

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 371*

Short Title: Day Care Provider Records.

(Public)

Sponsors: Senators Lucas, Ballance, Hobbs, Gulley, McKoy, and Martin of Guilford.

Referred to: Children and Human Resources

March 14, 1995

A BILL TO BE ENTITLED

1 AN ACT RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION
2 CHILD CARE COMMITTEE TO MANDATE CRIMINAL HISTORY CHECKS OF
3 CHILD DAY CARE PROVIDERS, TO STUDY THE USE OF THE CENTRAL
4 REGISTRY ON CHILD ABUSE AND NEGLECT, AND TO APPROPRIATE
5 FUNDS.
6

7 The General Assembly of North Carolina enacts:

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

10 **"§ 110-90.2. Mandatory day care providers' criminal history checks.**

11 (a) For purposes of this section:

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

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

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

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

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

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

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

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

41 (e) All the information that the Department receives through the checking of the
42 criminal history is privileged information and for the exclusive use of the Department and
43 those persons authorized under this section to receive the information. The Department

1 may destroy the information after it is used for the purposes authorized by this section
2 after one calendar year.

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

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

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

15 "**§ 114-19. Criminal statistics.**

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

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

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

40 (d) The child day care provider who seeks to be employed in child day care and
41 the child day care provider who seeks to own or operate child day care shall pay the cost
42 of the fingerprinting and the local check at the time the child day care provider seeks to
43 provide child day care. The Department of Justice shall perform the State check, using

1 funds appropriated to it for that purpose, if the Department considers that the additional
2 check is necessary."

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

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

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

22 (b) There is appropriated from the General Fund to the Department of Justice the
23 sum of eleven thousand eight hundred eighty-two dollars (\$11,882) for the 1995-96 fiscal
24 year and the sum of forty-seven thousand five hundred sixty-two dollars (\$47,562) for the
25 1996-97 fiscal year to implement this act.

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