

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1522*

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

Sponsors: Representatives Weiss; Ross, Coates, Farmer-Butterfield, Fisher, Glazier, Hackney, Insko, Lewis, Luebke, McLawhorn, Pate, Warren, and Womble.

Referred to: Judiciary I, if favorable, Appropriations.

May 19, 2004

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A PILOT PROGRAM TO CONDUCT NATIONAL
2 CRIMINAL HISTORY RECORD CHECKS OF PERSONS SEEKING
3 EMPLOYMENT TO PROVIDE DIRECT CARE IN ADULT CARE HOMES AND
4 CONTRACT AGENCIES OF ADULT CARE HOMES, AND TO MAKE
5 CONFORMING CHANGES, AS RECOMMENDED BY THE NORTH
6 CAROLINA STUDY COMMISSION ON AGING.
7

8 The General Assembly of North Carolina enacts:

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

- 15 (1) At the time it submits the request for the criminal history record check
16 to the Department of Justice, the adult care home or contract agency of
17 the adult care home shall provide a copy of the request to the
18 Department of Health and Human Services, Division of Facility
19 Services. If the adult care home or contract agency of the adult care
20 home receives the criminal history information from a private entity,
21 then within two business days of receiving the criminal history
22 information, the adult care home or contract agency shall forward the
23 information to the Department of Health and Human Services,
24 Division of Facility Services, for a determination as to whether the
25 applicant should be disqualified from employment.
- 26 (2) Notwithstanding G.S. 114-19.10, the Department of Justice shall
27 return the results of national criminal history record checks for
28 employment positions not covered by Public Law 105-277 and State

1 criminal history record checks to the Department of Health and Human
2 Services, Division of Facility Services. Within five business days of
3 receipt of the criminal history of the person, the Department of Health
4 and Human Services, Division of Facility Services, shall determine
5 whether the applicant should be disqualified from employment, unless
6 the Department is unable to determine within five business days the
7 disposition or accuracy of the criminal history information obtained by
8 the Department, in which case the Department shall make the
9 determination as soon as possible after verifying the disposition or
10 accuracy of the criminal history information. By the next business day
11 following its determination, the Department shall notify the adult care
12 home or contract agency of its determination and shall also notify the
13 applicant by a written statement as to the Department's determination
14 and the basis on which the determination was made. The applicant
15 shall be disqualified from employment if the applicant's criminal
16 history shows that:

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