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May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE AS NURSING HOME ADMINISTRATORS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-288.01. Criminal history record checks of applicants for licensure.

(a) The following definitions apply in this section:

(1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article

1 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article
2 19, False Pretenses and Cheats; Article 19A, Obtaining Property or
3 Services by False or Fraudulent Use of Credit Device or Other Means;
4 Article 19B, Financial Transaction Card Crime Act; Article 20,
5 Frauds; Article 21, Forgery; Article 26, Offenses Against Public
6 Morality and Decency; Article 26A, Adult Establishments; Article 27,
7 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
8 Misconduct in Public Office; Article 35, Offenses Against the Public
9 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection
10 of Minors; Article 40, Protection of the Family; Article 59, Public
11 Intoxication; and Article 60, Computer-Related Crime. The crimes
12 also include possession or sale of drugs in violation of the North
13 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the
14 General Statutes, and alcohol-related offenses, including sale to
15 underage persons in violation of G.S. 18B-302 or driving while
16 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

17 (b) Criminal History Record Check. – The Board shall require a criminal history
18 record check of all applicants. Refusal to consent to a criminal history record check may
19 constitute grounds for the Board to deny licensure to an applicant. The Board shall
20 provide to the North Carolina Department of Justice the fingerprints of the applicant to
21 be checked, a form signed by the applicant consenting to the criminal history record
22 check and the use of fingerprints and other identifying information required by the State
23 or National Repositories, and any additional information required by the Department of
24 Justice. The Board shall keep all information obtained pursuant to this section
25 confidential. The Board shall collect any fees required by the Department of Justice and
26 shall remit the fees to the Department of Justice for expenses associated with
27 conducting the criminal history record check.

28 (c) Convictions. – If the applicant's criminal history record check reveals one or
29 more convictions listed under subdivision (2) of subsection (a) of this section, the
30 conviction shall not automatically bar licensure. The Board shall consider all of the
31 following factors regarding the conviction:

- 32 (1) The level of seriousness of the crime.
- 33 (2) The date of the crime.
- 34 (3) The age of the applicant at the time of the conviction.
- 35 (4) The circumstances surrounding the commission of the crime, if known.
- 36 (5) The nexus between the criminal conduct of the applicant and the job
37 duties of the position to be filled.
- 38 (6) The applicant's prison, jail, probation, parole, rehabilitation, and
39 employment records since the date the crime was committed.
- 40 (7) The subsequent commission by the applicant of a crime listed in
41 subsection (a) of this section.

42 (d) Denial of Licensure. – If the Board refuses to issue or renew a license based
43 on information obtained in a criminal history record check, the Board must disclose to
44 the applicant the information contained in the criminal history record check that is

1 relevant to the Board's actions. The Board shall not provide a copy of the criminal
2 history record check to the applicant. An applicant has the right to appear before the
3 Board to appeal the Board's decision. An appearance before the Board shall constitute
4 an exhaustion of administrative remedies in accordance with Chapter 150B of the
5 General Statutes.

6 (e) Limited Immunity. – The Board, its officers and employees, acting in good
7 faith and in compliance with this section, shall be immune from civil liability for its
8 actions based on information provided in an applicant's criminal history record check."

9 **SECTION 2.** Chapter 114 of the General Statutes is amended by adding a
10 new section to read:

11 **"§ 114-19.25. Criminal history record checks of applicants for licensure as nursing**
12 **home administrators.**

13 (a) The Department of Justice may provide to the North Carolina State Board of
14 Examiners for Nursing Home Administrators from the State and National Repositories
15 of Criminal Histories the criminal history of any applicant for licensure as a nursing
16 home administrator under Article 20 of Chapter 90 of the General Statutes. Along with
17 the request, the Board shall provide to the Department of Justice the fingerprints of the
18 applicant, a form signed by the applicant consenting to the criminal history record check
19 and use of fingerprints and other identifying information required by the State and
20 National Repositories, and any additional information required by the Department of
21 Justice. The applicant's fingerprints shall be forwarded to the State Bureau of
22 Investigation for a search of the State's criminal history record file, and the State Bureau
23 of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation
24 for a national criminal history record check. The Board shall keep all information
25 obtained pursuant to this section confidential.

26 (b) The Department of Justice may charge a fee to offset the cost incurred by it to
27 conduct a criminal history record check under this section. The fee shall not exceed the
28 actual cost of locating, editing, researching, and retrieving the information."

29 **SECTION 3.** Sections 1 and 2 of this act are effective December 1, 2008,
30 and apply to nursing home administrator applications and renewals submitted to the
31 Board on or after this date. The remainder of this act is effective when it becomes law.