

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**D**

**HOUSE DRH80382-SWz-37\* (4/8)**

Short Title: Adult Care Homes Criminal Records Check/Pilot. (Public)

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Sponsors: Representative Weiss.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO CONDUCT NATIONAL  
CRIMINAL HISTORY RECORD CHECKS OF PERSONS SEEKING  
EMPLOYMENT TO PROVIDE DIRECT CARE IN ADULT CARE HOMES AND  
CONTRACT AGENCIES OF ADULT CARE HOMES, AND TO MAKE  
CONFORMING CHANGES, AS RECOMMENDED BY THE NORTH  
CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Department of Health and Human Services shall establish a pilot program to review the criminal history records of applicants for positions not requiring an occupational license but requiring direct resident care in adult care homes and contract agencies of adult care homes. Pursuant to this program, criminal history record checks for the employees of adult care homes and contract agencies of adult care homes shall be conducted as provided in G.S. 131D-40, except for the following:

- (1) At the time it submits the request for the criminal history record check to the Department of Justice, the adult care home or contract agency of the adult care home shall provide a copy of the request to the Department of Health and Human Services, Division of Facility Services. If the adult care home or contract agency of the adult care home receives the criminal history information from a private entity, then within two business days of receiving the criminal history information, the adult care home or contract agency shall forward the information to the Department of Health and Human Services, Division of Facility Services, for a determination as to whether the applicant should be disqualified from employment.
- (2) Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for

1 employment positions not covered by Public Law 105-277 and State  
2 criminal history record checks to the Department of Health and Human  
3 Services, Division of Facility Services. Within five business days of  
4 receipt of the criminal history of the person, the Department of Health  
5 and Human Services, Division of Facility Services, shall determine  
6 whether the applicant should be disqualified from employment, unless  
7 the Department is unable to determine within five business days the  
8 disposition or accuracy of the criminal history information obtained by  
9 the Department, in which case the Department shall make the  
10 determination as soon as possible after verifying the disposition or  
11 accuracy of the criminal history information. By the next business day  
12 following its determination, the Department shall notify the adult care  
13 home or contract agency of its determination and shall also notify the  
14 applicant by a written statement as to the Department's determination  
15 and the basis on which the determination was made. The applicant  
16 shall be disqualified from employment if the applicant's criminal  
17 history shows that:

- 18 a. The applicant was convicted of any of the offenses of Homicide  
19 under Article 6 of Chapter 14 of the General Statutes or Rape  
20 and Other Sex Offenses under Article 7A of Chapter 14 of the  
21 General Statutes, or equivalent offenses under the laws of  
22 another state.
  - 23 b. The applicant was convicted of any other offenses listed in  
24 G.S. 131D-40(d) within 10 years prior to the date of application  
25 for employment, or equivalent offenses under the laws of  
26 another state.
- 27 (3) If the criminal history of the applicant reveals a conviction of any of  
28 the other offenses listed in G.S. 131D-40(d) more than 10 years prior  
29 to the date of application for employment, the Department of Health  
30 and Human Services shall obtain the public record document reflecting  
31 the offense and shall provide the public record of the conviction to the  
32 adult care home or contract agency of the adult care home, and the  
33 adult care home or contract agency shall determine whether the  
34 applicant should be employed after considering the factors contained  
35 in G.S. 131D-40(b).
- 36 (4) If the adult care home or contract agency of the adult care home  
37 disqualifies an applicant or terminates a conditional employee based  
38 on the Department's determination or on its own consideration, then  
39 the adult care home or contract agency may disclose public criminal  
40 history information or public information that in the Department's  
41 determination is relevant to the disqualification but shall not provide  
42 the criminal record check to the applicant. All information that the  
43 Department receives through checking the criminal history is  
44 privileged information and is not a public record but is for the

1 exclusive use of the Department and those persons authorized under  
2 this act and under federal law to receive the information.

3 (5) An adult care home or contract agency of an adult care home may  
4 employ an applicant conditionally prior to obtaining the Department's  
5 determination or making its own determination, but shall terminate  
6 immediately the conditional employment of an applicant upon  
7 receiving notification from the Department that the applicant is  
8 disqualified or upon making its own determination that the applicant is  
9 disqualified.

10 (6) The pilot program shall include notices to the applicant of the criminal  
11 history record check and of the applicant's right to appeal the  
12 Department's determination as a final agency decision pursuant to  
13 Chapter 150B of the General Statutes.

14 **SECTION 2.(a)** The Department of Health and Human Services shall collect  
15 the following information during the pilot program:

16 (1) The number of persons whose criminal histories were reviewed by the  
17 Department.

18 (2) The number of persons who were disqualified by the Department and  
19 nature of the disqualifying offenses.

20 (3) The cost of the pilot program.

21 (4) The length of time between initial requests for criminal history record  
22 checks and the notices sent from the Department as to its  
23 determination.

24 **SECTION 2.(b)** The Department of Health and Human Services shall  
25 convene a workgroup that shall include representatives of the Department of Justice,  
26 nursing homes, adult care homes, home care agencies, and contract agencies of nursing  
27 homes and adult care homes. The Department shall conduct meetings at least monthly  
28 during the pilot program to discuss the progress of the pilot programs and any problems  
29 encountered in conducting the program.

30 **SECTION 2.(c)** The Department shall report the information required under  
31 this section and report the progress of the pilot program and the activities of the  
32 workgroup, including any statutory changes needed to fully implement G.S. 131D-40  
33 and G.S. 131E-265, to the House of Representatives Appropriations Subcommittee on  
34 Health and Human Services, the Senate Appropriations Committee on Health and  
35 Human Services, and to the North Carolina Study Commission on Aging on or before  
36 January 15, 2005.

37 **SECTION 3.** Section 10.8E of S.L. 2003-284 reads as rewritten:

38 **"SECTION 10.8E.** Notwithstanding any other provision of law to the contrary, the  
39 requirements of G.S. 131E-265 for nursing homes to conduct national criminal history  
40 record checks for employment positions other than those involving direct patient care  
41 shall become effective no earlier than ~~January 1, 2005~~ July 1, 2005. Notwithstanding  
42 any other provision of law to the contrary, the requirements of G.S. 131D-2 for adult  
43 care homes to conduct national criminal records checks for all staff positions except for

1 staff positions involving direct care of residents shall become effective no earlier than  
2 January 1, 2005. July 1, 2005."

3           **SECTION 4.** There is appropriated from the General Fund to the  
4 Department of Health and Human Services for the 2004-2005 fiscal year the sum of one  
5 hundred fifty thousand dollars (\$150,000) to implement the pilot program in this act.

6           **SECTION 5.** This act becomes effective July 1, 2004.