

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 1192
RATIFIED BILL

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY FOR CERTAIN APPLICANTS FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING HOMES, HOME CARE AGENCIES, AND CERTAIN MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES; TO IMPOSE A CRIMINAL PENALTY FOR FALSIFYING INFORMATION ON EMPLOYMENT APPLICATIONS; TO REQUIRE CERTAIN DISCLOSURES BY NURSING HOMES; AND PERTAINING TO RULES FOR THE OPERATION OF THE ADULT CARE PORTION OF NURSING HOMES.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and area mental health, developmental disabilities, and substance abuse services authorities.

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

- (1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.
- (2) Adult care homes licensed under Chapter 131D of the General Statutes.
- (3) Home care agencies licensed under Chapter 131E of the General Statutes.
- (4) Area mental health, developmental disabilities, and substance abuse services authorities 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 that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to area mental health, developmental disabilities, and substance abuse services authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's 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. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a reasonable fee for conducting the

checks authorized by this section. The fee for the State check may not exceed fourteen dollars (\$14.00)."

Section 2.(a) Subsections (a) and (a1) of G.S. 131D-40 read as rewritten:

"(a) Requirement; Adult Care Home. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an An adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.10 to conduct a State or national criminal history record check ~~check~~ required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~within five business days of making the conditional offer of employment.~~ All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a A contract agency of an adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~criminal history record check within five business days of making the conditional offer of employment.~~ All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 2.(b) G.S. 131D-40 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. – Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. – An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

- (1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The adult care home shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. – An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section."

Section 3.(a) Subsections (a) and (a1) of G.S. 131E-265 read as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, A–a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 114.19.10 to conduct a criminal history record check within five business days of making the conditional offer of employment. State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A

contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, A contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3-114-19.10~~ to conduct a criminal history record check within five business days of making the conditional offer of employment. to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 3.(b) G.S. 131E-265 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. – Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. – A nursing home or home care agency may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The nursing home or home care agency shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The nursing home or home care agency shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. – An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section."

Section 4. Chapter 122C of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 3A.

"MISCELLANEOUS PROVISIONS.

"§ 122C-80. Criminal history record check required for certain applicants for employment.

(a) Definition. – As used in this section, 'area authority' means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.

(b) Requirement. – An offer of employment by an area authority licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An area authority shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an area authority shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. All criminal history information received by the area authority

is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section.

(c) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the area authority shall consider all of the following factors in determining whether to hire the applicant:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the area authority. If the area authority disqualifies an applicant after consideration of the relevant factors, then the area authority may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. – An area authority and an officer or employee of an area authority that, in good faith, complies with this section shall be immune from civil liability for:

- (1) The failure of the area authority to employ an individual on the basis of information provided in the criminal history record check of the individual.
- (2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(e) Relevant Offense. – As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These 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 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) Penalty for Furnishing False Information. – Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an

employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. – An area authority may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

- (1) The area authority shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.
- (2) The area authority shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment."

Section 5. G.S. 114-19.3(a) reads as rewritten:

"(a) Authority. – The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

- (1) Hospitals licensed under Chapter 131E of the General Statutes.
- ~~(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.~~
- ~~(3) Adult care homes licensed under Chapter 131D of the General Statutes.~~
- (4) Home care agencies or hospices Hospices licensed under Chapter 131E of the General Statutes.
- (5) Child placing agencies licensed under Chapter 131D of the General Statutes.
- (6) Residential child care facilities licensed under Chapter 131D of the General Statutes.
- (7) Hospitals licensed under Chapter 122C of the General Statutes.
- ~~(8) Area mental health, developmental disabilities, and substance abuse authorities 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 that Chapter.~~
- (9) Licensed child care facilities and nonlicensed child care homes regulated by the State.
- (10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly."

Section 6. Effective January 1, 2001, Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"§ 131E-113. Special care units; disclosure of information required.

(a) A nursing home or combination home licensed under this Part that provides special care for persons with Alzheimer's disease or other dementias in a special care unit shall make the following disclosures pertaining to the special care provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias. The disclosure shall be made annually, in writing, to all of the following:

- (1) The Department, as part of its licensing procedures.
- (2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

- (1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with dementia.
- (2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
- (3) The process used for assessment and establishment of the plan of care and its implementation, as required under State and federal law.
- (4) Typical staffing patterns and how the patterns reflect the resident's need for increased care and supervision.
- (5) Dementia-specific staff training.
- (6) Physical environment features designed specifically for the special care unit.
- (7) Alzheimer's disease and other dementia-specific programming.
- (8) Opportunities for family involvement.
- (9) Additional costs or fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosures made by each licensed facility subject to this section.

(d) Nothing in this section shall be construed as prohibiting a nursing home or combination home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias. The disclosures required by this section apply only to a nursing home or combination home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term 'special care unit' means a wing or hallway within a nursing home, or a program provided by a nursing home, that is designated especially for residents with Alzheimer's disease or other dementias, or other special needs disease or condition, as determined by the Medical Care Commission, which may include mental disabilities."

Section 6.1. G.S. 131E-104 reads as rewritten:

"§ 131E-104. Rules and enforcement.

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) ~~The Commission shall adopt rules for the operation of the adult care portion of a combination home that are equal to the rules adopted by the Social Services Commission for the operation of freestanding adult care homes. The adult care portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents. home. The rules shall provide that for each requirement applicable to freestanding adult care homes or freestanding nursing homes, the combination home may choose to operate the adult care portion of the home in compliance with either the requirement applicable to freestanding adult care homes or the higher standard applicable to freestanding nursing homes."~~

Section 7. Sections 1 through 5 of this act become effective January 1, 2001, and apply to offenses committed and offers of employment made on and after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2000.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 2000