

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 259*

Short Title: Day Care Provider Records.

(Public)

Sponsors: Representatives H. Hunter; Wright and Wainwright.

Referred to: Welfare Reform and Human Resources, if favorable, Appropriations.

February 23, 1995

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION
CHILD CARE COMMITTEE TO MANDATE CRIMINAL HISTORY CHECKS
OF CHILD DAY CARE PROVIDERS, TO STUDY THE USE OF THE CENTRAL
REGISTRY ON CHILD ABUSE AND NEGLECT, AND TO APPROPRIATE
FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 110 of the General Statutes is amended by
adding a new section to read:

"§ 110-90.2. Mandatory day care providers' criminal history checks.

(a) For purposes of this section:

(1) 'Child day care', notwithstanding the definition in G.S. 110-86, means any child day care provided in child day care facilities and child day care homes, including child day care facilities and child day care homes required to be licensed or registered under this Article, religious-sponsored child day care facilities and child day care homes regulated under G.S. 110-106 and G.S. 110-106.1, and nonregistered child day care homes approved to receive or receiving State or federal funds for providing child day care.

(2) 'Child day care provider' means a person who:

a. Is employed by or seeks to be employed by a child day care facility or child day care home providing child day care as defined in subdivision (1) of this subsection and by G.S. 110-86; or

1 b. Owns or operates or seeks to own or operate a child day care
2 facility or child day care home providing child day care as
3 defined in subdivision (1) of this subsection and by G.S. 110-
4 86.

5 (3) 'Criminal history' means a county or State criminal history of
6 conviction of a crime, whether a misdemeanor or a felony, that bears
7 upon an individual's fitness to have responsibility for the safety and
8 well-being of children, including homicide, rape and other sex
9 offenses, assaults, kidnapping and abduction, malicious injury or
10 damage by the use of incendiary device or material, offenses against
11 public morality and decency, prostitution, a crime against children, and
12 a crime against the family, as prescribed respectively in Articles 6, 7A,
13 8, 10, 13, 26, 27, 39, and 40 of Chapter 14 of the General Statutes, a
14 violation of the North Carolina Controlled Substances Act, as
15 prescribed in Article 5 of Chapter 90 of the General Statutes, a
16 violation of the law prohibiting driving while impaired, as prescribed
17 in G.S. 20-138.1 through G.S. 20-138.5, a violation of the law
18 forbidding sales of alcohol to, or purchases of alcohol by, minors, as
19 prescribed in G.S. 18B-302(c), and a violation of the law prohibiting
20 public intoxication, as prescribed in G.S. 14-444.

21 (b) Effective April 2, 1996, the Department shall ensure that child day care
22 providers are checked for any criminal history and may prohibit a child day care
23 provider from providing child day care if that child day care provider has a criminal
24 history.

25 (c) The Department of Justice may provide to the Division of Child
26 Development, Department of Human Resources, the criminal history of any child day
27 care provider from the State Repository of criminal histories. The Division shall
28 provide to the Department of Justice along with the request the fingerprints of the
29 provider to be checked, any additional information required by the Department of
30 Justice, and a form consenting to the check of the criminal record and to the use of
31 fingerprints and other identifying information required by the State Repository signed
32 by the child day care provider to be checked. Refusal to consent is grounds for the
33 Department to prohibit the child day care provider from providing child day care.

34 (d) The Department shall notify in writing the child day care provider and that
35 child day care provider's employer, if any, of any disqualifying information resulting
36 from the check of the criminal history, and of the Department's action under subsection
37 (b) of this section.

38 A child day care provider who disagrees with the Department's decision may file a
39 civil action in the district court of the county of residence of the child day care provider.

40 (e) All the information that the Department receives through the checking of the
41 criminal history is privileged information and for the exclusive use of the Department
42 and those persons authorized under this section to receive the information. The
43 Department may destroy the information after it is used for the purposes authorized by
44 this section after one calendar year.

1 (f) No action for civil or criminal liability shall be brought against an employer
2 of a child day care provider, a child day care, or a State or local agency as a result of the
3 check of the criminal history, if the employer, child day care provider, or State or local
4 agency was acting in good faith and in accordance with this section and the rules
5 established under this section.

6 (g) The child day care provider who seeks to be employed in child day care and
7 the child day care provider who seeks to own or operate child day care shall pay the cost
8 of the fingerprinting and the local check at the time the child day care provider seeks to
9 provide child day care. The Department of Justice shall perform the State check, using
10 funds appropriated to it for that purpose, if the Department considers that the additional
11 check is necessary."

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

13 **"§ 114-19. Criminal statistics.**

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

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

29 (c) The Department of Justice may provide to the Division of Child
30 Development, Department of Human Resources, the criminal history from the State
31 Repository of criminal histories of any child day care provider. The Division shall
32 provide to the Department of Justice along with the request the fingerprints of the
33 provider to be checked, any additional information required by the Department of
34 Justice, and a form consenting to the check of the criminal record and to the use of
35 fingerprints and other identifying information required by the State Repository signed
36 by the child day care provider to be checked. Refusal to consent is grounds for the
37 Department to prohibit the child day care provider from providing child day care.

38 (d) The child day care provider who seeks to be employed in child day care and
39 the child day care provider who seeks to own or operate child day care shall pay the cost
40 of the fingerprinting and the local check at the time the child day care provider seeks to
41 provide child day care. The Department of Justice shall perform the State check, using
42 funds appropriated to it for that purpose, if the Department considers that the additional
43 check is necessary."

1 Sec. 3. The North Carolina Child Day Care Commission shall adopt rules to
2 implement this act, in consultation with the Divisions of Child Development and Social
3 Services of the Department of Human Resources, and the Division of Criminal
4 Information of the Department of Justice.

5 Sec. 4. The Legislative Research Commission's Child Care Study
6 Committee, if reauthorized, shall study the issue of using the records in the Central
7 Registry on Child Abuse and Neglect for the purpose of conducting records checks of
8 child day care providers. In its study, the Committee shall evaluate current procedures
9 for substantiating claims of child abuse or neglect and for maintaining records in the
10 Central Registry, and shall determine what procedures should be implemented to (i)
11 ensure that records are accurate, (ii) provide appropriate notice to interested parties, (iii)
12 provide for expungement or correction of information, and (iv) provide for release of
13 information. The Committee shall report its findings and recommendations to the
14 Legislative Research Commission before the 1995 General Assembly, Regular Session
15 1996.

16 Sec. 5. (a) There is appropriated from the General Fund to the Department of
17 Human Resources the sum of one hundred twenty-six thousand six hundred forty-five
18 dollars (\$126,645) for the 1995-96 fiscal year and the sum of two hundred eighty-seven
19 thousand eight hundred sixty-five dollars (\$287,865) for the 1996-97 fiscal year to
20 implement this act.

21 (b) There is appropriated from the General Fund to the Department of Justice the
22 sum of eleven thousand eight hundred eighty-two dollars (\$11,882) for the 1995-96
23 fiscal year and the sum of forty-seven thousand five hundred sixty-two dollars
24 (\$47,562) for the 1996-97 fiscal year to implement this act.

25 Sec. 6. Section 4 and this section of this act are effective upon ratification.
26 Section 5 of this act becomes effective July 1, 1995. The remainder of this act becomes
27 effective April 2, 1996, and applies to child day care providers newly hired in child day
28 care employment and to child day care providers newly owning or operating child day
29 care on or after that date.