

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1379*

Short Title: Day Care Provider Records.

(Public)

Sponsors: Senators Walker; and Gunter.

Referred to: Judiciary I.

May 25, 1994

A BILL TO BE ENTITLED
AN ACT TO MANDATE CRIMINAL HISTORY AND CENTRAL REGISTRY
HISTORY CHECKS OF CHILD DAY CARE PROVIDERS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 110 of the General Statutes is amended by adding a new section to read:

§ 110-90.2. Mandatory day care providers' criminal history and Central Registry checks.

(a) For purposes of this section:

(1) 'Central Registry history' means a history in the Central Registry on Child Abuse and Neglect of a substantiated claim of child abuse or child neglect as defined by G.S. 7A-517.

(2) 'Child day care', notwithstanding the definition in G.S. 110-86, means any child day care provided in child day care facilities and child day care homes, including child day care facilities and child day care homes required to be licensed or registered pursuant to this Article, religious sponsored child day care facilities and child day care homes regulated pursuant to G.S. 110-106 and G.S. 110-106.1, and nonregistered child day care homes approved to receive or receiving State or federal funds for providing child day care.

(3) 'Child day care provider' means a person who:

a. Is employed by or seeks to be employed by a child day care facility or child day care home providing child day care as

1 defined in subdivision (2) of this subsection and by G.S. 110-
2 86; or

3 b. Owns or operates or seeks to own or operate a child day care
4 facility or child day care home providing child day care as
5 defined in subdivision (2) of this subsection and by G.S. 110-
6 86.

7 (4) 'Criminal history' means a county, State, or federal criminal history of
8 conviction of a crime, whether a misdemeanor or a felony, that bears
9 upon an individual's fitness to have responsibility for the safety and
10 well-being of children, including homicide, rape and other sex
11 offenses, assaults, kidnapping and abduction, malicious injury or
12 damage by the use of incendiary device or material, offenses against
13 public morality and decency, prostitution, a crime against children, and
14 a crime against the family, as prescribed respectively in Articles 6, 7A,
15 8, 10, 13, 26, 27, 39, and 40 of Chapter 14 of the General Statutes, a
16 violation of the North Carolina Controlled Substances Act, as
17 prescribed in Article 5 of Chapter 90 of the General Statutes, a
18 violation of the law prohibiting driving while impaired, as prescribed
19 in G.S. 20-138.1 through G.S. 20-138.5, a violation of the law
20 forbidding sales of alcohol to, or purchases of alcohol by, minors, as
21 prescribed in G.S. 18B-302(c), and a violation of the law prohibiting
22 public intoxication, as prescribed in G.S. 14-444(b), or similar federal
23 crimes.

24 (b) Effective January 1, 1995, the Department shall ensure that child day care
25 providers are checked for both any criminal history and any Central Registry history
26 and may prohibit a child day care provider from providing child day care:

27 (1) Who has a criminal history; or

28 (2) Who has a Central Registry history if the Department determines that
29 the substantiated claim bears upon an individual's fitness to have
30 responsibility for the safety and well-being of children.

31 (c) The Department of Justice may provide to the Division of Child
32 Development, Department of Human Resources, the criminal history of any child day
33 care provider from the State and National Repositories of criminal histories. The
34 Division shall provide to the Department of Justice along with the request the
35 fingerprints of the provider to be checked, any additional information required by the
36 Department of Justice, and a form consenting to the check of the criminal record and to
37 the use of fingerprints and other identifying information required by the repositories
38 signed by the child day care provider to be checked. Refusal to consent is grounds for
39 the Department to prohibit the child day care provider from providing child day care.

40 (d) The Division of Social Services may provide to the Division of Child
41 Development, Department of Human Resources, the Central Registry history of a child
42 day care provider if this child day care provider signs a form consenting to this record
43 check. Refusal to consent is grounds for the Department to prohibit the child day care
44 provider from providing child day care.

1 (e) The Department shall notify in writing the child day care provider and that
2 child day care provider's employer, if any, of any disqualifying information resulting
3 from the check of the criminal history or of the Central Registry history, together with
4 the Department's action pursuant to subsection (b) of this section.

5 A child day care provider who disagrees with the decision of the Department may
6 commence a contested case by filing a petition under G.S. 150B-23 within 30 days after
7 the Department's notification. If the child day care provider does not file a petition
8 within the required time, the Department's decision is final and not subject to review.

9 (f) All the information received by the Department through the checking of the
10 criminal history and of the Central Registry history is privileged information and for the
11 exclusive use of the Department and those persons authorized under this section to
12 receive the information. The Department may destroy the information after it is used
13 for the purposes authorized by this section after one calendar year.

14 (g) No action for civil or criminal liability shall be brought against an employer
15 of a child day care provider, a child day care, or a State or local agency as a result of the
16 check of the criminal or Central Registry history, if the employer, child day care
17 provider, or State or local agency was acting in good faith and in accordance with this
18 section and the rules established pursuant to it.

19 (h) The Department of Justice shall charge a reasonable fee for conducting the
20 checks of the criminal records authorized by this section. The child day care provider
21 who seeks to be employed in child day care and the provider who seeks to own or
22 operate child day care shall pay the cost of the fingerprinting and the local check at the
23 time the child day care provider seeks to provide child day care and shall pay the further
24 cost of the State and federal checks if the Department considers that either or both of
25 these additional checks are necessary."

26 Sec. 2. G.S. 114-19 reads as rewritten:

27 **"§ 114-19. Criminal statistics.**

28 (a) It shall be the duty of the State Bureau of Investigation to receive and collect
29 police information, to assist in locating, identifying, and keeping records of criminals in
30 this State, and from other states, and to compare, classify, compile, publish, make
31 available and disseminate any and all such information to the sheriffs, constables, police
32 authorities, courts or any other officials of the State requiring such criminal
33 identification, crime statistics and other information respecting crimes local and
34 national, and to conduct surveys and studies for the purpose of determining so far as is
35 possible the source of any criminal conspiracy, crime wave, movement or cooperative
36 action on the part of the criminals, reporting such conditions, and to cooperate with all
37 officials in detecting and preventing.

38 ♦(b) The State Bureau of Investigation shall, on a daily basis, notify the
39 Department of Revenue of all reports it receives pursuant to G.S. 114-18.1 of arrests
40 and seizures involving non-tax-paid controlled substances and counterfeit controlled
41 substances. The Bureau shall also, as soon as practicable, provide the Department with
42 any additional information it receives regarding such arrests and seizures.

43 (c) The Department of Justice may provide to the Division of Child
44 Development, Department of Human Resources, the criminal history from the State and

1 National Repositories of criminal histories of any child day care provider. The Division
2 shall provide to the Department of Justice along with the request the fingerprints of the
3 provider to be checked, any additional information required by the Department of
4 Justice, and a form consenting to the check of the criminal record and to the use of
5 fingerprints and other identifying information required by the repositories signed by the
6 child day care provider to be checked. Refusal to consent is grounds for the Department
7 to prohibit the child day care provider from providing child day care.

8 (d) The Department of Justice shall charge a reasonable fee for conducting the
9 checks of the criminal records authorized by this section. The child day care provider
10 who seeks to be employed in child day care and the child day care provider who seeks
11 to own or operate child day care shall pay the cost of the fingerprinting and the local
12 check at the time they seek to provide child day care and shall pay the further cost of
13 the State and federal checks if the Department considers that either or both additional
14 checks are necessary."

15 Sec. 3. (a) The North Carolina Child Day Care Commission shall adopt rules
16 to implement this act, in consultation with the Divisions of Child Development and
17 Social Services of the Department of Human Resources, and the Division of Criminal
18 Information of the Department of Justice.

19 (b) The Department of Human Resources shall adopt rules regarding access
20 to the Central Registry on Child Abuse and Neglect needed to implement this act.

21 Sec. 4. There is appropriated from the General Fund to the Department of
22 Human Resources the sum of eighty thousand dollars (\$80,000) for the 1994-95 fiscal
23 year to implement this act.

24 Sec. 5. This act becomes effective January 1, 1995. This act applies to child
25 day care providers newly hired in child day care employment and to child day care
26 providers newly owning or operating child day care on or after that date.