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SENATE BILL 826
Health Care Committee Substitute Adopted 4/19/01
Third Edition Engrossed 4/23/01

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~~

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. All criminal history information received by the home or~~
16 ~~agency is confidential and may not be disclosed, except to the applicant as provided in~~
17 ~~subsection (b) of this section.~~

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

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

- 41 (1) The level and seriousness of the crime.
- 42 (2) The date of the crime.

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

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

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

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

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

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

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

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

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

1 **"§ 131D-40. Criminal history record checks required for certain applicants for**
2 **employment.**

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

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

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

- 42 (1) The level and seriousness of the crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 The criminal history shall be provided to nursing homes and home care agencies in
38 accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40,
39 and to area mental health, developmental disabilities, and substance abuse services
40 authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the
41 Department of Justice, along with the request, the fingerprints of the individual to be
42 ~~checked if a national criminal history record check is required,~~ checked, any additional

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

13 **SECTION 4.(a)** There is established the Legislative Study Commission on
14 Criminal History Record Checks. The purpose of the Commission is to study how
15 federal law affects the distribution of national criminal history record check information
16 requested for nursing homes, home care agencies, adult care homes, assisted living
17 facilities, and area mental health, developmental disabilities, and substance abuse
18 services authorities, and the problems federal restrictions pose for effective and efficient
19 implementation of State required criminal record checks. The study shall include the
20 following:

- 21 (1) Ways in which national record checks may be obtained and reviewed
22 for these facilities to effectuate State policy and protections of facility
23 residents, and the advantages, disadvantages, and costs of various
24 approaches to implementation.
- 25 (2) A review of ways in which federal record checks are obtained by the
26 Division of Child Development, Department of Health and Human
27 Services, and other State agencies, and related costs to the State.
- 28 (3) Solutions adopted by other states to effectively and efficiently
29 implement criminal record check requirements, including costs to the
30 State in implementing these solutions.
- 31 (4) Other issues the Commission considers relevant to State requirements
32 for criminal history record checks in long-term care facilities.

33 **SECTION 4.(b)** The Commission shall consist of 22 members, appointed as
34 follows:

- 35 (1) Ten members of the General Assembly, five of whom shall be
36 Senators appointed by the President Pro Tempore of the Senate, and
37 five of whom shall be members of the House of Representatives
38 appointed by the Speaker of the House of Representatives.
- 39 (2) A representative from each of the following, appointed by the
40 President Pro Tempore of the Senate:
 - 41 a. North Carolina Association of Long Term Care Facilities.
 - 42 b. North Carolina Assisted Living Association, Inc.

- 1 c. The Secretary of Health and Human Services, or her designee.
- 2 d. The Director of the Division of Aging of the Department of
- 3 Health and Human Services.
- 4 e. The Director of the Division of Mental Health, Developmental
- 5 Disabilities, and Substance Abuse Services of the Department
- 6 of Health and Human Services.
- 7 f. The Council on Community Programs.
- 8 (3) A representative from each of the following, appointed by the Speaker
- 9 of the House of Representatives:
- 10 a. North Carolina Health Care Facilities Association.
- 11 b. Friends of Residents in Long Term Care.
- 12 c. The Director of the State Bureau of Investigation, or his
- 13 designee.
- 14 d. The Director of the Division of Facility Services of the
- 15 Department of Health and Human Services.
- 16 e. The Attorney General, or his designee.
- 17 f. CNC Access, Inc., an organization representing providers of
- 18 mental health, developmental disabilities, and substance abuse
- 19 services.

20 **SECTION 4.(c)** With the prior approval of the Legislative Services
21 Commission, the Legislative Services Officer shall assign professional staff to assist in
22 the work of the Legislative Study Commission on Criminal History Record Checks.
23 With the prior approval of the Legislative Services Commission, the Study Commission
24 may hold its meetings in the State Legislative Building or the Legislative Office
25 Building.

26 **SECTION 4.(d)** The Commission shall submit a final written report of its
27 findings and recommendations on or before the convening of the 2003 Session of the
28 General Assembly and may submit a report to the 2002 Regular Session of the 2001
29 General Assembly. All reports shall be filed with the President Pro Tempore of the
30 Senate and the Speaker of the House of Representatives, the Principal Clerks of the
31 Senate and the House of Representatives, and the Legislative Librarian. Upon filing its
32 final report, the Commission shall terminate.

33 **SECTION 4.(e)** Members of the Commission shall be paid per diem,
34 subsistence, and travel allowances as follows:

- 35 (1) Commission members who are also members of the General
- 36 Assembly, at the rate established in G.S. 120-3.1;
- 37 (2) Commission members who are officials or employees of the State or
- 38 local government agencies, at the rate established in G.S. 138-6;
- 39 (3) All other Commission members, at the rate established in G.S. 138-5.

40 **SECTION 4.(f)** All State departments and agencies shall cooperate with the
41 Commission and, upon request, shall furnish to the Commission and its staff any
42 information in their possession or available to them.

1 **SECTION 4.(g)** From funds appropriated to the General Assembly, the
2 Legislative Services Commission shall allocate funds for the expenses of the Legislative
3 Study Commission on Criminal History Record Checks.

4 **SECTION 5.** This act is effective when it becomes law.