

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 41*

Short Title: Criminal Records Checks/LTC Changes. (Public)

Sponsors: Senators Swindell, Dannelly, Allran; Albertson, Berger of Franklin, Boseman, Cowell, Dalton, Purcell, Rand, Thomas, and Tillman.

Referred to: Judiciary I.

February 3, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING
3 NATIONAL CRIMINAL HISTORY RECORDS CHECKS FOR LONG-TERM
4 CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS
5 RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON
6 AGING.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 122C-80(b) reads as rewritten:

9 "(b) Requirement. – An offer of employment by an area authority licensed under
10 this Chapter to an applicant to fill a position that does not require the applicant to have
11 an occupational license is conditioned on consent to a State and national criminal
12 history record check of the applicant. If the applicant has been a resident of this State
13 for less than five years, then the offer of employment is conditioned on consent to a
14 State and national criminal history record check of the applicant. The national criminal
15 history record check shall include a check of the applicant's fingerprints. If the applicant
16 has been a resident of this State for five years or more, then the offer is conditioned on
17 consent to a State criminal history record check of the applicant. An area authority shall
18 not employ an applicant who refuses to consent to a criminal history record check
19 required by this section. Except as otherwise provided in this subsection, within five
20 business days of making the conditional offer of employment, an area authority shall
21 submit a request to the Department of Justice under G.S. 114-19.10 to conduct a
22 criminal history record check required by this section. Notwithstanding G.S. 114-19.10,
23 the Department of Justice shall return the results of national criminal history record
24 checks for employment positions not covered by Public Law 105-277 to the Department
25 of Health and Human Services, ~~Division of Facility Services, Criminal Records Check~~
26 Unit. Within five business days of receipt of the national criminal history of the person,
27 the Department of Health and Human Services, ~~Division of Facility Services, Criminal~~
28 Records Check Unit, shall ~~provide to notify~~ the area authority ~~the results of the national~~

1 ~~criminal history check~~, as to whether the information received may affect the
2 employability of the applicant. In no case shall the results of the national criminal
3 history record check be shared with the area authority. Area authorities shall make
4 available upon request verification that a criminal history check has been completed on
5 any staff covered by this section. A county that has adopted an appropriate local
6 ordinance and has access to the Division of Criminal Information data bank may
7 conduct on behalf of an area authority a State criminal history record check required by
8 this section without the area authority having to submit a request to the Department of
9 Justice. In such a case, the county shall commence with the State criminal history record
10 check required by this section within five business days of the conditional offer of
11 employment by the area authority. All criminal history information received by the area
12 authority is confidential and may not be disclosed, except to the applicant as provided in
13 subsection (c) of this section."

14 **SECTION 2.** G.S. 131D-40(a) reads as rewritten:

15 "(a) Requirement; Adult Care Home. – An offer of employment by an adult care
16 home licensed under this Chapter to an applicant to fill a position that does not require
17 the applicant to have an occupational license is conditioned on consent to a criminal
18 history record check of the applicant. If the applicant has been a resident of this State
19 for less than five years, then the offer of employment is conditioned on consent to a
20 State and national criminal history record check of the applicant. The national criminal
21 history record check shall include a check of the applicant's fingerprints. If the applicant
22 has been a resident of this State for five years or more, then the offer is conditioned on
23 consent to a State criminal history record check of the applicant. An adult care home
24 shall not employ an applicant who refuses to consent to a criminal history record check
25 required by this section. Within five business days of making the conditional offer of
26 employment, an adult care home shall submit a request to the Department of Justice
27 under G.S. 114-19.10 to conduct a State or national criminal history record check
28 required by this section, or shall submit a request to a private entity to conduct a State
29 criminal history record check required by this section. Notwithstanding G.S. 114-19.10,
30 the Department of Justice shall return the results of national criminal history record
31 checks for employment positions not covered by Public Law 105-277 to the Department
32 of Health and Human Services, ~~Division of Facility Services~~. Criminal Records Check
33 Unit. Within five business days of receipt of the national criminal history of the person,
34 the Department of Health and Human Services, ~~Division of Facility Services~~, Criminal
35 Records Check Unit, shall ~~provide to notify~~ the adult care home ~~the results of the~~
36 ~~national criminal history check~~, as to whether the information received may affect the
37 employability of the applicant. In no case shall the results of the national criminal
38 history record check be shared with the adult care home. Adult care homes shall make
39 available upon request verification that a criminal history check has been completed on
40 any staff covered by this section. All criminal history information received by the home
41 is confidential and may not be disclosed, except to the applicant as provided in
42 subsection (b) of this section."

43 **SECTION 3.** G.S. 131D-40(a1) reads as rewritten:

1 "(a1) Requirement; Contract Agency of Adult Care Home. – An offer of
2 employment by a contract agency of an adult care home licensed under this Chapter to
3 an applicant to fill a position that does not require the applicant to have an occupational
4 license is conditioned upon consent to a criminal history record check of the applicant.
5 If the applicant has been a resident of this State for less than five years, then the offer of
6 employment is conditioned on consent to a State and national criminal history record
7 check of the applicant. The national criminal history record check shall include a check
8 of the applicant's fingerprints. If the applicant has been a resident of this State for five
9 years or more, then the offer is conditioned on consent to a State criminal history record
10 check of the applicant. A contract agency of an adult care home shall not employ an
11 applicant who refuses to consent to a criminal history record check required by this
12 section. Within five business days of making the conditional offer of employment, a
13 contract agency of an adult care home shall submit a request to the Department of
14 Justice under G.S. 114-19.10 to conduct a State or national criminal history record
15 check required by this section, or shall submit a request to a private entity to conduct a
16 State criminal history record check required by this section. Notwithstanding
17 G.S. 114-19.10, the Department of Justice shall return the results of national criminal
18 history record checks for employment positions not covered by Public Law 105-277 to
19 the Department of Health and Human Services, ~~Division of Facility Services~~. Criminal
20 Records Check Unit. Within five business days of receipt of the national criminal
21 history of the person, the Department of Health and Human Services, ~~Division of~~
22 ~~Facility Services~~, Criminal Records Check Unit, shall ~~provide to~~ notify the contract
23 agency of the adult care home ~~the results of the national criminal history check, as to~~
24 whether the information received may affect the employability of the applicant. In no
25 case shall the results of the national criminal history record check be shared with the
26 contract agency of the adult care home. Contract agencies of adult care homes shall
27 make available upon request verification that a criminal history check has been
28 completed on any staff covered by this section. All criminal history information
29 received by the contract agency is confidential and may not be disclosed, except to the
30 applicant as provided by subsection (b) of this section."

31 **SECTION 4.** G.S. 131E-265(a) reads as rewritten:

32 "(a) Requirement; Nursing Home or Home Care Agency. – An offer of
33 employment by a nursing home licensed under this Chapter to an applicant to fill a
34 position that does not require the applicant to have an occupational license is
35 conditioned on consent to a criminal history record check of the applicant. If the
36 applicant has been a resident of this State for less than five years, then the offer of
37 employment is conditioned on consent to a State and national criminal history record
38 check of the applicant. The national criminal history record check shall include a check
39 of the applicant's fingerprints. If the applicant has been a resident of this State for five
40 years or more, then the offer is conditioned on consent to a State criminal history record
41 check of the applicant. An offer of employment by a home care agency licensed under
42 this Chapter to an applicant to fill a position that requires entering the patient's home is
43 conditioned on consent to a criminal history record check of the applicant. In addition,
44 employment status change of a current employee of a home care agency licensed under

1 this Chapter from a position that does not require entering the patient's home to a
2 position that requires entering the patient's home shall be conditioned on consent to a
3 criminal history record check of that current employee. If the applicant for employment
4 or if the current employee who is changing employment status has been a resident of
5 this State for less than five years, then the offer of employment or change in
6 employment status is conditioned on consent to a State and national criminal history
7 record check. The national criminal history record check shall include a check of the
8 applicant's or current employee's fingerprints. If the applicant or current employee has
9 been a resident of this State for five years or more, then the offer is conditioned on
10 consent to a State criminal history record check of the applicant or current employee
11 applying for a change in employment status. A nursing home or a home care agency
12 shall not employ an applicant who refuses to consent to a criminal history record check
13 required by this section. In addition, a home care agency shall not change a current
14 employee's employment status from a position that does not require entering the
15 patient's home to a position that requires entering the patient's home who refuses to
16 consent to a criminal history record check required by this section. Within five business
17 days of making the conditional offer of employment, a nursing home or home care
18 agency shall submit a request to the Department of Justice under G.S. 114.19.10 to
19 conduct a State or national criminal history record check required by this section, or
20 shall submit a request to a private entity to conduct a State criminal history record check
21 required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice
22 shall return the results of national criminal history record checks for employment
23 positions not covered by Public Law 105-277 to the Department of Health and Human
24 Services, ~~Division of Facility Services~~. Criminal Records Check Unit. Within five
25 business days of receipt of the national criminal history of the person, the Department of
26 Health and Human Services, ~~Division of Facility Services~~, Criminal Records Check
27 Unit, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the~~
28 ~~national criminal history check as to whether the information received may affect the~~
29 employability of the applicant. In no case shall the results of the national criminal
30 history record check be shared with the nursing home or home care agency. Nursing
31 homes and home care agencies shall make available upon request verification that a
32 criminal history check has been completed on any staff covered by this section. All
33 criminal history information received by the home or agency is confidential and may
34 not be disclosed, except to the applicant as provided in subsection (b) of this section."

35 **SECTION 5.** G.S. 131E-265(a1) reads as rewritten:

36 "(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –
37 An offer of employment by a contract agency of a nursing home or home care agency
38 licensed under this Chapter to an applicant to fill a position that does not require the
39 applicant to have an occupational license is conditioned upon consent to a criminal
40 history record check of the applicant. If the applicant has been a resident of this State
41 for less than five years, then the offer of employment is conditioned on consent to a
42 State and national criminal history record check of the applicant. The national criminal
43 history record check shall include a check of the applicant's fingerprints. If the applicant
44 has been a resident of this State for five years or more, then the offer is conditioned on

1 consent to a State criminal history record check of the applicant. A contract agency of a
2 nursing home or home care agency shall not employ an applicant who refuses to consent
3 to a criminal history record check required by this section. Within five business days of
4 making the conditional offer of employment, a contract agency of a nursing home or
5 home care agency shall submit a request to the Department of Justice under
6 G.S. 114-19.10 to conduct a State or national criminal history record check required by
7 this section, or shall submit a request to a private entity to conduct a State criminal
8 history record check required by this section. Notwithstanding G.S. 114-19.10, the
9 Department of Justice shall return the results of national criminal history record checks
10 for employment positions not covered by Public Law 105-277 to the Department of
11 Health and Human Services, ~~Division of Facility Services, Criminal Records Check~~
12 Unit. Within five business days of receipt of the national criminal history of the person,
13 the Department of Health and Human Services, ~~Division of Facility Services, Criminal~~
14 Records Check Unit, shall ~~provide to~~ notify the contract agency of the nursing home or
15 home care agency ~~the results of the national criminal history check, as to whether the~~
16 information received may affect the employability of the applicant. In no case shall the
17 results of the national criminal history record check be shared with the contract agency
18 of the nursing home or home care agency. Contract agencies of nursing homes and
19 home care agencies shall make available upon request verification that a criminal
20 history check has been completed on any staff covered by this section. All criminal
21 history information received by the contract agency is confidential and may not be
22 disclosed, except to the applicant as provided by subsection (b) of this section."

23 **SECTION 6.** This act is effective when it becomes law.