

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

1

HOUSE BILL 1432

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

Sponsors: Representatives McLawhorn; Faison, Lucas, and McElraft.

Referred to: Ways and Means/Broadband Connectivity, if favorable, Judiciary III.

April 13, 2009

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;
36 Article 39, Protection of Minors; Article 40, Protection of the Family; and
37 Article 59, Public Intoxication. Such crimes also include possession or sale



* H 1 4 3 2 - V - 1 *

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

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

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

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

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

34 "NOTICE

35
36 CHILD CARE PROVIDER
37 MANDATORY CRIMINAL HISTORY CHECK

38
39 NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY
40 CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD
41 CARE IN A LICENSED CHILD CARE FACILITY, AND ALL PERSONS
42 PROVIDING CHILD CARE IN NONLICENSED CHILD CARE HOMES
43 THAT RECEIVE STATE OR FEDERAL FUNDS.

44 "Criminal history" includes county, state, and federal convictions or pending
45 indictments of any of the following crimes: the following Articles of Chapter 14
46 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred
47 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
48 Malicious Injury or Damage by Use of Explosive or Incendiary Device or
49 Material; Article 26, Offenses Against Public Morality and Decency; Article 27,
50 Prostitution; Article 39, Protection of Minors; Article 40, Protection of the
51 Family; and Article 59, Public Intoxication; violation of the North Carolina

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

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

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

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

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

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

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

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

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

50 (g) The child care provider shall pay the cost of the fingerprinting and the local check.
51 The Department of ~~Justice~~ Justice or the certified independent company regulated by the

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

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