

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 606
SENATE BILL 1014

AN ACT REQUIRING CRIMINAL HISTORY RECORD CHECKS OF
UNLICENSED APPLICANTS FOR EMPLOYMENT IN NURSING HOMES,
ADULT CARE HOMES, AND HOME CARE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-19.3 reads as rewritten:

"§ 114-19.3. Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.

(a) Authority. – The Department of Justice may provide to any of the following entities a criminal record check to the employer of an individual who is employed by or who that entity, has applied for employment with the following: that entity, or has volunteered to provide direct care on behalf of that entity:

- (1) Hospitals licensed under Chapter 131E of the General Statutes; Statutes.
- (2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes; Statutes.
- (3) ~~Domiciliary care facilities~~ Adult care homes licensed under Chapter ~~131E~~ 131D of the General Statutes; Statutes.
- (4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes; Statutes.
- (5) Child placing agencies licensed under Chapter 131D of the General Statutes; Statutes.
- (6) Residential child care facilities licensed under Chapter 131D of the General Statutes; Statutes.
- (7) Hospitals licensed under Chapter 122C of the General Statutes; Statutes.
- (8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of Chapter 122C of the General Statutes; that Chapter.
- (9) Licensed child day care facilities and registered and nonregistered child day care ~~homes,~~ homes regulated by the ~~State;~~ and State.
- (10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

(b) Procedure. – A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if the ~~employee or applicant~~ individual whose record is checked consents to the record check. The information shall be kept confidential by the ~~employer~~ entity that receives the information. Upon the disclosure of confidential information under this section by the ~~employer, entity,~~ the Department may refuse to provide further criminal record checks to that ~~employer, entity.~~

(c) ~~The Department of Justice, at the request of an agency, facility, organization, or corporation listed in subsection (a) of this section, may provide a criminal record check of a volunteer who provides direct care on behalf of the organization or corporation if the volunteer consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency, facility, corporation, or organization, the Department may refuse to provide further criminal record checks to that agency, facility, corporation, or organization.~~

(d) Foster or Adoptive Parent. – The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) Fee. – The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars (\$14.00)."

Sec. 2. Chapter 131D of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5.

"Miscellaneous Provisions.

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

(a) Requirement. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be disclosed.

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

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

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

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

(d) Relevant Offense. – As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; 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 Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

Sec. 3. Chapter 131E of the General Statutes is amended by adding a new Article to read:

“ARTICLE 15.

"Miscellaneous Provisions.

"§ 131E-255. Criminal history record checks required for certain applicants for employment.

(a) Requirement. – An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed.

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

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

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

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

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

Sec. 4. G.S. 114-19.1 reads as rewritten:

"§ 114-19.1. Fees for performing certain background investigations. Criminal history background investigations; fees.

(a) When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this section shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

(b) As used in this section, 'administration of criminal justice' means the performance of any of the following activities: the detection, apprehension, detention,

pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court, or for suitability for appointment of a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives.

(c) In providing criminal history record checks, the Department of Justice shall process requests in the following priority order:

- (1) Administration of criminal justice record checks,
- (2) Mandatory noncriminal justice criminal history record checks,
- (3) Voluntary noncriminal justice criminal history record checks.

(d) Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19, G.S. 120-19.4A, and other applicable statutes."

Sec. 5. This act becomes effective January 1, 1997, except that the requirements imposed by Section 3 of this act on home care agencies become effective January 1, 1998. Sections 3 and 4 apply to applicants who apply for employment on or after the appropriate effective date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives