

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE DRH80302-LU-45 (2/6)

Short Title: Expedite Crim. Record Checks/Child Care. (Public)

Sponsors: Representative McLawhorn.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPEDITE CRIMINAL HISTORY CHECKS OF CHILD CARE PROVIDERS
3 BY ALLOWING CERTIFIED INDEPENDENT COMPANIES REGULATED BY THE
4 FEDERAL FAIR CREDIT REPORTING ACT TO PERFORM CRIMINAL HISTORY
5 CHECKS OF CHILD CARE PROVIDERS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 110-90.2 reads as rewritten:

8 "§ 110-90.2. Mandatory child care providers' criminal history checks.

9 (a) For purposes of this section:

10 (1) "Child care", notwithstanding the definition in G.S. 110-86, means any child
11 care provided in child care facilities required to be licensed under this
12 Article and nonlicensed child care homes approved to receive or receiving
13 State or federal funds for providing child care.

14 (2) "Child care provider" means a person who:

- 15 a. Is employed by or seeks to be employed by a child care facility
16 providing child care as defined in subdivision (1) of this subsection
17 and has contact with the children;
- 18 b. Owns or operates or seeks to own or operate a child care facility or
19 nonlicensed child care home providing child care as defined in
20 subdivision (1) of this subsection; or
- 21 c. Is a member of the household in a family child care home or
22 nonlicensed child care home and is over 15 years old and is present
23 when children are in care. This subdivision shall apply only to new
24 family child care homes and nonlicensed homes beginning March 1,
25 1998.

26 (3) "Criminal history" means a county, state, or federal criminal history of
27 conviction or pending indictment of a crime, whether a misdemeanor or a
28 felony, that bears upon an individual's fitness to have responsibility for the
29 safety and well-being of children as set forth in G.S. 110-91(8). Such crimes
30 include the following North Carolina crimes contained in any of the
31 following Articles of Chapter 14 of the General Statutes: Article 6,
32 Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults;
33 Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or
34 Damage by Use of Explosive or Incendiary Device or Material; Article 26,
35 Offenses Against Public Morality and Decency; Article 27, Prostitution;



1 Article 39, Protection of Minors; Article 40, Protection of the Family; and
2 Article 59, Public Intoxication. Such crimes also include possession or sale
3 of drugs in violation of the North Carolina Controlled Substances Act,
4 Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses
5 such as sale to underage persons in violation of G.S. 18B-302 or driving
6 while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In
7 addition to the North Carolina crimes listed in this subdivision, such crimes
8 also include similar crimes under federal law or under the laws of other
9 states.

10 (b) Effective January 1, 1996, the Department shall ensure that the criminal history of
11 all child care providers is checked and a determination is made of the child care provider's
12 fitness to have responsibility for the safety and well-being of children based on the criminal
13 history. The Department shall ensure that child care providers who have lived in North
14 Carolina continuously for the previous five years are checked for county and State criminal
15 histories. The Department shall ensure that all other child care providers are checked for
16 county, State, and national criminal histories. The Department may prohibit a child care
17 provider from providing child care if the Department determines that the child care provider is
18 unfit to have responsibility for the safety and well-being of children based on the criminal
19 history, in accordance with G.S. 110-91(8).

20 (c) The Department of Justice or a certified independent company regulated by the
21 federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et. seq., shall provide to the Division of
22 Child Development, Department of Health and Human Services, the criminal history from the
23 State and National Repositories of Criminal Histories of any child care provider as requested by
24 the Division.

25 The Division shall provide to the Department of ~~Justice~~Justice or the certified independent
26 company regulated by the federal Fair Credit Reporting Act, along with the request, the
27 fingerprints of the provider to be checked, any additional information required by the
28 Department of ~~Justice~~Justice or certified independent company, and a form consenting to the
29 check of the criminal record and to the use of fingerprints and other identifying information
30 required by the repositories signed by the child care provider to be checked. The fingerprints of
31 the provider shall be forwarded to the State Bureau of Investigation for a search of their
32 criminal history record file and the State Bureau of Investigation shall forward a set of
33 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

34 At the time of application the child care provider whose criminal history is to be checked
35 shall be furnished with a statement substantially similar to the following:

36 "NOTICE

37
38 CHILD CARE PROVIDER
39 MANDATORY CRIMINAL HISTORY CHECK

40
41 NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY
42 CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD
43 CARE IN A LICENSED CHILD CARE FACILITY, AND ALL PERSONS
44 PROVIDING CHILD CARE IN NONLICENSED CHILD CARE HOMES
45 THAT RECEIVE STATE OR FEDERAL FUNDS.

46 "Criminal history" includes county, state, and federal convictions or pending
47 indictments of any of the following crimes: the following Articles of Chapter 14
48 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred
49 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
50 Malicious Injury or Damage by Use of Explosive or Incendiary Device or
51 Material; Article 26, Offenses Against Public Morality and Decency; Article 27,

1 Prostitution; Article 39, Protection of Minors; Article 40, Protection of the
2 Family; and Article 59, Public Intoxication; violation of the North Carolina
3 Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and
4 alcohol-related offenses such as sale to underage persons in violation of
5 G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through
6 G.S. 20-138.5; or similar crimes under federal law or under the laws of other
7 states. Your fingerprints will be used to check the criminal history records of the
8 State Bureau of Investigation (SBI) and the Federal Bureau of Investigation
9 (FBI).

10 If it is determined, based on your criminal history, that you are unfit to have
11 responsibility for the safety and well-being of children, you shall have the
12 opportunity to complete, or challenge the accuracy of, the information contained
13 in the SBI or FBI identification records.

14 If you disagree with the determination of the North Carolina Department of
15 Health and Human Services on your fitness to provide child care, you may file a
16 civil lawsuit within 60 days after receiving written notification of
17 disqualification in the district court in the county where you live.

18 Any child care provider who intentionally falsifies any information required to
19 be furnished to conduct the criminal history shall be guilty of a Class 2
20 misdemeanor."

21 Refusal to consent to a criminal history check is grounds for the Department to prohibit the
22 child care provider from providing child care. Any child care provider who intentionally
23 falsifies any information required to be furnished to conduct the criminal history shall be guilty
24 of a Class 2 misdemeanor.

25 (d) The Department shall notify in writing the child care provider, and the child care
26 provider's employer, if any, or for nonlicensed child care homes the local purchasing agency, of
27 the determination by the Department whether the child care provider is qualified to provide
28 child care based on the child care provider's criminal history. In accordance with the law
29 regulating the dissemination of the contents of the criminal history file furnished by the Federal
30 Bureau of Investigation, the Department shall not release nor disclose any portion of the child
31 care provider's criminal history to the child care provider or the child care provider's employer
32 or local purchasing agency. The Department shall also notify the child care provider of the
33 procedure for completing or challenging the accuracy of the criminal history and the child care
34 provider's right to contest the Department's determination in court.

35 A child care provider who disagrees with the Department's decision may file a civil action
36 in the district court of the county of residence of the child care provider within 60 days after
37 receiving written notification of disqualification.

38 (e) All the information that the Department receives through the checking of the
39 criminal history is privileged information and is not a public record but is for the exclusive use
40 of the Department and those persons authorized under this section to receive the information.
41 The Department may destroy the information after it is used for the purposes authorized by this
42 section after one calendar year.

43 (f) There shall be no liability for negligence on the part of an employer of a child care
44 provider, an owner or operator of a child care facility, a State or local agency, or the employees
45 of a State or local agency, arising from any action taken or omission by any of them in carrying
46 out the provisions of this section. The immunity established by this subsection shall not extend
47 to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be
48 actionable. The immunity established by this subsection is waived to the extent of
49 indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General
50 Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth
51 in Article 31 of Chapter 143 of the General Statutes.

1 (g) The child care provider shall pay the cost of the fingerprinting and the local check.
2 The Department of ~~Justice~~Justice or the certified independent company regulated by the
3 federal Fair Credit Reporting Act shall perform the State criminal history check. If the
4 Department determines that a child care provider who has lived continuously in the State less
5 than five years is not disqualified based on the local and State criminal history record check,
6 the Department shall request a criminal history check from the National Repository of Criminal
7 History from the Department of ~~Justice~~Justice or the certified independent company. The
8 Department of Health and Human Services shall pay the cost for the national criminal history
9 record check."

10 **SECTION 2.** This act is effective when it becomes law.