

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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1

HOUSE BILL 2072

Short Title: Emp./Elderly Care Records.

(Public)

Sponsors: Representatives H. Hunter; and Adams.

Referred to: Judiciary I.

June 7, 1994

1 A BILL TO BE ENTITLED
2 AN ACT TO MANDATE CRIMINAL HISTORY AND CENTRAL REGISTRY
3 HISTORY CHECKS OF ALL EMPLOYEES CARING FOR THE ELDERLY.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 131D of the General Statutes is amended by adding a new
6 Article to read:

7 **"ARTICLE 5.**
8 **"MANDATORY CRIMINAL AND CENTRAL REGISTRY CHECKS**
9 **OF EMPLOYEES CARING FOR THE ELDERLY.**

10 **"§ 131D-40. Mandatory criminal history and Central Registry checks of all**
11 **employees who provide direct care to the elderly.**

12 (a) For purposes of this section:

13 (1) 'Central Registry history' means a history in the Central Registry on
14 Child Abuse and Neglect of a substantiated claim of child abuse or
15 child neglect as defined by G.S. 7A-517.

16 (2) 'Criminal history' means a county, State, or federal criminal history of
17 conviction of a crime, whether a misdemeanor or a felony, that bears
18 upon an individual's fitness to have responsibility for the safety and
19 well-being of children, including homicide, rape and other sex
20 offenses, assaults, kidnapping and abduction, malicious injury or
21 damage by the use of incendiary device or material, offenses against
22 public morality and decency, prostitution, a crime against children, and
23 a crime against the family, as prescribed respectively in Articles 6, 7A,
24 8, 10, 13, 26, 27, 39, and 40 of Chapter 14 of the General Statutes, a

1 violation of the North Carolina Controlled Substances Act, as
2 prescribed in Article 5 of Chapter 90 of the General Statutes, a
3 violation of the law prohibiting driving while impaired, as prescribed
4 in G.S. 20-138.1 through G.S. 20-138.5, a violation of the law
5 forbidding sales of alcohol to, or purchases of alcohol by, minors, as
6 prescribed in G.S. 18B-302(c), and a violation of the law prohibiting
7 public intoxication, as prescribed in G.S. 14-444(b), or similar federal
8 crimes.

9 (3) 'Employee' means any person employed by the following types of
10 facilities or agencies to provide direct care to the elderly:

- 11 a. Domiciliary care facilities licensed under Article 1 of Chapter
12 131D of the General Statutes;
13 b. Nursing and domiciliary care homes licensed under Part A of
14 Article 6 of Chapter 131E of the General Statutes;
15 c. Home care agencies licensed under Part C of Article 6 of
16 Chapter 131E of the General Statutes;
17 d. Nursing pools licensed under Part E of Article 6 of Chapter
18 131E of the General Statutes; and
19 e. Hospices licensed under Article 10 of Chapter 131E of the
20 General Statutes.

21 (b) Effective January 1, 1995, the Department of Human Resources shall ensure
22 that all employees are checked for both any criminal history and any Central Registry
23 history and may, by denying or revoking a license to provide direct care to the elderly,
24 prohibit an employee from providing direct care to the elderly:

- 25 (1) Who has a criminal history; or
26 (2) Who has a Central Registry history if the Department determines that
27 the substantiated claim bears upon an individual's fitness to have
28 responsibility for the safety and well-being of the elderly.

29 (c) The Department of Justice may provide to the Department of Human
30 Resources the criminal history of any employee from the State and National
31 Repositories of Criminal Histories. The Division shall provide to the Department of
32 Justice, along with the request, the fingerprints of the employee to be checked, any
33 additional information required by the Department of Justice, and a form consenting to
34 the check of the criminal record and to the use of the fingerprints and other identifying
35 information required by the repositories signed by the employee to be checked. Refusal
36 to consent is grounds for the Department to prohibit the employee from providing direct
37 care to the elderly.

38 (d) The Division of Social Services may provide to the Department of Human
39 Resources the Central Registry history of an employee if this employee signs a form
40 consenting to this record check. Refusal to consent is grounds for the Department to
41 prohibit the employee from providing direct care to the elderly.

42 (e) The Department of Human Resources shall notify in writing the employee
43 and that person's employer of any disqualifying information resulting from the check of

1 the criminal history or of the Central Registry history, together with the Department's
2 action pursuant to subsection (b) of this section.

3 An employee who disagrees with the decision of the Department may commence a
4 contested case by filing a petition under G.S. 150B-23 within 30 days after the
5 Department's notification. If the employee does not file a petition within the required
6 time, the Department's decision is final and not subject to review.

7 (f) All the information received by the Department through the checking of the
8 criminal history and of the Central Registry history pursuant to the checks required by
9 this section is privileged information and for the exclusive use of the Department and
10 those people authorized under this section to receive the information. The Department
11 may destroy the information after it is used for the purposes authorized by this section
12 after one calendar year.

13 (g) No action for civil or criminal liability shall be brought against an employer
14 or a State or local agency as a result of the check of the criminal or Central Registry
15 history if the employer or State or local agency was acting in good faith and in
16 accordance with this section and the rules established pursuant to it.

17 (h) The Department of Justice shall charge a reasonable fee for conducting the
18 checks of the criminal records authorized by this section.

19 (i) The Department of Human Resources, Division of Aging, shall bear the costs
20 of implementing this section."

21 Sec. 2. G.S. 114-19 reads as rewritten:

22 **"§ 114-19. Criminal statistics.**

23 (a) It shall be the duty of the State Bureau of Investigation to receive and collect
24 police information, to assist in locating, identifying, and keeping records of criminals in
25 this State, and from other states, and to compare, classify, compile, publish, make
26 available and disseminate any and all such information to the sheriffs, constables, police
27 authorities, courts or any other officials of the State requiring such criminal
28 identification, crime statistics and other information respecting crimes local and
29 national, and to conduct surveys and studies for the purpose of determining so far as is
30 possible the source of any criminal conspiracy, crime wave, movement or cooperative
31 action on the part of the criminals, reporting such conditions, and to cooperate with all
32 officials in detecting and preventing.

33 ♦(b) The State Bureau of Investigation shall, on a daily basis, notify the
34 Department of Revenue of all reports it receives pursuant to G.S. 114-18.1 of arrests
35 and seizures involving non-tax-paid controlled substances and counterfeit controlled
36 substances. The Bureau shall also, as soon as practicable, provide the Department with
37 any additional information it receives regarding such arrests and seizures.

38 (c) The Department of Justice may provide to the Division of Social Services,
39 Department of Human Resources, the criminal history of any employee from the State
40 and National Repositories of Criminal Histories. The Division shall provide to the
41 Department of Justice, along with the request, the fingerprints of the person to be
42 checked, any additional information required by the Department of Justice, and a form
43 consenting to the check of the criminal record and to the use of the fingerprints and
44 other identifying information required by the repositories signed by the employee to be

1 checked. Refusal to consent is grounds for the Department to prohibit the employee
2 from providing direct care to the elderly.

3 (d) The Department of Justice shall charge a reasonable fee for conducting the
4 checks of the criminal records authorized by this section."

5 Sec. 3. The Department of Human Resources shall adopt rules to implement
6 this act, in consultation with the Division of Aging, and the Division of Criminal
7 Information of the Department of Justice.

8 Sec. 4. There is appropriated from the General Fund to the Department of
9 Human Resources, Division of Aging, the sum of four million dollars (\$4,000,000) for
10 the 1994-95 fiscal year to implement this act.

11 Sec. 5. This act becomes effective January 1, 1995. This act applies to
12 employees providing direct care to the elderly on or after that date.