

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 826  
Health Care Committee Substitute Adopted 4/19/01  
Third Edition Engrossed 4/23/01  
House Committee Substitute Favorable 7/10/01

Short Title: Criminal Record Check Change/Long-Term Care.

(Public)

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Sponsors:

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Referred to:

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April 3, 2001

A BILL TO BE ENTITLED

1 AN ACT TO REPEAL THE REQUIREMENT FOR A NATIONAL CRIMINAL  
2 HISTORY RECORD CHECK FOR CERTAIN LONG-TERM CARE FACILITIES  
3 BECAUSE OF FEDERAL REQUIREMENTS LIMITING DISTRIBUTION OF  
4 RECORD CHECK RESULTS AND TO ESTABLISH THE STUDY  
5 COMMISSION ON CRIMINAL HISTORY RECORD CHECKS.  
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 131E-265 reads as rewritten:

9 **"§ 131E-265. Criminal history record checks required for certain applicants for**  
10 **employment.**

11 (a) Requirement; Nursing Home or Home Care Agency. – An offer of  
12 employment by a nursing home licensed under this Chapter to an applicant to fill a  
13 position that does not require the applicant to have an occupational license is  
14 conditioned on consent to a criminal history record check of the applicant. ~~If the~~  
15 ~~applicant has been a resident of this State for less than five years, then the offer of~~  
16 ~~employment is conditioned on consent to a State and national criminal history record~~  
17 ~~check of the applicant. The national criminal history record check shall include a check~~  
18 ~~of the applicant's fingerprints. If the applicant has been a resident of this State for five~~  
19 ~~years or more, then the offer is conditioned on consent to a State criminal history record~~  
20 ~~check of the applicant.~~ An offer of employment by a home care agency licensed under  
21 this Chapter to an applicant to fill a position that requires entering the patient's home is  
22 conditioned on consent to a criminal history record check of the applicant. In addition,  
23 employment status change of a current employee of a home care agency licensed under  
24 this Chapter from a position that does not require entering the patient's home to a  
25 position that requires entering the patient's home shall be conditioned on consent to a  
26 criminal history record check of that current employee. ~~If the applicant for employment~~  
27 ~~or if the current employee who is changing employment status has been a resident of~~

1 ~~this State for less than five years, then the offer of employment or change in~~  
2 ~~employment status is conditioned on consent to a State and national criminal history~~  
3 ~~record check. The national criminal history record check shall include a check of the~~  
4 ~~applicant's or current employee's fingerprints. If the applicant or current employee has~~  
5 ~~been a resident of this State for five years or more, then the offer is conditioned on~~  
6 ~~consent to a State criminal history record check of the applicant or current employee~~  
7 ~~applying for a change in employment status. A nursing home or a home care agency~~  
8 ~~shall not employ an applicant who refuses to consent to a criminal history record check~~  
9 ~~required by this section. In addition, a home care agency shall not change a current~~  
10 ~~employee's employment status from a position that does not require entering the~~  
11 ~~patient's home to a position that requires entering the patient's home who refuses to~~  
12 ~~consent to a criminal history record check required by this section. Within five business~~  
13 ~~days of making the conditional offer of employment, a nursing home or home care~~  
14 ~~agency shall submit a request to the Department of Justice under G.S. 114.19.10 to~~  
15 ~~conduct a State or national criminal history record check required by this section, or~~  
16 ~~shall submit a request to a private entity to conduct a State criminal history record check~~  
17 ~~required by this section. All criminal history information received by the home or~~  
18 ~~agency is confidential and may not be disclosed, except to the applicant as provided in~~  
19 ~~subsection (b) of this section.~~

20 (a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –  
21 An offer of employment by a contract agency of a nursing home or home care agency  
22 licensed under this Chapter to an applicant to fill a position that does not require the  
23 applicant to have an occupational license is conditioned upon consent to a criminal  
24 history record check of the applicant. ~~If the applicant has been a resident of this State~~  
25 ~~for less than five years, then the offer of employment is conditioned on consent to a~~  
26 ~~State and national criminal history record check of the applicant. The national criminal~~  
27 ~~history record check shall include a check of the applicant's fingerprints. If the applicant~~  
28 ~~has been a resident of this State for five years or more, then the offer is conditioned on~~  
29 ~~consent to a State criminal history record check of the applicant. A contract agency of a~~  
30 ~~nursing home or home care agency shall not employ an applicant who refuses to consent~~  
31 ~~to a criminal history record check required by this section. Within five business days of~~  
32 ~~making the conditional offer of employment, a contract agency of a nursing home or~~  
33 ~~home care agency shall submit a request to the Department of Justice under G.S.~~  
34 ~~114-19.10 to conduct a State or national criminal history record check required by this~~  
35 ~~section, or shall submit a request to a private entity to conduct a State criminal history~~  
36 ~~record check required by this section. All criminal history information received by the~~  
37 ~~contract agency is confidential and may not be disclosed, except to the applicant as~~  
38 ~~provided by subsection (b) of this section.~~

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

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

10 The fact of conviction of a relevant offense alone shall not be a bar to employment;  
11 however, the listed factors shall be considered by the nursing home or home care  
12 agency, or the contract agency of the nursing home or home care agency. If a nursing  
13 home, home care agency, or contract agency of a nursing home or home care agency  
14 disqualifies an applicant after consideration of the relevant factors, then the nursing  
15 home, home care agency, or contract agency may disclose information contained in the  
16 criminal history record check that is relevant to the disqualification, but may not provide  
17 a copy of the criminal history record check to the applicant.

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

22 (d) Relevant Offense. – As used in this section, the term "relevant offense" has  
23 the same meaning as in G.S. 131D-40.

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

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

- 31 (1) The nursing home or home care agency shall not employ an applicant  
32 prior to obtaining the applicant's consent for a criminal history record  
33 check as required in subsection (a) of this section or the completed  
34 fingerprint cards as required in G.S. 114-19.10.
- 35 (2) The nursing home or home care agency shall submit the request for a  
36 criminal history record check not later than five business days after the  
37 individual ~~begins conditional employment.~~ undertakes the functions of  
38 the job.

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

1           **SECTION 2.** G.S. 131D-40 reads as rewritten:

2   "**§ 131D-40. Criminal history record checks required for certain applicants for**  
3   **employment.**

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

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

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

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

10 The fact of conviction of a relevant offense alone shall not be a bar to employment;  
11 however, the listed factors shall be considered by the adult care home or the contract  
12 agency of the adult care home. If the adult care home or a contract agency of the adult  
13 care home disqualifies an applicant after consideration of the relevant factors, then the  
14 adult care home or the contract agency may disclose information contained in the  
15 criminal history record check that is relevant to the disqualification, but may not provide  
16 a copy of the criminal history record check to the applicant.

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

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

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

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

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

12 (2) The adult care home shall submit the request for a criminal history  
13 record check not later than five business days after the individual  
14 ~~begins conditional employment.~~ undertakes the functions of the job.

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

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

20 **"§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home**  
21 **care agencies, and area mental health, developmental disabilities, and**  
22 **substance abuse services authorities.**

23 The Department of Justice may provide to the following entities ~~the criminal history~~  
24 ~~from the State and National Repositories of Criminal Histories:~~ a criminal record check  
25 of an individual who is employed by that entity, has applied for employment with that  
26 entity, or has volunteered to provide direct care on behalf of that entity:

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

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

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

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

37 The criminal history shall be provided to nursing homes and home care agencies in  
38 accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40,  
39 and to area mental health, developmental disabilities, and substance abuse services  
40 authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the  
41 Department of Justice, along with the request, the fingerprints of the individual to be  
42 ~~checked if a national criminal history record check is required,~~ checked, any additional

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

13           **SECTION 4.(a)** There is established the Study Commission on Criminal  
14 History Record Checks. The purpose of the Commission is to study how federal law  
15 affects the distribution of national criminal history record check information requested  
16 for nursing homes, home care agencies, adult care homes, assisted living facilities, and  
17 area mental health, developmental disabilities, and substance abuse services authorities,  
18 and the problems federal restrictions pose for effective and efficient implementation of  
19 State-required criminal record checks. The study shall include the following:

- 20           (1) Ways in which national record checks may be obtained and reviewed  
21           for these facilities to effectuate State policy and protections of facility  
22           residents, and the advantages, disadvantages, and costs of various  
23           approaches to implementation.
- 24           (2) A review of ways in which national record checks are obtained by the  
25           Division of Child Development, Department of Health and Human  
26           Services, and other State agencies, and related costs to the State.
- 27           (3) Solutions adopted by other states to effectively and efficiently  
28           implement criminal record check requirements, including costs to the  
29           State in implementing these solutions.
- 30           (4) Other issues the Commission considers relevant to State requirements  
31           for criminal history record checks in long-term care facilities.

32           **SECTION 4.(b)** The Commission shall consist of 25 members, appointed as  
33 follows:

- 34           (1) Ten members of the General Assembly, five of whom shall be  
35           Senators appointed by the President Pro Tempore of the Senate, and  
36           five of whom shall be members of the House of Representatives  
37           appointed by the Speaker of the House of Representatives.
- 38           (2) A representative from each of the following, appointed by the  
39           President Pro Tempore of the Senate:
  - 40           a. North Carolina Association of Long Term Care Facilities.
  - 41           b. North Carolina Assisted Living Association, Inc.

- 1 c. The Director of the Division of Aging of the Department of  
2 Health and Human Services.
- 3 d. The Director of the Division of Mental Health, Developmental  
4 Disabilities, and Substance Abuse Services of the Department  
5 of Health and Human Services.
- 6 e. The public.
- 7 (3) A representative from each of the following, appointed by the Speaker  
8 of the House of Representatives:
- 9 a. North Carolina Health Care Facilities Association.  
10 b. Friends of Residents in Long Term Care.  
11 c. The Director of the Division of Facility Services of the  
12 Department of Health and Human Services.  
13 d. CNC Access, Inc., an organization representing providers of  
14 mental health, developmental disabilities, and substance abuse  
15 services.  
16 e. The public at large.
- 17 (4) A representative from each of the following, appointed by the  
18 Governor:
- 19 a. The Council on Community Programs.  
20 b. The Secretary of Health and Human Services, or her designee.  
21 c. The Attorney General, or his designee.  
22 d. The Director of the State Bureau of Investigation, or the  
23 Director's designee.  
24 e. Association for Home and Hospice Care in North Carolina.

25 **SECTION 4.(c)** With the prior approval of the Legislative Services  
26 Commission, the Legislative Services Officer shall assign professional staff to assist in  
27 the work of the Study Commission on Criminal History Record Checks. With the prior  
28 approval of the Legislative Services Commission, the Study Commission may hold its  
29 meetings in the State Legislative Building or the Legislative Office Building.

30 **SECTION 4.(d)** The Commission shall submit a final written report of its  
31 findings and recommendations on or before the convening of the 2002 Regular Session  
32 of the 2001 General Assembly. All reports shall be filed with the President Pro  
33 Tempore of the Senate and the Speaker of the House of Representatives, the Principal  
34 Clerks of the Senate and the House of Representatives, and the Legislative Librarian.  
35 Upon filing its final report, the Commission shall terminate.

36 **SECTION 4.(e)** Members of the Commission shall be paid per diem,  
37 subsistence, and travel allowances as follows:

- 38 (1) Commission members who are also members of the General  
39 Assembly, at the rate established in G.S. 120-3.1;  
40 (2) Commission members who are officials or employees of the State or  
41 local government agencies, at the rate established in G.S. 138-6;  
42 (3) All other Commission members, at the rate established in G.S. 138-5.



1           **SECTION 4.(f)** All State departments and agencies shall cooperate with the  
2 Commission and, upon request, shall furnish to the Commission and its staff any  
3 information in their possession or available to them.

4           **SECTION 4.(g)** From funds appropriated to the General Assembly, the  
5 Legislative Services Commission shall allocate funds for the expenses of the Study  
6 Commission on Criminal History Record Checks.

7           **SECTION 5.** Section 4 of this act becomes effective July 1, 2001. The  
8 remainder of this act is effective when it becomes law.