

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 165
Judiciary I/Constitution Committee Substitute Adopted 4/24/95

Short Title: Day Care Provider Records/AB.

(Public)

Sponsors:

Referred to: Appropriations

February 9, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO MANDATE CRIMINAL HISTORY CHECKS OF CHILD DAY CARE
3 PROVIDERS, TO STUDY THE USE OF THE CENTRAL REGISTRY ON CHILD
4 ABUSE AND NEGLECT, AND TO APPROPRIATE FUNDS.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 110-90.2. Mandatory day care providers' criminal history checks.**

9 (a) For purposes of this section:

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

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

17 a. Is employed by or seeks to be employed by a child day care
18 facility or child day care home providing child day care as

1 defined in subdivision (1) of this subsection and by G.S. 110-86;
2 or

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

6 (3) 'Criminal history' means a county, State, or federal criminal history of
7 conviction of a crime, whether a misdemeanor or a felony, that bears
8 upon an individual's fitness to have responsibility for the safety and
9 well-being of children as set forth in G.S. 110-90.1. Such crimes
10 include the following North Carolina crimes contained in any of the
11 following Articles of Chapter 14 of the General Statutes: Article 6,
12 Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults;
13 Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or
14 Damage by Use of Explosive or Incendiary Device or Material; Article
15 26, Offenses Against Public Morality and Decency; Article 27,
16 Prostitution; Article 39, Protection of Minors; Article 40, Protection of
17 the Family; and Article 59, Public Intoxication. Such crimes also
18 include possession or sale of drugs in violation of the North Carolina
19 Controlled Substances Act, Article 5 of Chapter 90 of the General
20 Statutes, and alcohol-related offenses such as sale to underage persons
21 in violation of G.S. 18B-302 or driving while impaired in violation of
22 G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina
23 crimes listed in this subparagraph, such crimes also include similar
24 crimes under federal law or under the laws of other states.

25 (b) Effective January 1, 1996, the Department shall ensure that the criminal history
26 of all child day care providers are checked and a determination of the child day care
27 provider's fitness to have responsibility for the safety and well-being of children based on
28 the criminal history is made. The Department shall ensure that child day care providers
29 who have lived in North Carolina continuously for the previous five years are checked for
30 county and State criminal histories. The Department shall ensure that all other child day
31 care providers are checked for county, State, and national criminal histories. The
32 Department may prohibit a child day care provider from providing child day care if the
33 Department determines that the child day care provider is unfit to have responsibility for
34 the safety and well-being of children based on the criminal history, in accordance with
35 G.S. 110-90.1.

36 (c) The Department of Justice shall provide to the Division of Child Development,
37 Department of Human Resources, the criminal history from the State and National
38 Repositories of Criminal Histories of any child day care provider as requested by the
39 Division.

40 The Division shall provide to the Department of Justice, along with the request, the
41 fingerprints of the provider to be checked, any additional information required by the
42 Department of Justice, and a form consenting to the check of the criminal record and to
43 the use of fingerprints and other identifying information required by the repositories

1 signed by the child day care provider to be checked. The fingerprints of the provider
2 shall be forwarded to the State Bureau of Investigation for a search of their criminal
3 history record file and the State Bureau of Investigation shall forward a set of fingerprints
4 to the Federal Bureau of Investigation for a national criminal history record check.

5 At the time of application the day care provider whose criminal history is to be
6 checked shall be furnished with a statement substantially similar to the following:

7
8 **'NOTICE**

9
10 **CHILD DAY CARE PROVIDER**
11 **MANDATORY CRIMINAL HISTORY CHECK**

12 **NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY**
13 **CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD**
14 **DAY CARE IN A LICENSED OR REGISTERED CHILD DAY CARE**
15 **FACILITY, AND ALL PERSONS PROVIDING CHILD DAY CARE IN**
16 **NONREGISTERED CHILD DAY CARE HOMES THAT RECEIVE STATE**
17 **OR FEDERAL FUNDS.**

18 "Criminal history" includes county, State, and federal convictions of any of
19 the following crimes: the following Articles of Chapter 14 of the General
20 Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8,
21 Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or
22 Damage by Use of Explosive or Incendiary Device or Material; Article 26,
23 Offenses Against Public Morality and Decency; Article 27, Prostitution; Article
24 39, Protection of Minors; Article 40, Protection of the Family; and Article 59,
25 Public Intoxication; violation of the North Carolina Controlled Substances Act,
26 Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such
27 as sale to underage persons in violation of G.S. 18B-302 or driving while impaired
28 in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under
29 federal law or under the laws of other states. Your fingerprints will be used to
30 check the criminal history records of the State Bureau of Investigation (SBI) and
31 the Federal Bureau of Investigation (FBI).

32 **If it is determined, based on your criminal history, that you are unfit to**
33 **have responsibility for the safety and well-being of children, you shall have**
34 **the opportunity to complete, or challenge the accuracy of, the information**
35 **contained in the SBI or FBI identification records.**

36 **If you disagree with the determination of the North Carolina**
37 **Department of Human Resources on your fitness to provide child day care,**
38 **you may file a civil lawsuit in the district court in the county where you live.**

39 **Any child day care provider who intentionally falsifies any information**
40 **required to be furnished to conduct the criminal history shall be guilty of a**
41 **Class 2 misdemeanor.'**

42 Refusal to consent to a criminal history check is grounds for the Department to
43 prohibit the child day care provider from providing child day care. Any child day care

1 provider who intentionally falsifies any information required to be furnished to conduct
2 the criminal history shall be guilty of a Class 2 misdemeanor.

3 (d) The Department shall notify in writing the child day care provider, and the
4 child day care provider's employer, if any, of the determination by the Department as to
5 whether or not the day care provider is qualified to provide child day care based on the
6 child day care provider's criminal history. In accordance with the law regulating the
7 dissemination of the contents of the criminal history file furnished by the Federal Bureau
8 of Investigation, the Department shall not release nor disclose any portion of the child
9 day care provider's criminal history to the child day care provider or the child day care
10 provider's employer. The Department shall also notify the child day care provider of the
11 procedure for completing or challenging the accuracy of the criminal history and the
12 child day care provider's right to contest the Department's determination in court.

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

15 (e) All the information that the Department receives through the checking of the
16 criminal history is privileged information and is not a public record but is for the
17 exclusive use of the Department and those persons authorized under this section to
18 receive the information. The Department may destroy the information after it is used for
19 the purposes authorized by this section after one calendar year.

20 (f) There shall be no liability for negligence on the part of an employer of a child
21 day care provider, a child day care, a State or local agency, or the employees of a State or
22 local agency arising from any action taken or omission by any of them in carrying out the
23 provisions of this section. The immunity established by this subsection shall not extend
24 to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be
25 actionable. The immunity established by this subsection shall be deemed to have been
26 waived to the extent of indemnification by insurance, indemnification under Article 31A
27 of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived
28 under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General
29 Statutes.

30 (g) The child day care provider who seeks to be employed in child day care and
31 the child day care provider who seeks to own or operate child day care shall pay the cost
32 of the fingerprinting and the local check at the time the child day care provider seeks to
33 provide child day care. The Department of Justice shall perform the State criminal
34 history check, and shall charge the Department of Human Resources a reasonable fee for
35 conducting the checks of the criminal records authorized by this section. The Department
36 of Human Resources shall bear the costs of obtaining the State and national criminal
37 history checks. If the Department determines that a day care provider who has not lived
38 continuously in the State for the previous five years is not disqualified based on the local
39 and State criminal history record check, the Department shall request a criminal history
40 check from the National Repository of Criminal History from the Department of Justice."

41 Sec. 2. Article 2 of Chapter 114 of the General Statutes is amended by adding
42 a new section to read:

43 **"§ 114-19.5. Criminal record checks of child day care providers.**

1 The Department of Justice may provide to the Division of Child Development,
2 Department of Human Resources, the criminal history from the State and National
3 Repositories of Criminal Histories in accordance with G.S. 110-90.2, of any child day
4 care provider, as defined in G.S. 110-90.2. The Division shall provide to the Department
5 of Justice, along with the request, the fingerprints of the provider to be checked, any
6 additional information required by the Department of Justice, and a form consenting to
7 the check of the criminal record and to the use of fingerprints and other identifying
8 information required by the State or National Repositories signed by the child day care
9 provider to be checked. The Division shall keep all information pursuant to this section
10 privileged, as provided in G.S. 110-90.2(e). The Department of Justice shall charge a
11 reasonable fee for conducting the checks of the criminal records authorized by this
12 section."

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

17 Sec. 4. The Legislative Research Commission shall study the issue of using
18 the records in the Central Registry on Child Abuse and Neglect for the purpose of
19 conducting records checks of child day care providers. In its study, the Commission shall
20 evaluate current procedures for substantiating claims of child abuse or neglect and for
21 maintaining records in the Central Registry, and shall determine what procedures should
22 be implemented to (i) ensure that records are accurate, (ii) provide appropriate notice to
23 interested parties, (iii) provide for expungement or correction of information, and (iv)
24 provide for release of information. The Commission shall report its findings and
25 recommendations to the 1997 General Assembly.

26 Sec. 5. There is appropriated from the General Fund to the Department of
27 Human Resources the sum of four hundred forty-two thousand three hundred seventy-
28 two dollars (\$442,372) for the 1995-96 fiscal year and the sum of five hundred fifty-five
29 thousand one hundred seventy-one dollars (\$555,171) for the 1996-97 fiscal year to
30 implement this act. There is appropriated from the General Fund to the Department of
31 Justice the sum of forty-seven thousand five hundred twenty-nine dollars (\$47,529) for
32 the 1995-96 fiscal year and the sum of ninety-five thousand fifty-eight dollars (\$95,058)
33 for the 1996-97 fiscal year to implement this act.

34 Sec. 6. Section 4 of this act is effective upon ratification. Section 5 of this act
35 becomes effective July 1, 1995. The remainder of this act becomes effective January 1,
36 1996, and as defined in this act, applies to all child day care providers providing child day
37 care as of that date, to all child day care providers newly hired in child day care
38 employment, and to all child day care providers newly owning or operating child day
39 care, on or after that date.