

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 403*
Committee Substitute Favorable 7/17/95

Short Title: Day Care Provider Records/AB.

(Public)

Sponsors:

Referred to:

March 9, 1995

A BILL TO BE ENTITLED
AN ACT TO MANDATE CRIMINAL HISTORY CHECKS OF CHILD DAY CARE
PROVIDERS AND TO STUDY THE USE OF THE CENTRAL REGISTRY ON
CHILD ABUSE AND NEGLECT.

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 checks.

(a) For purposes of this section:

(1) '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 under this Article and nonregistered child day care homes approved to receive or receiving State or federal funds for providing child day care.

(2) '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 defined in subdivision (1) of this subsection; or

b. Owns or operates or seeks to own or operate a child day care facility or child day care home providing child day care as defined in subdivision (1) of this subsection.

(3) 'Criminal history' means a county, state, or federal criminal history of conviction or pending indictment for any crime, whether a misdemeanor or a felony.

(b) Effective January 1, 1996, the Department shall ensure that the criminal history of all child day care providers is checked and a determination is made of the child day care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Department shall ensure that child day care providers who have lived in North Carolina continuously for the previous five years are checked for county and State criminal histories. The Department shall ensure that all other child day care providers are checked for county, State, and national criminal histories. The Department may prohibit a child day care provider from providing child day care if the Department determines that the child day care provider is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(c) The Department of Justice shall provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories of any child day care provider as requested by the Division.

The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories signed by the child day care provider to be checked. The fingerprints of the provider shall be forwarded to the State Bureau of Investigation for a search of their criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

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

'NOTICE

CHILD DAY CARE PROVIDER

MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD DAY CARE IN A LICENSED OR REGISTERED CHILD DAY CARE FACILITY, AND ALL PERSONS PROVIDING CHILD DAY CARE IN NONREGISTERED CHILD DAY CARE HOMES THAT RECEIVE STATE OR FEDERAL FUNDS.

'Criminal history' includes any county, state, and federal convictions or pending indictments, of any crime, whether felony or misdemeanor. Your

1 fingerprints will be used to check the criminal history records of the State
2 Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

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

7 If you disagree with the determination of the Department of Human
8 Resources on your fitness to provide child day care, you may file a civil
9 lawsuit in the district court in the county where you live.

10 Any child day care provider who intentionally falsifies any information
11 required to be furnished to conduct the criminal history is guilty of a Class 2
12 misdemeanor.'

13 Refusal to consent to a criminal history check is grounds for the Department to
14 prohibit the child day care provider from providing child day care. Any child day care
15 provider who intentionally falsifies any information required to be furnished to conduct
16 the criminal history is guilty of a Class 2 misdemeanor.

17 (d) The Department shall notify in writing the child day care provider and that
18 child day care provider's employer, if any, of the determination by the Department
19 whether the day care provider is qualified to provide child day care based on the child
20 day care provider's criminal history. In accordance with the law regulating the
21 dissemination of the contents of the criminal history files furnished by the Federal Bureau
22 of Investigation, the Department shall not release or disclose any portion of the child day
23 care provider's criminal history to the child day care provider or the child day care
24 provider's employer. The Department shall also notify the provider of the procedure for
25 completing or challenging the accuracy of the criminal history and the day care provider's
26 right to contest the Department's determination in court.

27 A child day care provider who disagrees with the Department's decision may file a
28 civil action in the district court of the county of residence of the child day care provider.

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

34 (f) There is no liability for negligence on the part of an employer of a child day
35 care provider, a child day care, or a State or local agency, arising from carrying out the
36 provisions of this section. The immunity established by this subsection shall not extend
37 to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be
38 actionable. The immunity established by this subsection shall be deemed to have been
39 waived to the extent of indemnification by insurance, indemnification under Article 31A
40 of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived
41 under the Torts Claim Act, as set forth in Chapter 31 of Chapter 143 of the General
42 Statutes.

1 (g) The child day care provider who seeks to be employed in child day care and
2 the child day care provider who seeks to own or operate child day care shall pay the cost
3 of the fingerprinting and the local check at the time the child day care provider seeks to
4 provide child day care. The Department of Justice shall perform the State criminal
5 history check and shall charge the Department of Human Resources a reasonable fee for
6 conducting the checks of the criminal records authorized by this section. The Department
7 of Human Resources shall bear the costs of obtaining the State criminal history check. If
8 the Department determines that a child day care provider who has lived in the State less
9 than five years is not disqualified based on the local and State criminal history record
10 check, the Department shall request a criminal history check from the National
11 Repository of Criminal History from the Department of Justice. The child day care
12 provider, or the employer of the child day care provider, shall pay the cost for the
13 national criminal history record check."

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

15 **"§ 114-19.5. Criminal record checks of child day care providers.**

16 The Department of Justice shall provide to the Division of Child Development,
17 Department of Human Resources, the criminal history from the State and National
18 Repositories of Criminal Histories in accordance with G.S. 110-90.2, of any child day
19 care provider, as defined in G.S. 110-90.2. The Division shall provide to the Department
20 of Justice, along with the request, the fingerprints of the provider to be checked, any
21 additional information required by the Department of Justice, and a form consenting to
22 the check of the criminal record and to the use of fingerprints and other identifying
23 information required by the State or National Repositories signed by the child day care
24 provider to be checked. The Division shall keep all information pursuant to this section
25 privileged, as provided in G.S. 110-90.2(e). The Department of Justice shall charge a
26 reasonable fee for conducting the checks of the criminal records authorized by this
27 section."

28 Sec. 3. The North Carolina Child Day Care Commission shall adopt rules to
29 implement this act, in consultation with the Divisions of Child Development and Social
30 Services of the Department of Human Resources, and the Division of Criminal
31 Information of the Department of Justice.

32 Sec. 4. The Legislative Research Commission shall study the issue of using
33 the records in the Central Registry on Child Abuse and Neglect for the purpose of
34 conducting records checks of child day care providers. In its study, the Commission shall
35 evaluate current procedures for substantiating claims of child abuse or neglect and for
36 maintaining records in the Central Registry, and shall determine what procedures should
37 be implemented to (i) ensure that records are accurate, (ii) provide appropriate notice to
38 interested parties, (iii) provide for expungement or correction of information, and (iv)
39 provide for release of information. The Commission shall report its findings and
40 recommendations to the 1997 General Assembly.

41 Sec. 5. The Department of Human Resources may designate an agent to
42 perform the county and State criminal history checks.

1 Sec. 6. Sections 4 and 5 of this act are effective upon ratification. The
2 remainder of this act becomes effective January 1, 1996, and applies to all child day care
3 providers licensed as of that date, and applies to child day care providers newly hired in
4 child day care employment, and to child day care providers newly owning or operating
5 child day care on or after that date.