

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-160
HOUSE BILL 737

AN ACT TO STRENGTHEN THE LAWS REGARDING THE SAFETY OF CHILDREN IN
CHILD CARE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-90.2 reads as rewritten:

"§ 110-90.2. Mandatory child care providers' criminal history checks.

- (a) For purposes of this section:
- (1) "Child care", notwithstanding the definition in G.S. 110-86, means any child care provided in child care facilities required to be licensed or regulated under this Article and nonlicensed child care homes approved to receive or receiving State or federal funds for providing child care.
 - (2) "Child care provider" means a person who:
 - a. Is employed by or seeks to be employed by a child care facility providing child care as defined in subdivision (1) of this ~~subsection~~ and has contact with the children; ~~subsection, whether in temporary or permanent capacity, including substitute providers;~~
 - b. Owns or operates or seeks to own or operate a child care facility or nonlicensed child care home providing child care as defined in subdivision (1) of this subsection; or
 - c. Is a member of the household in a family child care ~~home or home,~~ nonlicensed child care ~~home home,~~ or child care center in a residence and who is over 15 years old and is present when children are in care. ~~This subdivision shall apply only to new family child care homes and nonlicensed homes beginning March 1, 1998.~~ old, including family members and nonfamily members who use the home on a permanent or temporary basis as their place of residence.
 - (3) "Criminal history" means a county, state, or federal criminal history of conviction or pending indictment of a ~~crime, crime or criminal charge,~~ whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of ~~children as set forth in G.S. 110-91(8).~~ children. Such crimes ~~include include,~~ but are not limited to, the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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; Article 16, Larceny; Article 17, Robbery; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19C, Identity Theft; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 29, Bribery; 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 52, Miscellaneous Police Regulations; and Article 59, Public Intoxication. Such crimes also include cruelty to animals in violation of Article 3 of Chapter 19A of the General Statutes, 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. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(4) "Substitute provider" means a person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility.

(5) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility.

(a1) No person shall be a child care provider or uncompensated child care provider who has been any of the following:

(1) Convicted of a misdemeanor or a felony crime involving child neglect or child abuse.

(2) Adjudicated a "responsible individual" under G.S. 7B-807(a1).

(3) Convicted of a "reportable conviction" as defined under G.S. 14-208.6(4).

(b) Effective January 1, 1996, the Department shall ensure that—that, prior to employment and every three years thereafter, the criminal history of all child care providers is checked and a determination is made of the child care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Department shall ensure that all child care providers who have lived in North Carolina continuously for the previous five years are checked for county and State criminal histories. The Department shall ensure that all other child care providers are checked for county, State, and national—federal criminal histories. The Department may prohibit a child care provider from providing child care if the Department determines that the child care provider is unfit to have responsibility for the safety and well-being of children based on the criminal history, in accordance with G.S. 110-91(8).

(b1) The Department may prevent an individual from being a child care provider if the Department determines that the individual is a habitually excessive user of alcohol, illegally uses narcotic or other impairing drugs, or is mentally or emotionally impaired to an extent that may be injurious to children.

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

The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories signed by the child care provider to be checked. The fingerprints of the provider shall be forwarded to the State Bureau of Investigation for a search of their 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~~ federal criminal history record check.

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

"NOTICE

CHILD CARE PROVIDER MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY RECORD CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD CARE IN A LICENSED CHILD CARE FACILITY, AND ALL PERSONS PROVIDING CHILD CARE IN NONLICENSED CHILD CARE HOMES THAT RECEIVE STATE OR FEDERAL FUNDS.

"Criminal history" ~~includes—means a county, state, and federal convictions or pending indictments of any of the following crimes: the following~~ or federal criminal history of conviction, pending indictment of a crime, or criminal charge, whether a misdemeanor or a felony, that bears on an individual's fitness to have responsibility for the safety and well-being of children. Such crimes

include, but are not limited to, the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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; Article 16, Larceny; Article 17, Robbery; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19C, Identity Theft; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 29, Bribery; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; Intoxication. Such crimes also include cruelty to animals in violation of Article 3 of Chapter 19A of the General Statutes, 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~~; or G.S. 20-138.5. In addition to the North Carolina crimes listed in this notice, such crimes also include similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

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

If you disagree with the determination of the North Carolina Department of Health and Human Services on your fitness to provide child care, you may file a civil lawsuit within 60 days after receiving written notification of disqualification in the district court in the county where you live.

Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history record check shall be guilty of a Class 2 misdemeanor."

Refusal to consent to a criminal history record check or intentional falsification of any information required to be furnished to conduct a criminal history record check is grounds for the Department to prohibit the child care provider from providing child care. Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.

(d) The Department shall notify in writing the child care provider, and the child care provider's employer, if any, or for nonlicensed child care homes the local purchasing agency, of the determination by the Department whether the child care provider is qualified to provide child care based on the child care provider's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the child care provider's criminal history to the child care provider or the child care provider's employer or local purchasing agency. The Department shall also notify the child care provider of the procedure for completing or challenging the accuracy of the criminal history and the child care provider's right to contest the Department's determination in court.

A child care provider who disagrees with the Department's decision may file a civil action in the district court of the county of residence of the child care provider within 60 days after receiving written notification of disqualification. Review of the Department's determination disqualifying a child care provider shall be de novo. No jury trial is available for appeals to district court under this section.

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

(f) There shall be no liability for negligence on the part of an employer of a child care provider, an owner or operator of a child care facility, a State or local agency, or the employees

of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(g) ~~The child care provider shall pay the cost of the fingerprinting and the local check-federal criminal history record check in accordance with G.S. 114-19.5. The Department of Justice shall perform the State criminal history record check. If the Department determines that a child care provider who has lived continuously in the State less than five years is not disqualified based on the local and State criminal history record check, the Department shall request a criminal history check from the National Repository of Criminal History from the Department of Justice. The Department of Health and Human Services shall pay the cost for the national criminal history record check, for and conduct the county criminal history record check. Child care providers who reside outside the State bear the cost of the county criminal history record check and shall provide the county criminal history record check to the Division of Child Development as required by this section.~~"

SECTION 2. G.S. 110-91(8) reads as rewritten:

"§ 110-91. Mandatory standards for a license.

All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. Except as otherwise provided in this Article, the standards in this section shall be complied with by all child care facilities. However, none of the standards in this section apply to the school-age children of the operator of a child care facility but do apply to the preschool-age children of the operator. Children 13 years of age or older may receive child care on a voluntary basis provided all applicable required standards are met. The standards in this section, along with any other applicable State laws and federal laws or local ordinances, shall be the required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for the licensing of facilities which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

- ...
- (8) **Qualifications for Staff.** – All child care center administrators shall be at least 21 years of age. All child care center administrators shall have the North Carolina Early Childhood Administration Credential or its equivalent as determined by the Department. All child care administrators performing administrative duties as of the date this act becomes law and child care administrators who assume administrative duties at any time after this act becomes law and until September 1, 1998, shall obtain the required credential by September 1, 2000. Child care administrators who assume administrative duties after September 1, 1998, shall begin working toward the completion of the North Carolina Early Childhood Administration Credential or its equivalent within six months after assuming administrative duties and shall complete the credential or its equivalent within two years after beginning work to complete the credential. Each child care center shall be under the direction or supervision of a person meeting these requirements. All staff counted toward meeting the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a credentialed staff person who is at least 21 years of age. All lead teachers in a child care center shall have at least a North Carolina Early Childhood Credential or its equivalent as determined by the Department. Lead teachers shall be enrolled in the North Carolina Early Childhood Credential coursework or its equivalent as determined by the Department within six months after becoming employed as a lead teacher or within six months after this act becomes law, whichever is later, and shall complete the credential or its equivalent within 18 months after enrollment.

For child care centers licensed to care for 200 or more children, the Department, in collaboration with the North Carolina Institute for Early Childhood Professional Development, shall establish categories to recognize the levels of education achieved by child care center administrators and teachers who perform administrative functions. The Department shall use these categories to establish appropriate staffing based on the size of the center and the individual staff responsibilities.

Effective January 1, 1998, an operator of a licensed family child care home shall be at least 21 years old and have a high school diploma or its equivalent. Operators of a family child care home licensed prior to January 1, 1998, shall be at least 18 years of age and literate. Literate is defined as understanding licensing requirements and having the ability to communicate with the family and relevant emergency personnel. Any operator of a licensed family child care home shall be the person on-site providing child care.

~~No person shall be an operator of nor be employed in a child care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.~~

The Commission shall adopt standards to establish appropriate qualifications for all staff in child care centers. These standards shall reflect training, experience, education and credentialing and shall be appropriate for the size center and the level of individual staff responsibilities. It is the intent of this provision to guarantee that all children in child care are cared for by qualified people. Pursuant to G.S. 110-106, no requirements may interfere with the teachings or doctrine of any established religious organization. The staff qualification requirements of this subdivision do not apply to religious-sponsored child care facilities pursuant to G.S. 110-106.

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SECTION 3. This act becomes effective January 1, 2013.

In the General Assembly read three times and ratified this the 28th day of June,

2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:23 p.m. this 12th day of July, 2012