five business days of
29 making the conditional offer of employment, a contract agency of a nursing home or
30 home care agency shall submit a request to the Department of Justice under G.S.
31 114-19.10 to conduct a State ~~or national~~ criminal history record check required by this
32 section, or shall submit a request to a private entity to conduct a State criminal history
33 record check required by this section. All criminal history information received by the
34 contract agency is confidential and may not be disclosed, except to the applicant as
35 provided by subsection (b) of this section.

36 (b) Action. – If an applicant's criminal history record check reveals one or more
37 convictions of a relevant offense, the nursing home or home care agency, or the contract
38 agency of a nursing home or home care agency, shall consider all of the following
39 factors in determining whether to hire the applicant:

- 40 (1) The level and seriousness of the crime.
- 41 (2) The date of the crime.
- 42 (3) The age of the person at the time of the conviction.

- 1 (4) The circumstances surrounding the commission of the crime, if known.
- 2 (5) The nexus between the criminal conduct of the person and the job
- 3 duties of the position to be filled.
- 4 (6) The prison, jail, probation, parole, rehabilitation, and employment
- 5 records of the person since the date the crime was committed.
- 6 (7) The subsequent commission by the person of a relevant offense.

7 The fact of conviction of a relevant offense alone shall not be a bar to employment;
8 however, the listed factors shall be considered by the nursing home or home care
9 agency, or the contract agency of the nursing home or home care agency. If a nursing
10 home, home care agency, or contract agency of a nursing home or home care agency
11 disqualifies an applicant after consideration of the relevant factors, then the nursing
12 home, home care agency, or contract agency may disclose information contained in the
13 criminal history record check that is relevant to the disqualification, but may not provide
14 a copy of the criminal history record check to the applicant.

15 (c) Limited Immunity. – An entity and an officer or employee of an entity that, in
16 good faith, complies with this section is not liable for the failure of the entity to employ
17 an individual on the basis of information provided in the criminal history record check
18 of the individual.

19 (d) Relevant Offense. – As used in this section, the term "relevant offense" has
20 the same meaning as in G.S. 131D-40.

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

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

- 28 (1) The nursing home or home care agency shall not employ an applicant
- 29 prior to obtaining the applicant's consent for a criminal history record
- 30 check as required in subsection (a) of this section or the completed
- 31 fingerprint cards as required in G.S. 114-19.10.
- 32 (2) The nursing home or home care agency shall submit the request for a
- 33 criminal history record check not later than five business days after the
- 34 individual ~~begins conditional employment.~~ undertakes the functions of
- 35 the job.

36 (g) Immunity From Liability. – An entity and officers and employees of an entity
37 shall be immune from civil liability for failure to check an employee's history of
38 criminal offenses if the employee's criminal history record check is requested and
39 received in compliance with this section."

40 SECTION 2. G.S. 131D-40 reads as rewritten:

41 "§ 131D-40. Criminal history record checks required for certain applicants for
42 employment.

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

18 (a1) Requirement; Contract Agency of Adult Care Home. – An offer of
19 employment by a contract agency of an adult care home licensed under this Chapter to
20 an applicant to fill a position that does not require the applicant to have an occupational
21 license is conditioned upon consent to a criminal history record check of the applicant.
22 ~~If the applicant has been a resident of this State for less than five years, then the offer of
23 employment is conditioned on consent to a State and national criminal history record
24 check of the applicant. The national criminal history record check shall include a check
25 of the applicant's fingerprints. If the applicant has been a resident of this State for five
26 years or more, then the offer is conditioned on consent to a State criminal history record
27 check of the applicant.~~ A contract agency of an adult care home shall not employ an
28 applicant who refuses to consent to a criminal history record check required by this
29 section. Within five business days of making the conditional offer of employment, a
30 contract agency of an adult care home shall submit a request to the Department of
31 Justice under G.S. 114-19.10 to conduct a State ~~or national~~ criminal history record
32 check required by this section, or shall submit a request to a private entity to conduct a
33 State criminal history record check required by this section. All criminal history
34 information received by the contract agency is confidential and may not be disclosed,
35 except to the applicant as provided by subsection (b) of this section.

36 (b) Action. – If an applicant's criminal history record check reveals one or more
37 convictions of a relevant offense, the adult care home or a contract agency of the adult
38 care home shall consider all of the following factors in determining whether to hire the
39 applicant:

- 40 (1) The level and seriousness of the crime.
- 41 (2) The date of the crime.
- 42 (3) The age of the person at the time of the conviction.

- 1 (4) The circumstances surrounding the commission of the crime, if known.
- 2 (5) The nexus between the criminal conduct of the person and the job
- 3 duties of the position to be filled.
- 4 (6) The prison, jail, probation, parole, rehabilitation, and employment
- 5 records of the person since the date the crime was committed.
- 6 (7) The subsequent commission by the person of a relevant offense.

7 The fact of conviction of a relevant offense alone shall not be a bar to employment;
8 however, the listed factors shall be considered by the adult care home or the contract
9 agency of the adult care home. If the adult care home or a contract agency of the adult
10 care home disqualifies an applicant after consideration of the relevant factors, then the
11 adult care home or the contract agency may disclose information contained in the
12 criminal history record check that is relevant to the disqualification, but may not provide
13 a copy of the criminal history record check to the applicant.

14 (c) Limited Immunity. – An adult care home and an officer or employee of an
15 adult care home that, in good faith, complies with this section is not liable for the failure
16 of the home to employ an individual on the basis of information provided in the
17 criminal history record check of the individual.

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

40 (e) Penalty for Furnishing False Information. – Any applicant for employment
41 who willfully furnishes, supplies, or otherwise gives false information on an

1 employment application that is the basis for a criminal history record check under this
2 section shall be guilty of a Class A1 misdemeanor.

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

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

10 (2) The adult care home shall submit the request for a criminal history
11 record check not later than five business days after the individual
12 ~~begins conditional employment~~ undertakes the functions of the job.

13 (g) Immunity From Liability. – An entity and officers and employees of an entity
14 shall be immune from civil liability for failure to check an employee's history of
15 criminal offenses if the employee's criminal history record check is requested and
16 received in compliance with this section."

17 **SECTION 3.** G.S. 114-19.10 reads as rewritten:

18 **"§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home**
19 **care agencies, and area mental health, developmental disabilities, and**
20 **substance abuse services authorities.**

21 The Department of Justice may provide to the following entities ~~the criminal history~~
22 ~~from the State and National Repositories of Criminal Histories:~~ a criminal record check
23 of an individual who is employed by that entity, has applied for employment with that
24 entity, or has volunteered to provide direct care on behalf of that entity:

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 licensed under Chapter 122C of the General
33 Statutes, including a contract agency of an area authority that is subject
34 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 in accordance with G.S. 122C-80. The requesting entity shall provide to the
39 Department of Justice, along with the request, the fingerprints of the individual to be
40 ~~checked if a national criminal history record check is required,~~ checked, any additional
41 information required by the Department of Justice, and a form signed by the individual
42 to be checked consenting to the check of the criminal record and to the use of

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

11 **SECTION 4.** This act is effective when it becomes law.