

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 826

Short Title: Criminal Record Check Change/Long-Term Care.

(Public)

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Sponsors: Senator Rand.

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Referred to: Health Care.

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April 3, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO REPEAL THE REQUIREMENT FOR A NATIONAL CRIMINAL  
3 HISTORY RECORD CHECK FOR CERTAIN LONG-TERM CARE FACILITIES  
4 BECAUSE OF FEDERAL REQUIREMENTS LIMITING DISTRIBUTION OF  
5 RECORD CHECK RESULTS.

6 The General Assembly of North Carolina enacts:

7       **SECTION 1.** G.S. 131E-265 reads as rewritten:

8 "**§ 131E-265. Criminal history record checks required for certain applicants for**  
9       **employment.**

10       (a) Requirement; Nursing Home or Home Care Agency. – An offer of  
11 employment by a nursing home licensed under this Chapter to an applicant to fill a  
12 position that does not require the applicant to have an occupational license is  
13 conditioned on consent to a criminal history record check of the applicant. ~~If the~~  
14 ~~applicant has been a resident of this State for less than five years, then the offer of~~  
15 ~~employment is conditioned on consent to a State and national criminal history record~~  
16 ~~check of the applicant. The national criminal history record check shall include a check~~  
17 ~~of the applicant's fingerprints. If the applicant has been a resident of this State for five~~  
18 ~~years or more, then the offer is conditioned on consent to a State criminal history record~~  
19 ~~check of the applicant.~~ An offer of employment by a home care agency licensed under  
20 this Chapter to an applicant to fill a position that requires entering the patient's home is  
21 conditioned on consent to a criminal history record check of the applicant. In addition,  
22 employment status change of a current employee of a home care agency licensed under  
23 this Chapter from a position that does not require entering the patient's home to a  
24 position that requires entering the patient's home shall be conditioned on consent to a  
25 criminal history record check of that current employee. ~~If the applicant for employment~~  
26 ~~or if the current employee who is changing employment status has been a resident of~~  
27 ~~this State for less than five years, then the offer of employment or change in~~  
28 ~~employment status is conditioned on consent to a State and national criminal history~~

1 ~~record check. The national criminal history record check shall include a check of the~~  
2 ~~applicant's or current employee's fingerprints. If the applicant or current employee has~~  
3 ~~been a resident of this State for five years or more, then the offer is conditioned on~~  
4 ~~consent to a State criminal history record check of the applicant or current employee~~  
5 ~~applying for a change in employment status. A nursing home or a home care agency~~  
6 ~~shall not employ an applicant who refuses to consent to a criminal history record check~~  
7 ~~required by this section. In addition, a home care agency shall not change a current~~  
8 ~~employee's employment status from a position that does not require entering the~~  
9 ~~patient's home to a position that requires entering the patient's home who refuses to~~  
10 ~~consent to a criminal history record check required by this section. Within five business~~  
11 ~~days of making the conditional offer of employment, a nursing home or home care~~  
12 ~~agency shall submit a request to the Department of Justice under G.S. 114.19.10 to~~  
13 ~~conduct a State or national criminal history record check required by this section, or~~  
14 ~~shall submit a request to a private entity to conduct a State criminal history record check~~  
15 ~~required by this section. All criminal history information received by the home or~~  
16 ~~agency is confidential and may not be disclosed, except to the applicant as provided in~~  
17 ~~subsection (b) of this section.~~

18 (a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –  
19 An offer of employment by a contract agency of a nursing home or home care agency  
20 licensed under this Chapter to an applicant to fill a position that does not require the  
21 applicant to have an occupational license is conditioned upon consent to a criminal  
22 history record check of the applicant. ~~If the applicant has been a resident of this State~~  
23 ~~for less than five years, then the offer of employment is conditioned on consent to a~~  
24 ~~State and national criminal history record check of the applicant. The national criminal~~  
25 ~~history record check shall include a check of the applicant's fingerprints. If the applicant~~  
26 ~~has been a resident of this State for five years or more, then the offer is conditioned on~~  
27 ~~consent to a State criminal history record check of the applicant.~~ A contract agency of a  
28 nursing home or home care agency shall not employ an applicant who refuses to consent  
29 to a criminal history record check required by this section. Within five business days of  
30 making the conditional offer of employment, a contract agency of a nursing home or  
31 home care agency shall submit a request to the Department of Justice under G.S.  
32 114-19.10 to conduct a State ~~or national~~ criminal history record check required by this  
33 section, or shall submit a request to a private entity to conduct a State criminal history  
34 record check required by this section. All criminal history information received by the  
35 contract agency is confidential and may not be disclosed, except to the applicant as  
36 provided by subsection (b) of this section.

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

- 41 (1) The level and seriousness of the crime.
- 42 (2) The date of the crime.
- 43 (3) The age of the person at the time of the conviction.
- 44 (4) The circumstances surrounding the commission of the crime, if known.

1 (5) The nexus between the criminal conduct of the person and the job  
2 duties of the position to be filled.

3 (6) The prison, jail, probation, parole, rehabilitation, and employment  
4 records of the person since the date the crime was committed.

5 (7) The subsequent commission by the person of a relevant offense.

6 The fact of conviction of a relevant offense alone shall not be a bar to employment;  
7 however, the listed factors shall be considered by the nursing home or home care  
8 agency, or the contract agency of the nursing home or home care agency. If a nursing  
9 home, home care agency, or contract agency of a nursing home or home care agency  
10 disqualifies an applicant after consideration of the relevant factors, then the nursing  
11 home, home care agency, or contract agency may disclose information contained in the  
12 criminal history record check that is relevant to the disqualification, but may not provide  
13 a copy of the criminal history record check to the applicant.

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

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

20 (e) Penalty for Furnishing False Information. – Any applicant for employment  
21 who willfully furnishes, supplies, or otherwise gives false information on an  
22 employment application that is the basis for a criminal history record check under this  
23 section shall be guilty of a Class A1 misdemeanor.

24 (f) Conditional Employment. – A nursing home or home care agency may  
25 employ an applicant conditionally prior to obtaining the results of a criminal history  
26 record check regarding the applicant if both of the following requirements are met:

27 (1) The nursing home or home care agency shall not employ an applicant  
28 prior to obtaining the applicant's consent for a criminal history record  
29 check as required in subsection (a) of this section or the completed  
30 fingerprint cards as required in G.S. 114-19.10.

31 (2) The nursing home or home care agency shall submit the request for a  
32 criminal history record check not later than five business days after the  
33 individual ~~begins conditional employment.~~ undertakes the functions of  
34 the job.

35 (g) Immunity From Liability. – An entity and officers and employees of an entity  
36 shall be immune from civil liability for failure to check an employee's history of  
37 criminal offenses if the employee's criminal history record check is requested and  
38 received in compliance with this section."

39 **SECTION 2.** G.S. 131D-40 reads as rewritten:

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

42 (a) Requirement; Adult Care Home. – An offer of employment by an adult care  
43 home licensed under this Chapter to an applicant to fill a position that does not require  
44 the applicant to have an occupational license is conditioned on consent to a criminal

1 history record check of the applicant. ~~If the applicant has been a resident of this State~~  
2 ~~for less than five years, then the offer of employment is conditioned on consent to a~~  
3 ~~State and national criminal history record check of the applicant. The national criminal~~  
4 ~~history record check shall include a check of the applicant's fingerprints. If the applicant~~  
5 ~~has been a resident of this State for five years or more, then the offer is conditioned on~~  
6 ~~consent to a State criminal history record check of the applicant.~~ An adult care home  
7 shall not employ an applicant who refuses to consent to a criminal history record check  
8 required by this section. Within five business days of making the conditional offer of  
9 employment, an adult care home shall submit a request to the Department of Justice  
10 under G.S. 114-19.10 to conduct a State ~~or national~~ criminal history record check  
11 required by this section, or shall submit a request to a private entity to conduct a State  
12 criminal history record check required by this section. All criminal history information  
13 received by the home is confidential and may not be disclosed, except to the applicant  
14 as provided in subsection (b) of this section.

15 (a1) Requirement; Contract Agency of Adult Care Home. – An offer of  
16 employment by a contract agency of an adult care home licensed under this Chapter to  
17 an applicant to fill a position that does not require the applicant to have an occupational  
18 license is conditioned upon consent to a criminal history record check of the applicant.  
19 ~~If the applicant has been a resident of this State for less than five years, then the offer of~~  
20 ~~employment is conditioned on consent to a State and national criminal history record~~  
21 ~~check of the applicant. The national criminal history record check shall include a check~~  
22 ~~of the applicant's fingerprints. If the applicant has been a resident of this State for five~~  
23 ~~years or more, then the offer is conditioned on consent to a State criminal history record~~  
24 ~~check of the applicant.~~ A contract agency of an adult care home shall not employ an  
25 applicant who refuses to consent to a criminal history record check required by this  
26 section. Within five business days of making the conditional offer of employment, a  
27 contract agency of an adult care home shall submit a request to the Department of  
28 Justice under G.S. 114-19.10 to conduct a State ~~or national~~ criminal history record  
29 check required by this section, or shall submit a request to a private entity to conduct a  
30 State criminal history record check required by this section. All criminal history  
31 information received by the contract agency is confidential and may not be disclosed,  
32 except to the applicant as provided by subsection (b) of this section.

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

- 37 (1) The level and seriousness of the crime.
- 38 (2) The date of the crime.
- 39 (3) The age of the person at the time of the conviction.
- 40 (4) The circumstances surrounding the commission of the crime, if known.
- 41 (5) The nexus between the criminal conduct of the person and the job  
42 duties of the position to be filled.
- 43 (6) The prison, jail, probation, parole, rehabilitation, and employment  
44 records of the person since the date the crime was committed.

1           (7) The subsequent commission by the person of a relevant offense.

2           The fact of conviction of a relevant offense alone shall not be a bar to employment;  
3 however, the listed factors shall be considered by the adult care home or the contract  
4 agency of the adult care home. If the adult care home or a contract agency of the adult  
5 care home disqualifies an applicant after consideration of the relevant factors, then the  
6 adult care home or the contract agency may disclose information contained in the  
7 criminal history record check that is relevant to the disqualification, but may not provide  
8 a copy of the criminal history record check to the applicant.

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

13           (d) Relevant Offense. – As used in this section, "relevant offense" means a State  
14 crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have  
15 responsibility for the safety and well-being of aged or disabled persons. These crimes  
16 include the criminal offenses set forth in any of the following Articles of Chapter 14 of  
17 the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article  
18 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A,  
19 Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and  
20 Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary  
21 Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson  
22 and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,  
23 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property  
24 or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B,  
25 Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article  
26 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments;  
27 Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct  
28 in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and  
29 Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family;  
30 Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes  
31 also include possession or sale of drugs in violation of the North Carolina Controlled  
32 Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related  
33 offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while  
34 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

35           (e) Penalty for Furnishing False Information. – Any applicant for employment  
36 who willfully furnishes, supplies, or otherwise gives false information on an  
37 employment application that is the basis for a criminal history record check under this  
38 section shall be guilty of a Class A1 misdemeanor.

39           (f) Conditional Employment. – An adult care home may employ an applicant  
40 conditionally prior to obtaining the results of a criminal history record check regarding  
41 the applicant if both of the following requirements are met:

42           (1) The adult care home shall not employ an applicant prior to obtaining  
43           the applicant's consent for a criminal history record check as required

1 in subsection (a) of this section or the completed fingerprint cards as  
2 required in G.S. 114-19.10.

- 3 (2) The adult care home shall submit the request for a criminal history  
4 record check not later than five business days after the individual  
5 ~~begins conditional employment.~~undertakes the functions of the job.

6 (g) Immunity From Liability. – An entity and officers and employees of an entity  
7 shall be immune from civil liability for failure to check an employee's history of  
8 criminal offenses if the employee's criminal history record check is requested and  
9 received in compliance with this section."

10 **SECTION 3.** G.S. 122C-80 reads as rewritten:

11 **"§ 122C-80. Criminal history record check required for certain applicants for**  
12 **employment.**

13 (a) Definition. – As used in this section, "area authority" means an area mental  
14 health, developmental disabilities, and substance abuse services area authority,  
15 including a contract agency of an area authority that is subject to the provisions of  
16 Article 4 of this Chapter.

17 (b) Requirement. – An offer of employment by an area authority licensed under  
18 this Chapter to an applicant to fill a position that does not require the applicant to have  
19 an occupational license is conditioned on consent to a State ~~and national~~ criminal  
20 history record check of the applicant. ~~If the applicant has been a resident of this State~~  
21 ~~for less than five years, then the offer of employment is conditioned on consent to a~~  
22 ~~State and national criminal history record check of the applicant. The national criminal~~  
23 ~~history record check shall include a check of the applicant's fingerprints. If the applicant~~  
24 ~~has been a resident of this State for five years or more, then the offer is conditioned on~~  
25 ~~consent to a State criminal history record check of the applicant.~~ An area authority shall  
26 not employ an applicant who refuses to consent to a criminal history record check  
27 required by this section. Within five business days of making the conditional offer of  
28 employment, an area authority shall submit a request to the Department of Justice under  
29 G.S. 114-19.10 to conduct a criminal history record check required by this ~~section.~~  
30 section, or shall submit a request to a private entity to conduct a State criminal history  
31 record check required by this section. All criminal history information received by the  
32 area authority is confidential and may not be disclosed, except to the applicant as  
33 provided in subsection (c) of this section.

34 (c) Action. – If an applicant's criminal history record check reveals one or more  
35 convictions of a relevant offense, the area authority shall consider all of the following  
36 factors in determining whether to hire the applicant:

- 37 (1) The level and seriousness of the crime.  
38 (2) The date of the crime.  
39 (3) The age of the person at the time of the conviction.  
40 (4) The circumstances surrounding the commission of the crime, if known.  
41 (5) The nexus between the criminal conduct of the person and the job  
42 duties of the position to be filled.  
43 (6) The prison, jail, probation, parole, rehabilitation, and employment  
44 records of the person since the date the crime was committed.

1 (7) The subsequent commission by the person of a relevant offense.

2 The fact of conviction of a relevant offense alone shall not be a bar to employment;  
3 however, the listed factors shall be considered by the area authority. If the area authority  
4 disqualifies an applicant after consideration of the relevant factors, then the area  
5 authority may disclose information contained in the criminal history record check that is  
6 relevant to the disqualification, but may not provide a copy of the criminal history  
7 record check to the applicant.

8 (d) Limited Immunity. – An area authority and an officer or employee of an area  
9 authority that, in good faith, complies with this section shall be immune from civil  
10 liability for:

11 (1) The failure of the area authority to employ an individual on the basis  
12 of information provided in the criminal history record check of the  
13 individual.

14 (2) Failure to check an employee's history of criminal offenses if the  
15 employee's criminal history record check is requested and received in  
16 compliance with this section.

17 (e) Relevant Offense. – As used in this section, "relevant offense" means a State  
18 crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have  
19 responsibility for the safety and well-being of persons needing mental health,  
20 developmental disabilities, or substance abuse services. These crimes include the  
21 criminal offenses set forth in any of the following Articles of Chapter 14 of the General  
22 Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A,  
23 Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape  
24 and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction;  
25 Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or  
26 Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other  
27 Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article  
28 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or  
29 Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction  
30 Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against  
31 Public Morality and Decency; Article 26A, Adult Establishments; Article 27,  
32 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public  
33 Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil  
34 Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article  
35 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also  
36 include possession or sale of drugs in violation of the North Carolina Controlled  
37 Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related  
38 offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while  
39 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

40 (f) Penalty for Furnishing False Information. – Any applicant for employment  
41 who willfully furnishes, supplies, or otherwise gives false information on an  
42 employment application that is the basis for a criminal history record check under this  
43 section shall be guilty of a Class A1 misdemeanor.

1 (g) Conditional Employment. – An area authority may employ an applicant  
2 conditionally prior to obtaining the results of a criminal history record check regarding  
3 the applicant if both of the following requirements are met:

4 (1) The area authority shall not employ an applicant prior to obtaining the  
5 applicant's consent for criminal history record check as required in  
6 subsection (b) of this section or the completed fingerprint cards as  
7 required in G.S. 114-19.10.

8 (2) The area authority shall submit the request for a criminal history  
9 record check not later than five business days after the individual  
10 ~~begins conditional employment.~~ undertakes the functions of the job."

11 **SECTION 4.** G.S. 114-19.10 reads as rewritten:

12 **"§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home**  
13 **care agencies, and area mental health, developmental disabilities, and**  
14 **substance abuse services authorities.**

15 The Department of Justice may provide to the following entities ~~the criminal history~~  
16 ~~from the State and National Repositories of Criminal Histories:~~ a criminal record check  
17 of an individual who is employed by that entity, has applied for employment with that  
18 entity, or has volunteered to provide direct care on behalf of that entity:

19 (1) Nursing homes or combination homes licensed under Chapter 131E of  
20 the General Statutes.

21 (2) Adult care homes licensed under Chapter 131D of the General  
22 Statutes.

23 (3) Home care agencies licensed under Chapter 131E of the General  
24 Statutes.

25 (4) Area mental health, developmental disabilities, and substance abuse  
26 services authorities licensed under Chapter 122C of the General  
27 Statutes, including a contract agency of an area authority that is subject  
28 to the provisions of Article 4 of that Chapter.

29 The criminal history shall be provided to nursing homes and home care agencies in  
30 accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40,  
31 and to area mental health, developmental disabilities, and substance abuse services  
32 authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the  
33 Department of Justice, along with the request, the fingerprints of the individual to be  
34 ~~checked if a national criminal history record check is required,~~ checked, any additional  
35 information required by the Department of Justice, and a form signed by the individual  
36 to be checked consenting to the check of the criminal record and to the use of  
37 fingerprints and other identifying information required by the ~~State or National~~  
38 ~~Repositories of Criminal Histories.~~ Department of Justice. ~~If a national criminal history~~  
39 ~~record check is required, the fingerprints of the individual shall be forwarded to the~~  
40 ~~State Bureau of Investigation for a search of the State's criminal history record file, and~~  
41 ~~the State Bureau of Investigation shall forward a set of fingerprints to the Federal~~  
42 ~~Bureau of Investigation for a national criminal history record check.~~ All information  
43 received by the entity shall be kept confidential in accordance with G.S. 131E-265,  
44 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a



- 1 reasonable fee for conducting the checks authorized by this section. The fee for the  
2 State check may not exceed fourteen dollars (\$14.00)."  
3           **SECTION 5.** This act is effective when it becomes law.