

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1014

Judiciary I/Constitution Committee Substitute Adopted 6/6/95

Short Title: Nursing/Rest Home Emp. Check.

(Public)

Sponsors:

Referred to:

May 4, 1995

A BILL TO BE ENTITLED

AN ACT REQUIRING CRIMINAL HISTORY RECORD CHECKS OF UNLICENSED APPLICANTS FOR EMPLOYMENT IN NURSING HOMES AND DOMICILIARY HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-19.3 reads as rewritten:

"§ 114-19.3. Criminal record checks of personnel of ~~hospitals, nursing homes,~~ hospitals and area mental health, developmental disabilities, and substance abuse authorities and their contract agencies.

The Department of Justice may provide a criminal record check to a hospital or ~~nursing home~~ licensed under Chapter 131E of the General Statutes and to a hospital or an area mental health, developmental disabilities, and substance abuse authority licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of Chapter 122C of the General Statutes, of an individual who is employed by the hospital, ~~nursing home,~~ area authority, or contract agency or of an individual who has applied for employment with the hospital, ~~nursing home,~~ area authority, or contract agency if the employee or applicant consents to the record check. The information shall be kept confidential by the hospital, ~~nursing home,~~ area authority, or contract agency that received the information. Upon the

1 disclosure of confidential information under this section by a hospital, ~~nursing home~~, area
2 authority, or contract agency, the Department may refuse to provide further criminal
3 record checks to the hospital, ~~nursing home~~, area authority, or contract agency. The
4 Department shall charge a fee of ten dollars (\$10.00) for conducting a criminal record
5 check under this section."

6 Sec. 2. Article 4 of Chapter 114 is amended by adding a new section to read:
7 **"§ 114-19.4. Criminal history record checks of certain applicants for employment at**
8 **nursing homes and domiciliary homes.**

9 (a) Definitions. – As used in this section:

10 (1) 'Criminal history' means a State history of conviction of a crime,
11 whether a misdemeanor or felony, that bears upon a covered person's
12 fitness to have responsibility for the safety and well-being of aged or
13 disabled persons. Such crimes include criminal offenses as set forth in
14 any of the following Articles of Chapter 14 of the General Statutes:
15 Article 5, Counterfeiting and Issuing Monetary Substitutes.; Article 5A,
16 Endangering Executive and Legislative Officers.; Article 6, Homicide.;
17 Article 7A, Rape and Other Sex Offenses.; Article 8, Assaults.; Article
18 10, Kidnapping and Abduction.; Article 13, Malicious Injury or Damage
19 by Use of Explosive or Incendiary Device or Material.; Article 14,
20 Burglary and Other Housebreakings.; Article 15, Arson and Other
21 Burnings.; Article 16, Larceny.; Article 17, Robbery.; Article 18,
22 Embezzlement.; Article 19, False Pretenses and Cheats.; Article 19A,
23 Obtaining Property or Services by False or Fraudulent Use of Credit
24 Device or Other Means.; Article 19B, Financial Transaction Card Crime
25 Act.; Article 20, Frauds.; Article 21, Forgery.; Article 26, Offenses
26 against Public Morality and Decency.; Article 26A, Adult
27 Establishments.; Article 27, Prostitution.; Article 28, Perjury.; Article
28 29, Bribery.; Article 31, Misconduct in Public Office.; Article 35,
29 Offenses Against the Public Peace.; Article 36A, Riots and Civil
30 Disorders.; Article 39, Protection of Minors.; Article 40, Protection of
31 the Family.; Article 59, Public Intoxication.; and Article 60, Computer-
32 Related Crime. Such crimes also include possession or sale of drugs in
33 violation of the North Carolina Controlled Substances Act, Article 5 of
34 Chapter 90 of the General Statutes, and alcohol-related offenses such as
35 sale to underage persons in violation of G.S. 18B-302 or driving while
36 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

37 (2) 'Covered person' means an individual who is an applicant for
38 employment with a covered entity for a position that does not require
39 the applicant to be licensed by a licensing board of this State.

40 (3) 'Covered entity' means a domiciliary home licensed under Chapter 131D
41 of the General Statutes or a nursing home licensed under Chapter 131E
42 of the General Statutes.

1 (b) The Department of Justice may provide a criminal history record check of a
2 covered person to a covered entity. A criminal history record check conducted pursuant
3 to this section may be obtained by using as identifying information the fingerprints or the
4 name of the covered person. Before the record check may be conducted, the covered
5 person must sign a form consenting to the criminal history record check and the use of
6 identifying information. The covered entity shall forward the covered person's
7 identifying information to the State Bureau of Investigation for processing.

8 (c) All releases of criminal history information to a covered entity shall be subject
9 to, and in compliance with, rules governing the dissemination of criminal history record
10 checks as adopted by the North Carolina Division of Criminal Information. All the
11 information that the covered entity receives through the checking of the criminal history
12 is privileged information and for the exclusive use of the covered entity. The information
13 shall be kept confidential by the covered entity and shall be held securely by the covered
14 entity. Upon the disclosure of confidential information under this section by a covered
15 entity, the Department may refuse to provide further criminal record checks to the
16 covered entity.

17 (d) The Department shall charge a reasonable fee for conducting a criminal history
18 record check under this section, with the costs of a record check to be borne by the
19 covered entity requesting the check."

20 Sec. 3. Chapter 131D of the General Statutes is amended by adding a new
21 Article to read:

22 **"ARTICLE 5.**

23 **"MISCELLANEOUS PROVISIONS.**

24 **"§ 131D-40. Criminal history record checks of certain applicants for employment.**

25 (a) The administrator or the designee of the administrator of a domiciliary home
26 licensed under this Chapter, upon making a conditional offer of employment, shall
27 require that an applicant for employment being considered for a position that does not
28 require the applicant to be licensed by a licensing board of this State to consent to a
29 criminal history record check performed pursuant to G.S. 114-19.4. A domiciliary home
30 shall not employ an applicant who refuses to consent to a criminal history record check.
31 The request for a record check shall be submitted within five business days of making the
32 conditional offer of employment. All criminal history information received by the
33 domiciliary home shall be privileged, kept confidential, and held securely as provided by
34 G.S. 114-19.4.

35 (b) If the applicant's criminal history record check reveals one or more convictions
36 covered by G.S. 114-19.4(a)(1), the administrator or the administrator's designee shall
37 consider the following factors in determining whether the applicant will be hired:

- 38 (1) The level and seriousness of the crime;
- 39 (2) The date of the crime;
- 40 (3) The age of the person at the time of the conviction;
- 41 (4) The circumstances surrounding the commission of the crime, if known;
- 42 (5) The nexus between the criminal conduct of the person and job duties of
43 the person;

1 out the provisions of this section. The immunity established by this subsection shall not
2 extend to gross negligence, wanton conduct, or intentional wrongdoing that would
3 otherwise be actionable. The immunity established by this subsection shall be deemed to
4 have been waived to the extent of indemnification by insurance."

5 Sec. 5. G.S. 114-19.1 reads as rewritten:

6 "**§ 114-19.1. Fees for performing certain background investigations. Criminal history**
7 **background investigations; fees.**

8 (a) When the Department of Justice determines that any person is entitled by law
9 to receive information, including criminal records, from the State Bureau of
10 Investigation, for any purpose other than the administration of criminal justice, the State
11 Bureau of Investigation shall charge the recipient of such information a reasonable fee for
12 retrieving such information. The fee authorized by this section shall not exceed the actual
13 cost of locating, editing, researching and retrieving the information, and may be budgeted
14 for the support of the State Bureau of Investigation.

15 (b) As used in this section, 'administration of criminal justice' means the
16 performance of any of the following activities: the detection, apprehension, detention,
17 pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or
18 rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The
19 term also includes screening for suitability for employment, appointment or retention of a
20 person as a law enforcement or criminal justice officer, or as an officer of the court, or for
21 suitability for appointment of a person who must be appointed or confirmed by the
22 General Assembly, the Senate, or the House of Representatives.

23 (c) In providing criminal history record checks, the Department of Justice shall
24 process requests in the following priority order:

25 (1) Administration of criminal justice record checks,

26 (2) Mandatory noncriminal justice criminal history record checks,

27 (3) Voluntary noncriminal justice criminal history record checks.

28 (d) Nothing in this section shall be construed as enlarging any right to receive any
29 record of the State Bureau of Investigation. Such rights are and shall be controlled by
30 G.S. 114-15, G.S. 114-19, G.S. 120-19.4A, and other applicable statutes."

31 Sec. 6. This act becomes effective January 1, 1996, and applies to applicants
32 who apply for employment on or after that date.