

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-125
SENATE BILL 876

AN ACT TO AMEND THE LAW PERTAINING TO CRIMINAL BACKGROUND
CHECKS REQUIRED TO BE OBTAINED BY NURSING HOMES, ADULT
CARE HOMES, AND HOME CARE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-40 reads as rewritten:

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

(a) ~~Requirement.~~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. 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.~~ disclosed, except to the applicant as provided in subsection (b) of this section.

(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. 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. A contract agency of 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 contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(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~~ a contract agency of the adult care home 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.~~ adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency 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.

(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."

Section 2. G.S. 131E-265 reads as rewritten:

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

(a) ~~Requirement.~~Requirement; Nursing Home or Home Care Agency. – 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.~~disclosed, except to the applicant as provided in subsection (b) of this section.

(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. 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. A contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 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 contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(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, agency, or the contract agency of a nursing home or home care agency,~~ 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, nursing home or home care agency, or the contract agency of the nursing home or home care agency.~~ If a nursing home, home care agency, or contract agency of a nursing home or home care agency disqualifies an applicant after consideration of the relevant factors, then the nursing home, home care agency, or contract agency 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.

(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."

Section 3. This act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 21st day of May, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:37 p.m. this 29th day of May, 1997