

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-4
SENATE BILL 41**

AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LONG-TERM CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-80(a) reads as rewritten:

"(a) Definition. – As used in this section, ~~"area authority" means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.~~ the term "provider" applies to an area authority/county program and any provider of mental health, developmental disability, and substance abuse services that is licensable under Article 2 of this Chapter."

SECTION 2. G.S. 122C-80(b) reads as rewritten:

"(b) Requirement. – An offer of employment by ~~an area authority~~ a provider 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 State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. ~~An area authority~~ A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, ~~an area authority~~ a provider shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to the area authority the results of the national criminal history check.~~ notify the provider as

to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. ~~Area authorities~~ Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of ~~an area authority~~ a provider a State criminal history record check required by this section without the ~~area authority~~ provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the ~~area authority~~ provider. All criminal history information received by the ~~area authority~~ provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 3. G.S. 122C-80(c) reads as rewritten:

"(c) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the ~~area authority~~ provider 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 ~~area authority~~ provider. If the ~~area authority~~ provider disqualifies an applicant after consideration of the relevant factors, then the ~~area authority~~ provider may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant."

SECTION 4. G.S. 122C-80(d) reads as rewritten:

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

- (1) The failure of the ~~area authority~~ provider to employ an individual on the basis of information provided in the criminal history record check of the individual.
- (2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section."

SECTION 5.(a) G.S. 122C-80(g) reads as rewritten:

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

- (1) The ~~area authority~~ provider shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.
- (2) The ~~area authority~~ provider shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment."

SECTION 5.(b) G.S. 114-19.10 reads as rewritten:

"§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and ~~area mental health, developmental disabilities, and substance abuse services authorities.~~ providers of mental health, developmental disabilities, and substance abuse services.

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

- (1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.
- (2) Adult care homes licensed under Chapter 131D of the General Statutes.
- (3) Home care agencies licensed under Chapter 131E of the General Statutes.
- (4) ~~Area mental health, developmental disabilities, and substance abuse services authorities~~ Providers licensed under Chapter 122C of the General Statutes, including a contract agency of ~~an area authority~~ a provider that is subject to the provisions of Article 4 of that Chapter.

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

checks authorized by this section. The fee for the State check may not exceed fourteen dollars (\$14.00)."

SECTION 6. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement; Adult Care Home. – 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. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State 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. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services~~. Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services~~, Criminal Records Check Unit, shall ~~provide to notify~~ provide to notify the adult care home ~~the results of the national criminal history check~~, as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 7. G.S. 131D-40(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of 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 upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a

contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services~~. Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services~~, Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the adult care home ~~the results of the national criminal history check, as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home.~~ Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 8. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing 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. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. 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. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services~~. Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services~~. Criminal Records Check Unit, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the national criminal history check as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the nursing home or home care agency.~~ Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 9. G.S. 131E-265(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or 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 upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services~~. Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person,

the Department of Health and Human Services, ~~Division of Facility Services, Criminal Records Check Unit,~~ shall ~~provide to notify~~ the contract agency of the nursing home or home care agency ~~the results of the national criminal history check, as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the nursing home or home care agency.~~ Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 10. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of March, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:20 p.m. this 23rd day of March, 2005