

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1282

Short Title: Criminal Background Checks Long-Term Care. (Public)

Sponsors: Representatives Weiss; Morris, Luebke, and Jeffus.

Referred to: Judiciary II.

April 12, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE FOR DEPARTMENTAL REVIEW OF CRIMINAL
3 HISTORY RECORD CHECKS TO DETERMINE IF PERSONS EMPLOYED IN
4 ADULT CARE HOMES AND NURSING HOMES ARE FIT TO BE
5 RESPONSIBLE FOR THE SAFETY AND WELL-BEING OF AGED OR
6 DISABLED PERSONS; AND TO PROVIDE THAT INDIVIDUALS
7 DETERMINED TO BE UNFIT TO BE RESPONSIBLE FOR THE SAFETY AND
8 WELL-BEING OF AGED OR DISABLED INDIVIDUALS MAY NOT BE
9 EMPLOYED IN ADULT CARE HOMES AND NURSING HOMES.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 131D-40 reads as rewritten:

12 "**§ 131D-40. Criminal history record checks required for certain applicants for**
13 **employment.**

14 (a) Requirement; Adult Care Home. – An offer of employment by an adult care
15 home licensed under this Chapter to an applicant to fill a position that does not require
16 the applicant to have an occupational license is conditioned on consent to a criminal
17 history record check of the applicant. If the applicant has been a resident of this State
18 for less than five years, then the offer of employment is conditioned on consent to a
19 State and national criminal history record check of the applicant. The national criminal
20 history record check shall include a check of the applicant's fingerprints. If the applicant
21 has been a resident of this State for five years or more, then the offer is conditioned on
22 consent to a State criminal history record check of the applicant. An adult care home
23 shall not employ an applicant who refuses to consent to a criminal history record check
24 required by this section. Within five business days of making the conditional offer of
25 employment, an adult care home shall submit a request to the Department of Justice
26 under G.S. 114-19.10 to conduct a State or national criminal history record check
27 required by this section, or shall submit a request to a private entity to conduct a State
28 criminal history record check required by this section. At the time of submitting the

1 request for the criminal history record check, the adult care home shall provide a copy
2 of the request to the Department of Health and Human Services, Division of Facility
3 Services. If the criminal history information is provided directly to the adult care home
4 under G.S. 114-19.10, then within two business days of receiving the criminal history
5 information, the adult care home shall forward the information to the Department of
6 Health and Human Services, Division of Facility Services, for a determination of the
7 individual's fitness as required by this section. All criminal history information received
8 by the home is confidential and may not be disclosed, except to the applicant as
9 provided in subsection (b) of this section.

10 (a1) Requirement; Contract Agency of Adult Care Home. – An offer of
11 employment by a contract agency of an adult care home licensed under this Chapter to
12 an applicant to fill a position that does not require the applicant to have an occupational
13 license is conditioned upon consent to a criminal history record check of the applicant.
14 If the applicant has been a resident of this State for less than five years, then the offer of
15 employment is conditioned on consent to a State and national criminal history record
16 check of the applicant. The national criminal history record check shall include a check
17 of the applicant's fingerprints. If the applicant has been a resident of this State for five
18 years or more, then the offer is conditioned on consent to a State criminal history record
19 check of the applicant. A contract agency of an adult care home shall not employ an
20 applicant who refuses to consent to a criminal history record check required by this
21 section. Within five business days of making the conditional offer of employment, a
22 contract agency of an adult care home shall submit a request to the Department of
23 Justice under G.S. 114-19.10 to conduct a State or national criminal history record
24 check required by this section, or shall submit a request to a private entity to conduct a
25 State criminal history record check required by this section. At the time of submitting
26 the request for the criminal history record check, a contract agency of an adult care
27 home shall provide a copy of the request to the Department of Health and Human
28 Services, Division of Facility Services. If the criminal history information is provided
29 directly to the contract agency under G.S. 114-19.10, then within two business days of
30 receiving the criminal history information, the contract agency shall forward the
31 information to the Department of Health and Human Services, Division of Facility
32 Services, for a determination of the individual's fitness as required by this section. All
33 criminal history information received by the contract agency is confidential and may not
34 be disclosed, except to the applicant as provided by subsection (b) of this section.

35 (b) Action. – ~~If an applicant's criminal history record check reveals one or more~~
36 ~~convictions of a relevant offense, the adult care home or a contract agency of the adult~~
37 ~~care home shall consider all of the following factors in determining whether to hire the~~
38 ~~applicant:~~

39 (1) ~~The level and seriousness of the crime.~~

40 (2) ~~The date of the crime.~~

41 (3) ~~The age of the person at the time of the conviction.~~

42 (4) ~~The circumstances surrounding the commission of the crime, if known.~~

1 ~~(5) The nexus between the criminal conduct of the person and the job~~
2 ~~duties of the position to be filled.~~

3 ~~(6) The prison, jail, probation, parole, rehabilitation, and employment~~
4 ~~records of the person since the date the crime was committed.~~

5 ~~(7) The subsequent commission by the person of a relevant offense.~~

6 ~~The fact of conviction of a relevant offense alone shall not be a bar to employment;~~
7 ~~however, the listed factors shall be considered by the adult care home or the contract~~
8 ~~agency of the adult care home. If the adult care home or a contract agency of the adult~~
9 ~~care home disqualifies an applicant after consideration of the relevant factors, then the~~
10 ~~adult care home or the contract agency may disclose information contained in the~~
11 ~~criminal history record check that is relevant to the disqualification, but may not provide~~
12 ~~a copy of the criminal history record check to the applicant. Except as provided in~~
13 ~~subsection (f) of this section, an adult care home or contract agency of an adult care~~
14 ~~home shall not employ an individual who is subject to a criminal history record check~~
15 ~~under this section until the criminal history has been reviewed and a determination~~
16 ~~made by the Department in accordance with this section as to the individual's fitness to~~
17 ~~have responsibility for the safety and well-being of aged or disabled individuals. An~~
18 ~~adult care home or contract agency of an adult care home shall not employ an individual~~
19 ~~who has been determined by the Department to be unfit to be responsible for the safety~~
20 ~~and well-being of aged or disabled persons. If an applicant's criminal history reveals one~~
21 ~~or more convictions of an offense listed in subsection (d) of this section, other than~~
22 ~~homicide or rape or other sex offenses, and the conviction occurred 10 or more years~~
23 ~~prior to the date of application, the adult care home or contract agency of an adult care~~
24 ~~home shall consider all of the following factors in determining whether to hire the~~
25 ~~applicant:~~

26 ~~(1) The level and seriousness of the crime.~~

27 ~~(2) The date of the crime.~~

28 ~~(3) The age of the person at the time of conviction.~~

29 ~~(4) The circumstances surrounding the commission of the crime, if known.~~

30 ~~(5) The nexus between the criminal conduct of the person and the job~~
31 ~~duties of the position to be filled.~~

32 ~~(6) The prison, jail, probation, parole, rehabilitation, and employment~~
33 ~~records of the person since the date the crime was committed.~~

34 ~~(7) The subsequent conviction by the person of one or more of the~~
35 ~~offenses listed in subsection (d) of this section, other than homicide or~~
36 ~~rape or other sex offense.~~

37 ~~(8) Whether the applicant's name is listed in the Health Care Personnel~~
38 ~~Registry based on findings by the Department under G.S. 131E-256,~~
39 ~~and the nature of those findings.~~

40 ~~If the adult care home or contract agency of the adult care home disqualifies an~~
41 ~~applicant or terminates a conditional employee based on the Department's determination~~
42 ~~or on its own consideration of the factors in this subsection, then the adult care home or~~

1 the contract agency may disclose information contained in the criminal history record
2 check or in the Department's determination that is relevant to the disqualification but
3 may not provide the criminal record check to the applicant.

4 (c) Limited Immunity. – An adult care home and an officer or employee of an
5 adult care home that, in good faith, complies with this section is not liable for the failure
6 of the home to employ an individual on the basis of information provided in the
7 criminal history record check of the individual.

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

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

37 (f) Conditional Employment. – An adult care home may employ an applicant
38 conditionally prior to obtaining a determination from the Department based on its
39 review of the criminal history conducted under subsection (i) of this section ~~the results~~
40 ~~of a criminal history record check regarding the applicant~~ if both of the following
41 requirements are met:

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

8 The adult care home shall terminate immediately the conditional employment of an
9 individual upon receipt of notification from the Department that it has determined that
10 the individual is unfit to be responsible for the safety or well-being of aged or disabled
11 persons.

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

16 (h) Notice to Applicant. – At the time of application, the individual whose
17 criminal history is to be checked shall be furnished with a statement substantially
18 similar to the following:

19 **"NOTICE**

20
21 **MANDATORY CRIMINAL HISTORY CHECK**

22
23 **NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL**
24 **HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO**
25 **PROVIDE CARE TO RESIDENTS OF ADULT CARE HOMES**
26 **AND WHO ARE NOT REQUIRED TO HAVE AN**
27 **OCCUPATIONAL LICENSE TO PROVIDE THE CARE.**
28

29 'Criminal history' includes county, state, and federal convictions or
30 pending indictments of any of the following crimes: the following
31 Articles of Chapter 14 of the General Statutes: Article 6, Homicide;
32 Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article
33 10, Kidnapping and Abduction; Article 13, Malicious Injury or
34 Damage by Use of Explosive or Incendiary Device or Material; Article
35 14, Burglary and Other Housebreakings; Article 15, Arson and Other
36 Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,
37 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A,
38 Obtaining Property or Services by False or Fraudulent Use of Credit
39 Device or Other Means; Article 20, Frauds; Article 21, Forgery;
40 Article 26, Offenses against Public Morality and Decency; and Article
41 59, Public Intoxication; violation of the North Carolina Controlled
42 Substances Act, Article 5 of Chapter 90 of the General Statutes, and

1 alcohol-related offenses such as driving while impaired in violation of
2 G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal
3 law or under the laws of other states. Your fingerprints will be used to
4 check the criminal history records of the State Bureau of Investigation
5 (SBI) and the Federal Bureau of Investigation (FBI).

6 If you have ever been convicted of homicide or rape, or if you have
7 been convicted of any of the other crimes listed in the criminal history
8 within 10 years preceding the date of application for employment, you
9 will be determined as unfit to have responsibility for the safety and
10 well-being of aged or disabled persons. If you have been convicted of
11 any of the crimes other than murder or rape, and the conviction
12 occurred 10 or more years preceding the date of application for
13 employment, the facility may determine your fitness based on your
14 criminal history information and whether your name is listed in the
15 Health Care Personnel Registry pursuant to G.S. 131E-256.

16 If it is determined, based on your criminal history or listing in the
17 Health Care Personnel Registry, that you are unfit to have
18 responsibility for the safety and well-being of aged or disabled
19 individuals, you shall have the opportunity to complete, or challenge
20 the accuracy of, the information contained in the SBI or FBI
21 identification records or in the Health Care Personnel Registry.

22 If you disagree with the determination of the Department of Health
23 and Human Services on your fitness to provide care, you may file a
24 petition for a hearing with the Office of Administrative Hearings under
25 Chapter 150B of the General Statutes within 60 days of the date you
26 receive notice of the Department's determination.

27 Any individual who intentionally falsifies any information required to
28 be furnished to conduct the criminal history shall be guilty of a Class A1
29 misdemeanor."

30 (i) Department Review of Criminal History. – Within five business days of
31 receipt of the criminal history of an individual conditionally employed or an applicant
32 for employment under this section, the Department shall, after review of the criminal
33 history in accordance with this section, make a determination as to the fitness of the
34 individual to be responsible for the safety and well-being of aged or disabled persons.
35 By the next business day following its determination, the Department shall provide its
36 written determination to the adult care home or contract agency and shall also provide to
37 the individual applicant or conditional employee a written statement as to the
38 Department's determination and the basis on which it was made. The notice to the
39 individual shall also provide that if the individual disagrees with the Department's
40 determination, the individual may file a petition for a hearing under Chapter 150B of the
41 General Statutes within 60 days of the date the individual receives the Department's
42 determination. The Department shall maintain a record of each determination made, and

1 the determination shall be binding on the Department for subsequent reviews of the
2 same individual except to the extent that new information is obtained by the Department
3 in the subsequent review. A determination issued by the Department to the requesting
4 adult care home or contract agency of the adult care home is a final agency decision.
5 An individual denied employment or terminated from conditional employment based on
6 the Department's determination may file a petition for a contested case under Chapter
7 150B of the General Statutes within 60 days of the date the individual receives the
8 Department's determination. All information that the Department receives through the
9 checking of the criminal history is privileged information and is not a public record but
10 is for the exclusive use of the Department and those persons authorized under this
11 section to receive the information. The Department may destroy the information after it
12 is used for the purposes authorized by this section after one calendar year.

13 (j) Fitness for Employment. – An applicant is unfit to be responsible for the
14 safety and well-being of aged or disabled persons if the applicant's criminal history
15 shows that:

16 (1) The applicant was convicted of any of the offenses of Homicide under
17 Article 6 of Chapter 14 of the General Statutes or Rape and Other Sex
18 Offenses under Article 7A of Chapter 14 of the General Statutes.

19 (2) The applicant was convicted of any other offense listed in subsection
20 (d) of this section within 10 years prior to the date of application for
21 employment.

22 If an applicant's criminal history shows that the applicant was convicted of an offense
23 listed in subsection (d) of this section, other than homicide or rape and other sex
24 offenses, and the conviction occurred 10 or more years prior to the date of the
25 application, the Department shall obtain the public record document reflecting the
26 offense and shall provide the public record of that conviction to the adult care home or
27 contract agency of the adult care home, and the adult care home or contract agency may
28 consider whether or not to hire the applicant after considering the factors contained in
29 subsection (b) of this section."

30 **SECTION 2.** G.S. 131E-265 reads as rewritten:

31 **"§ 131E-265. Criminal history record checks required for certain applicants for**
32 **employment.**

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

1 this Chapter to an applicant to fill a position that requires entering the patient's home is
2 conditioned on consent to a criminal history record check of the applicant. In addition,
3 employment status change of a current employee of a home care agency licensed under
4 this Chapter from a position that does not require entering the patient's home to a
5 position that requires entering the patient's home shall be conditioned on consent to a
6 criminal history record check of that current employee. If the applicant for employment
7 or if the current employee who is changing employment status has been a resident of
8 this State for less than five years, then the offer of employment or change in
9 employment status is conditioned on consent to a State and national criminal history
10 record check. The national criminal history record check shall include a check of the
11 applicant's or current employee's fingerprints. If the applicant or current employee has
12 been a resident of this State for five years or more, then the offer is conditioned on
13 consent to a State criminal history record check of the applicant or current employee
14 applying for a change in employment status. A nursing home or a home care agency
15 shall not employ an applicant who refuses to consent to a criminal history record check
16 required by this section. In addition, a home care agency shall not change a current
17 employee's employment status from a position that does not require entering the
18 patient's home to a position that requires entering the patient's home who refuses to
19 consent to a criminal history record check required by this section. Within five business
20 days of making the conditional offer of employment, a nursing home or home care
21 agency shall submit a request to the Department of Justice under G.S. 114.19.10 to
22 conduct a State or national criminal history record check required by this section, or
23 shall submit a request to a private entity to conduct a State criminal history record check
24 required by this section. At the time of submitting the request for the criminal history
25 record check, the nursing home or home care agency shall provide a copy of the request
26 to the Department of Health and Human Services, Division of Facility Services. If the
27 criminal history information is provided directly to the nursing home or home care
28 agency under G.S. 114-19.10, then within two business days of receiving the criminal
29 history information the nursing home or home care agency shall forward the
30 information to the Department of Health and Human Services, Division of Facility
31 Services, for a determination of the individual's fitness as required by this section. All
32 criminal history information received by the home or agency is confidential and may
33 not be disclosed, except to the applicant as provided in subsection (b) of this section.

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

1 consent to a State criminal history record check of the applicant. A contract agency of a
2 nursing home or home care agency shall not employ an applicant who refuses to consent
3 to a criminal history record check required by this section. Within five business days of
4 making the conditional offer of employment, a contract agency of a nursing home or
5 home care agency shall submit a request to the Department of Justice under G.S. 114-
6 19.10 to conduct a State or national criminal history record check required by this
7 section, or shall submit a request to a private entity to conduct a State criminal history
8 record check required by this section. At the time of submitting the request for the
9 criminal history record check, the contract agency of a nursing home or home care
10 agency shall provide a copy of the request to the Department of Health and Human
11 Services, Division of Facility Services. If the criminal history information is provided
12 directly to the contract agency of the nursing home or home care agency under G.S.
13 114-19.10, then within two business days of receiving the criminal history information,
14 the contract agency of the nursing home or home care agency shall forward the
15 information to the Department of Health and Human Services, Division of Facility
16 Services, for a determination of the individual's fitness as required by this section. All
17 criminal history information received by the contract agency is confidential and may not
18 be disclosed, except to the applicant as provided by subsection (b) of this section.

19 (b) ~~Action. – If an applicant's criminal history record check reveals one or more~~
20 ~~convictions of a relevant offense, the nursing home or home care agency, or the contract~~
21 ~~agency of a nursing home or home care agency, shall consider all of the following~~
22 ~~factors in determining whether to hire the applicant:~~

23 (1) ~~The level and seriousness of the crime.~~

24 (2) ~~The date of the crime.~~

25 (3) ~~The age of the person at the time of the conviction.~~

26 (4) ~~The circumstances surrounding the commission of the crime, if known.~~

27 (5) ~~The nexus between the criminal conduct of the person and the job~~
28 ~~duties of the position to be filled.~~

29 (6) ~~The prison, jail, probation, parole, rehabilitation, and employment~~
30 ~~records of the person since the date the crime was committed.~~

31 (7) ~~The subsequent commission by the person of a relevant offense.~~

32 ~~The fact of conviction of a relevant offense alone shall not be a bar to employment;~~
33 ~~however, the listed factors shall be considered by the nursing home or home care~~
34 ~~agency, or the contract agency of the nursing home or home care agency. If a nursing~~
35 ~~home, home care agency, or contract agency of a nursing home or home care agency~~
36 ~~disqualifies an applicant after consideration of the relevant factors, then the nursing~~
37 ~~home, home care agency, or contract agency may disclose information contained in the~~
38 ~~criminal history record check that is relevant to the disqualification, but may not provide~~
39 ~~a copy of the criminal history record check to the applicant.~~Except as provided in
40 subsection (f) of this section, a nursing home, home care agency, or a contract agency of
41 a nursing home or home care agency shall not employ an individual who is subject to a
42 criminal history record check under this section until the criminal history has been

1 reviewed and a determination made by the Department in accordance with this section
2 as to the individual's fitness to have responsibility for the safety and well-being of aged
3 or disabled individuals. A nursing home, home care agency, or contract agency of a
4 nursing home or home care agency shall not employ an individual who has been
5 determined by the Department to be unfit to be responsible for the safety and well-being
6 of aged or disabled persons. If an applicant's criminal history reveals one or more
7 convictions of an offense listed in subsection (d) of this section, other than homicide or
8 rape or other sex offenses, and the conviction occurred 10 or more years prior to the
9 date of application, the nursing home, home care agency, or contract agency of the
10 nursing home or home care agency shall consider all of the following factors in
11 determining whether to hire the applicant:

- 12 (1) The level and seriousness of the crime.
- 13 (2) The date of the crime.
- 14 (3) The age of the person at the time of conviction.
- 15 (4) The circumstances surrounding the commission of the crime, if known.
- 16 (5) The nexus between the criminal conduct of the person and the job
17 duties of the position to be filled.
- 18 (6) The prison, jail, probation, parole, rehabilitation, and employment
19 records of the person since the date the crime was committed.
- 20 (7) The subsequent conviction by the person of one or more of the
21 offenses listed in subsection (d) of this section, other than homicide or
22 rape or other sex offense.
- 23 (8) Whether the applicant's name is listed in the Health Care Personnel
24 Registry based on findings by the Department under G.S. 131E-256,
25 and the nature of those findings.

26 If the nursing home, home care agency, or contract agency of a nursing home or home
27 care agency disqualifies an applicant or terminates a conditional employee based on the
28 Department's determination or on its own consideration of the factors listed in this
29 subsection, then the nursing home, home care agency, or contract agency of a nursing
30 home or home care agency may disclose information contained in the criminal history
31 record check or in the Department's determination that is relevant to the disqualification
32 but may not provide the criminal history record check to the applicant or conditional
33 employee.

34 (c) Limited Immunity. – An entity and an officer or employee of an entity that, in
35 good faith, complies with this section is not liable for the failure of the entity to employ
36 an individual on the basis of information provided in the criminal history record check
37 of the individual.

38 (d) Relevant Offense.—~~As used in this section, the term "relevant offense" has~~
39 ~~the same meaning as in G.S. 131D-40.~~ Criminal History. – Criminal history means a
40 county, state, or federal criminal history of conviction or pending indictment of a crime,
41 whether a misdemeanor or felony, that bears upon an individual's fitness to have
42 responsibility for the safety and well-being of aged or disabled persons. These crimes

1 include the criminal offenses set forth in any of the following Articles of Chapter 14 of
2 the General Statutes: Article 6, Homicide; Article 7A, Rape and Other Sex Offenses;
3 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury
4 or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary
5 and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny;
6 Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats;
7 Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit
8 Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses
9 against Public Morality and Decency; and Article 59, Public Intoxication. These crimes
10 also include possession or sale of drugs in violation of the North Carolina Controlled
11 Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related
12 offenses such as driving while impaired in violation of G.S. 20-138.1 through G.S. 20-
13 138.5.

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

18 (f) Conditional Employment. – A nursing home or home care agency may
19 employ an applicant conditionally prior to obtaining ~~the results of a criminal history~~
20 ~~record check regarding the applicant~~ a determination from the Department based on its
21 review of the criminal history conducted under subsection (i) of this section if both of
22 the following requirements are met:

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

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

30 The nursing home or home care agency shall terminate immediately the conditional
31 employment of an individual upon receipt of notification from the Department that it
32 has determined upon review of the criminal history that the individual is unfit to be
33 responsible for the safety or well-being of aged or disabled persons.

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

38 (h) Notice to Applicant. – At the time of application, the individual whose
39 criminal history is to be checked shall be furnished with a statement substantially
40 similar to the following:

41 **"NOTICE**

MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CARE TO RESIDENTS OF NURSING HOMES AND PERSONS EMPLOYED BY HOME CARE AGENCIES AND WHO ARE NOT REQUIRED TO HAVE AN OCCUPATIONAL LICENSE TO PROVIDE THE CARE.

'Criminal history' includes county, state, and federal convictions or pending indictments of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: 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 Devices or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If you have ever been convicted of homicide or rape, or if you have been convicted of any of the other crimes listed in the criminal history within 10 years preceding the date of application for employment, you will be determined as unfit to have responsibility for the safety and well-being of aged or disabled persons. If you have been convicted of any of the crimes other than murder or rape and the conviction occurred 10 or more years preceding the date of application for employment, the facility may determine your fitness based on your criminal history information and whether your name is listed in the Health Care Personnel Registry pursuant to G.S. 131E-256.

If it is determined, based on your criminal history or listing in the Health Care Personnel Registry, that you are unfit to have responsibility for the safety and well-being of aged or disabled individuals, you shall have the opportunity to complete, or challenge

1 the accuracy of, the information contained in the SBI or FBI
2 identification records or in the Health Care Personnel Registry.

3 If you disagree with the determination of the Department of Health
4 and Human Services on your fitness to provide care, you may file a
5 petition for a hearing with the Office of Administrative Hearings under
6 Chapter 150B of the General Statutes within 60 days of the date you
7 receive notice of the Department's determination.

8 Any individual who intentionally falsifies any information required
9 to be furnished to conduct the criminal history shall be guilty of a
10 Class A1 misdemeanor."

11 (i) Department Review of Criminal History. – Within five business days of
12 receipt of the criminal history of an individual conditionally employed or an applicant
13 for employment under this section, the Department shall, after review of the criminal
14 history in accordance with this section, make a determination as to the fitness of the
15 individual to be responsible for the safety and well-being of aged or disabled persons.
16 By the next business day following its determination, the Department shall provide its
17 written determination to the nursing home, home care agency, or contract agency of a
18 nursing home or home care agency and shall also provide to the individual applicant or
19 conditional employee a written statement as to the Department's determination and the
20 basis on which it was made. The notice to the individual shall also provide that if the
21 individual disagrees with the Department's determination the individual may file a
22 petition for a hearing under Chapter 150B of the General Statutes within 60 days of the
23 date the individual receives the Department's determination. The Department shall
24 maintain a record of each determination made, and the determination shall be binding
25 on the Department for subsequent reviews of the same individual except to the extent
26 that new information is obtained by the Department in the subsequent review. A
27 determination issued by the Department to the requesting nursing home, home care
28 agency, or contract agency of a nursing home or home care agency is a final agency
29 decision. An individual denied employment or terminated from conditional
30 employment based on the Department's determination may file a petition for a contested
31 case under Chapter 150B of the General Statutes within 60 days of the date the
32 individual receives the Department's determination. All information that the Department
33 receives through the checking of the criminal history is privileged information and is
34 not a public record but is for the exclusive use of the Department and those persons
35 authorized under this section to receive the information. The Department may destroy
36 the information after it is used for the purposes authorized by this section after one
37 calendar year.

38 (j) Fitness for Employment. – An applicant is unfit to be responsible for the
39 safety and well-being of aged or disabled persons if the applicant's criminal history
40 shows that:

1 (1) The applicant was convicted of any of the offenses of Homicide under
2 Article 6 of Chapter 14 of the General Statutes or Rape and Other Sex
3 Offenses under Article 7A of Chapter 14 of the General Statutes.

4 (2) The applicant was convicted of any other offense listed in subsection
5 (d) of this section within 10 years prior to the date of application for
6 employment.

7 If an applicant's criminal history shows that the applicant was convicted of an
8 offense listed in subsection (d) of this section, other than homicide or rape and other sex
9 offenses, and the conviction occurred 10 or more years prior to the date of the
10 application, the Department shall obtain the public record document reflecting the
11 offense and shall provide the public record of that conviction to the nursing home, home
12 care agency, or contract agency of the nursing home or contract agency and the nursing
13 home, home care agency, or contract agency may consider whether or not to hire the
14 applicant after considering the factors contained in subsection (b) of this section."

15 **SECTION 3.** G.S. 114-19.10 reads as rewritten:

16 **"§ 114-19.10. Criminal history record checks for adult care homes, nursing homes,**
17 **home care agencies, and area mental health, developmental disabilities,**
18 **and substance abuse services authorities.**

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

21 (1) Nursing homes or combination homes licensed under Chapter 131E of
22 the General Statutes.

23 (2) Adult care homes licensed under Chapter 131D of the General
24 Statutes.

25 (3) Home care agencies licensed under Chapter 131E of the General
26 Statutes.

27 (4) Area mental health, developmental disabilities, and substance abuse
28 services authorities licensed under Chapter 122C of the General
29 Statutes, including a contract agency of an area authority that is subject
30 to the provisions of Article 4 of that Chapter.

31 ~~The~~ For national checks, the criminal history shall be provided to nursing homes and
32 home care agencies for employment positions covered by Public Law 105-277. For
33 employment positions in nursing homes and home care agencies not covered by Public
34 Law 105-277, and for all other agencies listed in this section, the national criminal
35 history shall be provided to the Department of Health and Human Services, Division of
36 Facility Services. For State checks, the criminal history shall be provided to nursing
37 homes and home care agencies in accordance with G.S. 131E-265, to adult care homes
38 in accordance with G.S. 131D-40, and to area mental health, developmental disabilities,
39 and substance abuse services authorities in accordance with G.S. 122C-80. The
40 requesting entity shall provide to the Department of Justice, along with the request, the
41 fingerprints of the individual to be checked if a national criminal history record check is
42 required, any additional information required by the Department of Justice, and a form

1 signed by the individual to be checked consenting to the check of the criminal record
2 and to the use of fingerprints and other identifying information required by the State or
3 National Repositories of Criminal Histories. If a national criminal history record check
4 is required, the fingerprints of the individual shall be forwarded to the State Bureau of
5 Investigation for a search of the State's criminal history record file, and the State Bureau
6 of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation
7 for a national criminal history record check. All information received by the entity shall
8 be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as
9 applicable. The Department of Justice shall charge a reasonable fee for conducting the
10 checks authorized by this section. The fee for the State check may not exceed fourteen
11 dollars (\$14.00)."

12 **SECTION 4.** There is appropriated from the General Fund to the
13 Department of Health and Human Services, Division of Facility Services, the sum of
14 one hundred thirty-three thousand three hundred twenty-eight dollars (\$133,328) for the
15 2001-2002 fiscal year and the sum of one hundred fifty-three thousand seven hundred
16 seventy dollars (\$153,770) for the 2002-2003 fiscal year. These funds shall be used to
17 carry out the duties required under this act.

18 **SECTION 5.** This act becomes effective October 1, 2001.