

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1523

Short Title: Criminal Backg. Checks – Long-Term Care. (Public)

Sponsors: Representatives Weiss, Insko, Earle (Primary Sponsors); Adams, B. Allen, Coates, Culp, Farmer-Butterfield, Fisher, Glazier, Gorman, Hackney, Lewis, Luebke, McLawhorn, Parmon, Pate, Ross, Wainwright, and Womble.

Referred to: Judiciary I, if favorable, Appropriations.

May 19, 2004

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE FOR THE DEPARTMENT OF HEALTH AND HUMAN
3 SERVICES TO REVIEW CRIMINAL HISTORY RECORD CHECKS TO
4 DETERMINE IF PERSONS EMPLOYED IN OR SEEKING EMPLOYMENT IN
5 NURSING HOMES AND ADULT CARE HOMES ARE FIT TO BE
6 RESPONSIBLE FOR THE SAFETY AND WELL-BEING OF AGED OR
7 DISABLED PERSONS RESIDING IN THE HOMES; AND TO PROVIDE THAT
8 INDIVIDUALS DETERMINED TO BE UNFIT TO BE RESPONSIBLE FOR THE
9 SAFETY AND WELL-BEING OF AGED OR DISABLED INDIVIDUALS
10 RESIDING IN NURSING HOMES OR ADULT CARE HOMES MAY NOT BE
11 EMPLOYED BY THE NURSING HOME OR ADULT CARE HOME; AND TO
12 APPROPRIATE FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN
13 SERVICES TO REVIEW CRIMINAL HISTORY RECORD CHECKS TO
14 DETERMINE FITNESS FOR EMPLOYMENT IN NURSING HOMES AND
15 ADULT CARE HOMES.

16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** G.S. 131D-40 reads as rewritten:

18 "**§ 131D-40. Criminal history record checks required for certain applicants for**
19 **employment.**

20 (a) Requirement; Adult Care Home. – An offer of employment by an adult care
21 home licensed under this Chapter to an applicant to fill a position that does not require
22 the applicant to have an occupational license is conditioned on consent to a criminal
23 history record check of the applicant. If the applicant has been a resident of this State
24 for less than five years, then the offer of employment is conditioned on consent to a
25 State and national criminal history record check of the applicant. The national criminal
26 history record check shall include a check of the applicant's fingerprints. If the applicant

1 has been a resident of this State for five years or more, then the offer is conditioned on
2 consent to a State criminal history record check of the applicant. An adult care home
3 shall not employ an applicant who refuses to consent to a criminal history record check
4 required by this section. Within five business days of making the conditional offer of
5 employment, an adult care home shall submit a request to the Department of Justice
6 under G.S. 114-19.10 to conduct a State or national criminal history record check
7 required by this section, or shall submit a request to a private entity to conduct a State
8 criminal history record check required by this section. At the time of submitting the
9 request for the criminal history record check, the adult care home shall provide a copy
10 of the request to the Department of Health and Human Services, Division of Facility
11 Services. If the adult care home receives the criminal history information from a private
12 entity, then within two business days of receiving the criminal history information, the
13 adult care home shall forward the information to the Department of Health and Human
14 Services, Division of Facility Services, for a determination of the individual's fitness as
15 required by this section. All criminal history information received by the home is
16 confidential and may not be disclosed, except to the applicant as provided in subsection
17 (b) of this section.

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

43 (b) Action. – ~~If an applicant's criminal history record check reveals one or more~~
44 ~~convictions of a relevant offense, the adult care home or a contract agency of the adult~~

1 care home shall consider all of the following factors in determining whether to hire the
2 applicant:

- 3 (1) ~~The level and seriousness of the crime.~~
- 4 (2) ~~The date of the crime.~~
- 5 (3) ~~The age of the person at the time of the conviction.~~
- 6 (4) ~~The circumstances surrounding the commission of the crime, if known.~~
- 7 (5) ~~The nexus between the criminal conduct of the person and the job~~
8 ~~duties of the position to be filled.~~
- 9 (6) ~~The prison, jail, probation, parole, rehabilitation, and employment~~
10 ~~records of the person since the date the crime was committed.~~
- 11 (7) ~~The subsequent commission by the person of a relevant offense.~~

12 ~~The fact of conviction of a relevant offense alone shall not be a bar to employment;~~
13 ~~however, the listed factors shall be considered by the adult care home or the contract~~
14 ~~agency of the adult care home. If the adult care home or a contract agency of the adult~~
15 ~~care home disqualifies an applicant after consideration of the relevant factors, then the~~
16 ~~adult care home or the contract agency may disclose information contained in the~~
17 ~~criminal history record check that is relevant to the disqualification, but may not provide~~
18 ~~a copy of the criminal history record check to the applicant.~~

19 Except as provided in subsection (f) of this section, an adult care home or contract
20 agency of an adult care home shall not employ an individual who is subject to a criminal
21 history record check under this section until the criminal history has been reviewed and
22 a determination made by the Department of Health and Human Services in accordance
23 with this section as to the individual's fitness to be responsible for the safety and
24 well-being of aged or disabled persons. If an applicant's criminal history shows that the
25 applicant was convicted of an offense listed in subsection (d) of this section, other than
26 homicide or rape and other sex offenses, and the conviction occurred 10 or more years
27 prior to the date of the application, the Department of Health and Human Services shall
28 obtain the public record document reflecting the offense and shall provide the public
29 record of that conviction to the adult care home or contract agency of the adult care
30 home, and the adult care home or contract agency may consider whether or not to hire
31 the applicant after considering all of the following factors:

- 32 (1) The level and seriousness of the crime.
- 33 (2) The date of the crime.
- 34 (3) The age of the person at the time of conviction.
- 35 (4) The circumstances surrounding the commission of the crime, if known.
- 36 (5) The nexus between the criminal conduct of the person and the job
37 duties of the position to be filled.
- 38 (6) The prison, jail, probation, parole, rehabilitation, and employment
39 records of the person since the date the crime was committed.
- 40 (7) The subsequent conviction by the person of one or more of the
41 offenses listed in subsection (d) of this section, other than homicide or
42 rape or other sex offense.

1 (8) Whether the applicant's name is listed in the Health Care Personnel
2 Registry based on findings by the Department of Health and Human
3 Services under G.S. 131E-256, and the nature of those findings.

4 If the adult care home or contract agency of the adult care home disqualifies an
5 applicant or terminates a conditional employee based on the Department's determination
6 or on its own consideration of the factors in this subsection, then the adult care home or
7 contract agency may disclose public criminal history information or public information
8 that in the Department's determination is relevant to the disqualification but may not
9 provide the criminal record check to the applicant.

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

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

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

43 (f) Conditional Employment. – An adult care home may employ an applicant
44 conditionally prior to obtaining ~~the results of a criminal history record check regarding~~

1 ~~the applicant~~ a determination from the Department based on its review of the criminal
2 history conducted under subsection (i) of this section if both of the following
3 requirements are met:

- 4 (1) The adult care home shall not employ an applicant prior to obtaining
5 the applicant's consent for a criminal history record check as required
6 in subsection (a) of this section or the completed fingerprint cards as
7 required in G.S. 114-19.10.
- 8 (2) The adult care home shall submit the request for a criminal history
9 record check not later than five business days after the individual
10 begins conditional employment.

11 The adult care home shall terminate immediately the conditional employment of an
12 individual upon receipt of notification from the Department that it has determined that
13 the individual is unfit to be responsible for the safety or well-being of aged or disabled
14 persons.

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

19 (h) Notice to Applicant. – At the time of application, the employing entity shall
20 furnish the individual whose criminal history is to be checked with a statement
21 substantially similar to the following:

22 **"NOTICE**

23
24 **MANDATORY CRIMINAL HISTORY CHECK**

25
26 **NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL**
27 **HISTORY CHECK BE CONDUCTED ON ALL PERSONS**
28 **WHO PROVIDE CARE TO RESIDENTS OF ADULT CARE**
29 **HOMES AND WHO ARE NOT REQUIRED TO HAVE AN**
30 **OCCUPATIONAL LICENSE TO PROVIDE THAT CARE.**

31
32 'Criminal history' includes county, state, and federal convictions or
33 pending indictments of any of the following crimes: the following
34 Articles of Chapter 14 of the General Statutes: Article 6, Homicide;
35 Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article
36 10, Kidnapping and Abduction; Article 13, Malicious Injury or
37 Damage by Use of Explosive or Incendiary Device or Material; Article
38 14, Burglary and Other Housebreakings; Article 15, Arson and Other
39 Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,
40 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A,
41 Obtaining Property or Services by False or Fraudulent Use of Credit
42 Device or Other Means; Article 19B, Financial Transaction Card
43 Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26,
44 Offenses Against Public Morality and Decency; and Article 59, Public

1 Intoxication; violation of the North Carolina Controlled Substances
2 Act, Article 5 of Chapter 90 of the General Statutes, and
3 alcohol-related offenses such as driving while impaired in violation of
4 G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal
5 law or under the laws of other states. Your fingerprints will be used to
6 check the criminal history records of the State Bureau of Investigation
7 (SBI) and the Federal Bureau of Investigation (FBI).

8 If you have ever been convicted of homicide or rape, or if you have
9 been convicted of any of the other crimes listed in the criminal history
10 within 10 years preceding the date of application for employment, you
11 will be determined as unfit to have responsibility for the safety and
12 well-being of aged or disabled persons. If you have been convicted of
13 any of the crimes other than murder or rape, and the conviction
14 occurred 10 or more years preceding the date of application for
15 employment, the facility may determine your fitness based on your
16 criminal history information and whether your name is listed in the
17 Health Care Personnel Registry pursuant to G.S. 131E-256.

18 If it is determined based on your criminal history or listing in the
19 Health Care Personnel Registry, that you are unfit to have
20 responsibility for the safety and well-being of aged or disabled
21 individuals, you shall have the opportunity to complete or challenge
22 the accuracy of the information contained in the Health Care Personnel
23 Registry.

24 If you disagree with the determination of the Department of Health
25 and Human Services on your fitness to provide care, you may file a
26 petition for a hearing with the Office of Administrative Hearings under
27 Chapter 150B of the General Statutes within 60 days of the date you
28 received notice of the Department's determination.

29 Any individual who intentionally falsifies any information required to be
30 furnished to conduct the criminal history shall be guilty of a Class A1
31 misdemeanor."

32 (i) Department Review of Criminal History. – After reviewing criminal history
33 information of an individual conditionally employed or an applicant for employment
34 obtained by the Department of Health and Human Services in accordance with this
35 section, the Department shall make a determination as to the fitness of the individual to
36 be responsible for the safety and well-being of aged or disabled persons. The
37 Department of Health and Human Services shall make the determination within five
38 business days of receipt of the criminal history information unless the Department of
39 Health and Human Services is unable to determine within five business days the
40 disposition or accuracy of the criminal history information obtained by the Department
41 of Health and Human Services, in which case the Department of Health and Human
42 Services shall make the determination as soon as possible after verifying the disposition
43 or accuracy of the criminal history information. By the next business day following its
44 determination, the Department shall provide its written determination to the adult care

1 home or contract agency of the adult care home and shall also provide to the individual
2 applicant or conditional employee a written statement as to the Department's
3 determination and the basis on which it was made. The notice to the individual shall
4 also provide that if the individual disagrees with the Department's determination, the
5 individual may petition for a hearing under Chapter 150B of the General Statutes within
6 60 days of the date the individual receives the Department's determination. The
7 Department shall maintain a record of each determination made, and the determination
8 shall be binding on the Department for subsequent reviews of the same individual
9 except to the extent that new information is obtained by the Department in the
10 subsequent review. A determination issued by the Department to the requesting adult
11 care home or contract agency of the adult care home is a final agency decision. An
12 individual denied employment or termination from conditional employment based on
13 the Department's determination may file a petition for a contested case under Chapter
14 150B of the General Statutes within 60 days of the date the individual receives the
15 Department's determination. All information that the Department receives through the
16 checking of the criminal history is privileged information and is not a public record but
17 is for the exclusive use of the Department and those persons authorized under this
18 section and federal law to receive the information. The Department may destroy the
19 information after it is used for purposes authorized by this section after one calendar
20 year.

21 (j) **Fitness for Employment.** – An applicant is unfit to be responsible for the
22 safety and well-being of aged or disabled persons if the applicant's criminal history
23 shows that:

- 24 (1) The applicant was convicted of any of the offenses of homicide under
25 Article 6 of Chapter 14 of the General Statutes or Rape and Other Sex
26 Offenses under Article 7A of Chapter 14 of the General Statutes.
27 (2) The applicant was convicted of any other offense listed in subsection
28 (d) of this section within 10 years prior to the date of application for
29 employment.

30 If an applicant's criminal history shows that the applicant was convicted of an offense
31 listed in subsection (d) of this section, other than homicide or rape and other sex
32 offenses, and the conviction occurred 10 or more years prior to the date of the
33 application, the Department of Health and Human Services shall obtain the public
34 record document reflecting the offense and shall provide the public record of that
35 conviction to the adult care home or contract agency of the adult care home, and the
36 adult care home or contract agency may consider whether or not to hire the applicant
37 after considering the factors contained in subsection (b) of this section."

38 **SECTION 2.** G.S. 131E-265 reads as rewritten:

39 **"§ 131E-265. Criminal history record checks required for certain applicants for**
40 **employment.**

41 (a) Requirement; Nursing Home or Home Care Agency. – An offer of
42 employment by a nursing home licensed under this Chapter to an applicant to fill a
43 position that does not require the applicant to have an occupational license is
44 conditioned on consent to a criminal history record check of the applicant. If the

1 applicant has been a resident of this State for less than five years, then the offer of
2 employment is conditioned on consent to a State and national criminal history record
3 check of the applicant. The national criminal history record check shall include a check
4 of the applicant's fingerprints. If the applicant has been a resident of this State for five
5 years or more, then the offer is conditioned on consent to a State criminal history record
6 check of the applicant. An offer of employment by a home care agency licensed under
7 this Chapter to an applicant to fill a position that requires entering the patient's home is
8 conditioned on consent to a criminal history record check of the applicant. In addition,
9 employment status change of a current employee of a home care agency licensed under
10 this Chapter from a position that does not require entering the patient's home to a
11 position that requires entering the patient's home shall be conditioned on consent to a
12 criminal history record check of that current employee. If the applicant for employment
13 or if the current employee who is changing employment status has been a resident of
14 this State for less than five years, then the offer of employment or change in
15 employment status is conditioned on consent to a State and national criminal history
16 record check. The national criminal history record check shall include a check of the
17 applicant's or current employee's fingerprints. If the applicant or current employee has
18 been a resident of this State for five years or more, then the offer is conditioned on
19 consent to a State criminal history record check of the applicant or current employee
20 applying for a change in employment status. A nursing home or a home care agency
21 shall not employ an applicant who refuses to consent to a criminal history record check
22 required by this section. In addition, a home care agency shall not change a current
23 employee's employment status from a position that does not require entering the
24 patient's home to a position that requires entering the patient's home who refuses to
25 consent to a criminal history record check required by this section. Within five business
26 days of making the conditional offer of employment, a nursing home or home care
27 agency shall submit a request to the Department of Justice under G.S. 114.19.10 to
28 conduct a State or national criminal history record check required by this section, or
29 shall submit a request to a private entity to conduct a State criminal history record check
30 required by this section. At the time of submitting the request for the criminal history
31 record check, the nursing home or home care agency shall provide a copy of the request
32 to the Department of Health and Human Services, Division of Facility Services. If the
33 nursing home or home care agency receives the criminal history information from a
34 private entity, then within two business days of receiving the criminal history
35 information, the nursing home or home care agency shall forward the information to the
36 Department of Health and Human Services, Division of Facility Services, for a
37 determination of the individual's fitness as required by this section. All criminal history
38 information received by the home or agency is confidential and may not be disclosed,
39 except to the applicant as provided in subsection (b) of this section.

40 (a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –
41 An offer of employment by a contract agency of a nursing home or home care agency
42 licensed under this Chapter to an applicant to fill a position that does not require the
43 applicant to have an occupational license is conditioned upon consent to a criminal
44 history record check of the applicant. If the applicant has been a resident of this State

1 for less than five years, then the offer of employment is conditioned on consent to a
2 State and national criminal history record check of the applicant. The national criminal
3 history record check shall include a check of the applicant's fingerprints. If the applicant
4 has been a resident of this State for five years or more, then the offer is conditioned on
5 consent to a State criminal history record check of the applicant. A contract agency of a
6 nursing home or home care agency shall not employ an applicant who refuses to consent
7 to a criminal history record check required by this section. Within five business days of
8 making the conditional offer of employment, a contract agency of a nursing home or
9 home care agency shall submit a request to the Department of Justice under
10 G.S. 114-19.10 to conduct a State or national criminal history record check required by
11 this section, or shall submit a request to a private entity to conduct a State criminal
12 history record check required by this section. At the time of submitting the request for
13 the criminal history record check, a contract agency of a nursing home or home care
14 agency shall provide a copy of the request to the Department of Health and Human
15 Services, Division of Facility Services. If the contract agency receives the criminal
16 history information from a private entity, then within two business days of receiving the
17 criminal history information, the contract agency shall forward the information to the
18 Department of Health and Human Services, Division of Facility Services, for a
19 determination of the individual's fitness as required by this section. All criminal history
20 information received by the contract agency is confidential and may not be disclosed,
21 except to the applicant as provided by subsection (b) of this section.

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

- 26 (1) ~~The level and seriousness of the crime.~~
- 27 (2) ~~The date of the crime.~~
- 28 (3) ~~The age of the person at the time of the conviction.~~
- 29 (4) ~~The circumstances surrounding the commission of the crime, if known.~~
- 30 (5) ~~The nexus between the criminal conduct of the person and the job~~
31 ~~duties of the position to be filled.~~
- 32 (6) ~~The prison, jail, probation, parole, rehabilitation, and employment~~
33 ~~records of the person since the date the crime was committed.~~
- 34 (7) ~~The subsequent commission by the person of a relevant offense.~~

35 ~~The fact of conviction of a relevant offense alone shall not be a bar to employment;~~
36 ~~however, the listed factors shall be considered by the nursing home or home care~~
37 ~~agency, or the contract agency of the nursing home or home care agency. If a nursing~~
38 ~~home, home care agency, or contract agency of a nursing home or home care agency~~
39 ~~disqualifies an applicant after consideration of the relevant factors, then the nursing~~
40 ~~home, home care agency, or contract agency may disclose information contained in the~~
41 ~~criminal history record check that is relevant to the disqualification, but may not provide~~
42 ~~a copy of the criminal history record check to the applicant.~~

43 Except as provided in subsection (f) of this section, a nursing home, home care
44 agency, or contract agency of a nursing home or home care agency shall not employ an

1 individual who is subject to a criminal history record check under this section until the
2 criminal history has been reviewed and a determination made by the Department of
3 Health and Human Services in accordance with this section as to the individual's fitness
4 to be responsible for the safety and well-being of aged or disabled persons. If an
5 applicant's criminal history shows that the applicant was convicted of an offense listed
6 in subsection (d) of this section, other than homicide or rape and other sex offenses, and
7 the conviction occurred 10 or more years prior to the date of the application, the
8 Department of Health and Human Services shall obtain the public record document
9 reflecting the offense and shall provide the public record of that conviction to the
10 contract agency of the nursing home or home care agency and the contract agency may
11 consider whether or not to hire the applicant after considering all of the following
12 factors:

- 13 (1) The level and seriousness of the crime.
- 14 (2) The date of the crime.
- 15 (3) The age of the person at the time of conviction.
- 16 (4) The circumstances surrounding the commission of the crime, if known.
- 17 (5) The nexus between the criminal conduct of the person and the job
18 duties of the position to be filled.
- 19 (6) The prison, jail, probation, parole, rehabilitation, and employment
20 records of the person since the date the crime was committed.
- 21 (7) The subsequent conviction by the person of one or more of the
22 offenses listed in subsection (d) of this section, other than homicide or
23 rape or other sex offense.
- 24 (8) Whether the applicant's name is listed in the Health Care Personnel
25 Registry based on findings by the Department of Health and Human
26 Services under G.S. 131E-256, and the nature of those findings.

27 If the nursing home, home care agency, or contract agency of the nursing home or home
28 care agency disqualifies an applicant or terminates a conditional employee based on the
29 Department's determination or on its own consideration of the factors in this subsection,
30 then the contract agency may disclose public criminal history information or public
31 information that in the Department's determination is relevant to the disqualification but
32 may not provide the criminal record check to the applicant.

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

37 (d) Relevant Offense. — ~~As used in this section, the term "relevant offense" has~~
38 ~~the same meaning as in G.S. 131D-40.~~ Criminal History. – 'Criminal history' means a
39 county, state, or federal criminal history of conviction or pending indictment of a crime,
40 whether a misdemeanor or felony, that bears upon the individual's fitness to have
41 responsibility for the safety and well-being of aged or disabled persons. These crimes
42 include the criminal offenses set forth in any of the following Articles of Chapter 14 of
43 the General Statutes: Article 6, Homicide; Article 7A, Rape and Other Sex Offenses;
44 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury

1 or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary
2 and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny;
3 Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats;
4 Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit
5 Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20,
6 Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency;
7 and Article 60, Computer-Related Crime. These crimes also include possession or sale
8 of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of
9 Chapter 90 of the General Statutes, and alcohol-related offenses such as driving while
10 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

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

15 (f) Conditional Employment. – A nursing home or home care agency may
16 employ an applicant conditionally prior to obtaining ~~the results of a criminal history~~
17 ~~record check regarding the applicant~~ a determination from the Department of Health and
18 Human Services based on its review of the criminal history conducted under subsection
19 (i) of this section if both of the following requirements are met:

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

24 (2) The nursing home or home care agency shall submit the request for a
25 criminal history record check not later than five business days after the
26 individual begins conditional employment.

27 The nursing home or home care agency shall terminate immediately the conditional
28 employment of an individual upon receipt of notification from the Department that it
29 has determined upon review of the criminal history that the individual is unfit to be
30 responsible for the safety or well-being of aged or disabled persons.

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

35 (h) Notice to Applicant. – At the time of application, the individual whose
36 criminal history is to be checked shall be furnished with a statement substantially
37 similar to the following:

38 **"NOTICE**

39 **MANDATORY CRIMINAL HISTORY CHECK**

40 **NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL**
41 **HISTORY CHECK BE CONDUCTED ON ALL PERSONS**
42 **WHO PROVIDE CARE TO RESIDENTS OF NURSING**
43 **WHO PROVIDE CARE TO RESIDENTS OF NURSING**
44

1 **HOMES AND PERSONS EMPLOYED BY HOME CARE**
2 **AGENCIES AND WHO ARE NOT REQUIRED TO HAVE AN**
3 **OCCUPATIONAL LICENSE TO PROVIDE THAT CARE.**
4

5 'Criminal history' includes county, state, and federal convictions or
6 pending indictments of any of the following crimes: the following
7 Articles of Chapter 14 of the General Statutes: Article 6, Homicide;
8 Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article
9 10, Kidnapping and Abduction; Article 13, Malicious Injury or
10 Damage by Use of Explosive or Incendiary Device or Material; Article
11 14, Burglary and Other Housebreakings; Article 15, Arson and Other
12 Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,
13 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A,
14 Obtaining Property or Services by False or Fraudulent Use of Credit
15 Device or Other Means; Article 19B, Financial Transaction Card
16 Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26,
17 Offenses against Public Morality and Decency; and Article 59, Public
18 Intoxication; violation of the North Carolina Controlled Substances
19 Act, Article 5 of Chapter 90 of the General Statutes, and
20 alcohol-related offenses such as driving while impaired in violation of
21 G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal
22 law or under the laws of other states. Your fingerprints will be used to
23 check the criminal history records of the State Bureau of Investigation
24 (SBI) and the Federal Bureau of Investigation (FBI).

25 If you have ever been convicted of homicide or rape, or if you have
26 been convicted of any of the other crimes listed in the criminal history
27 within 10 years preceding the date of application for employment, you
28 will be determined as unfit to have responsibility for the safety and
29 well-being of aged or disabled persons. If you have been convicted of
30 any of the crimes other than murder or rape, and the conviction
31 occurred 10 or more years preceding the date of application for
32 employment, the facility may determine your fitness based on your
33 criminal history information and whether your name is listed in the
34 Health Care Personnel Registry pursuant to G.S. 131E-256.

35 If it is determined based on your criminal history or listing in the
36 Health Care Personnel Registry, that you are unfit to have
37 responsibility for the safety and well-being of aged or disabled
38 individuals, you shall have the opportunity to complete or challenge
39 the accuracy of the information contained in the Health Care Personnel
40 Registry.

41 If you disagree with the determination of the Department of Health
42 and Human Services on your fitness to provide care, you may file a
43 petition for a hearing with the Office of Administrative Hearings under

1 Chapter 150B of the General Statutes within 60 days of the date you
2 received notice of the Department's determination.

3 Any individual who intentionally falsifies any information required
4 to be furnished to conduct the criminal history shall be guilty of a
5 Class A1 misdemeanor."

6 (i) Department Review of Criminal History. – After reviewing criminal history
7 information of an individual conditionally employed or an applicant for employment
8 obtained by the Department of Health and Human Services in accordance with this
9 section, the Department shall make a determination as to the fitness of the individual to
10 be responsible for the safety and well-being of aged or disabled persons. The
11 Department of Health and Human Services shall make the determination within five
12 business days of receipt of the criminal history information unless the Department of
13 Health and Human Services is unable to determine within five business days the
14 disposition or accuracy of the criminal information obtained by the Department of
15 Health and Human Services, in which case the Department of Health and Human
16 Services shall make the determination as soon as possible after verifying the disposition
17 or accuracy of the criminal history information. By the next business day following its
18 determination, the Department shall provide its written determination to the nursing
19 home, home care agency, or contract agency of the nursing home or home care agency,
20 and shall also provide to the individual applicant or conditional employee a written
21 statement as to the Department's determination and the basis on which it was made. The
22 notice to the individual shall also provide that if the individual disagrees with the
23 Department's determination, the individual may petition for a hearing under Chapter
24 150B of the General Statutes within 60 days of the date the individual receives the
25 Department's determination. The Department shall maintain a record of each
26 determination made, and the determination shall be binding on the Department for
27 subsequent reviews of the same individual except to the extent that new information is
28 obtained by the Department in the subsequent review. A determination issued by the
29 Department to the requesting nursing home or home care agency is a final agency
30 decision. An individual denied employment or termination from conditional
31 employment based on the Department's determination may file a petition for a contested
32 case under Chapter 150B of the General Statutes within 60 days of the date the
33 individual receives the Department's determination. All information that the Department
34 receives through the checking of the criminal history is privileged information and is
35 not a public record but is for the exclusive use of the Department and those persons
36 authorized under this section and federal law to receive the information. The
37 Department may destroy the information after it is used for purposes authorized by this
38 section after one calendar year.

39 (j) Fitness for Employment. – An applicant is unfit to be responsible for the
40 safety and well-being of aged or disabled persons if the applicant's criminal history
41 shows that:

- 42 (1) The applicant was convicted of any of the offenses of Homicide under
43 Article 6 of Chapter 14 of the General Statutes or Rape and Other Sex
44 Offenses under Article 7A of Chapter 14 of the General Statutes.

1 (2) The applicant was convicted of any other offense listed in subsection
2 (d) of this section within 10 years prior to the date of application for
3 employment.

4 If an applicant's criminal history shows that the applicant was convicted of an offense
5 listed in subsection (d) of this section, other than homicide or rape and other sex
6 offenses, and the conviction occurred 10 or more years prior to the date of the
7 application, the Department of Health and Human Services shall obtain the public
8 record document reflecting the offense and shall provide the public record of that
9 conviction to the nursing home or home care agency, and the nursing home or home
10 care agency may consider whether or not to hire the applicant after considering the
11 factors contained in subsection (b) of this section."

12 **SECTION 3.** G.S. 114-19.10 reads as rewritten:

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

16 ~~The~~ As authorized by this section, the Department of Justice may provide to the
17 following entities the criminal history from the State and National Repositories of
18 Criminal Histories:

- 19 (1) Nursing homes or combination homes licensed under Chapter 131E of
20 the General Statutes. Statutes, including a contract agency of a nursing
21 home that is subject to Article 16 of Chapter 131E of the General
22 Statutes.
- 23 (2) Adult care homes licensed under Chapter 131D of the General
24 Statutes. Statutes, including a contract agency of an adult care home
25 that is subject to Article 5 of Chapter 131D of the General Statutes.
- 26 (3) Home care agencies licensed under Chapter 131E of the General
27 Statutes. Statutes, including a contract agency of a home care agency
28 that is subject to Article 16 of Chapter 131E of the General Statutes.
- 29 (4) Area mental health, developmental disabilities, and substance abuse
30 services authorities licensed under Chapter 122C of the General
31 Statutes, including a contract agency of an area authority that is subject
32 to the provisions of Article 4 of that Chapter.

33 ~~The~~ For national checks, the criminal history shall be provided to nursing homes and
34 home care agencies for employment positions covered by Public Law 105-277. For
35 employment positions in nursing homes and home care agencies or home health care
36 agencies not covered by Public Law 105-277, and for agencies listed in subdivisions (1)
37 through (3) of this section, the national and State criminal history shall be provided to
38 the Department of Health and Human Services, Division of Facility Services. For State
39 checks, the Department shall provide the criminal history to nursing homes and home
40 care agencies in accordance with G.S. 131E-265, G.S. 131E-265 and to adult care
41 homes in accordance with G.S. 131D-40, and G.S. 131D-40. The criminal history shall
42 be provided to area mental health, developmental disabilities, and substance abuse
43 services authorities in accordance with G.S. 122C-80. The requesting entity shall
44 provide to the Department of Justice, along with the request, the fingerprints of the

1 individual to be checked if a national criminal history record check is required, any
2 additional information required by the Department of Justice, and a form signed by the
3 individual to be checked consenting to the check of the criminal record and to the use of
4 fingerprints and other identifying information required by the State or National
5 Repositories of Criminal Histories. If a national criminal history record check is
6 required, the fingerprints of the individual shall be forwarded to the State Bureau of
7 Investigation for a search of the State's criminal history record file, and the State Bureau
8 of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation
9 for a national criminal history record check. All information received by the entity shall
10 be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as
11 applicable. The Department of Justice shall charge a reasonable fee for conducting the
12 checks authorized by this section. The fee for the State check may not exceed fourteen
13 dollars (\$14.00)."

14 **SECTION 4.** The Department of Health and Human Services shall
15 determine if consolidation of its criminal record checks functions would result in a cost
16 savings to the Department and, if so, shall implement the consolidation not later than
17 January 1, 2005.

18 **SECTION 5.** There is appropriated from the General Fund to the
19 Department of Health and Human Services, Division of Facility Services, the sum of
20 one hundred thirty-three thousand three hundred twenty-eight dollars (\$133,328) for the
21 2004-2005 fiscal year. These funds shall be used to carry out the duties required under
22 this act. The Department shall apply for federal funds available under P.L. 108-173 or
23 other federal law to expedite the implementation of criminal history record checks of
24 nursing homes, adult care homes, and contract agencies. If federal funds are received,
25 then the Department may use funds appropriated in this act for criminal record check
26 implementation purposes other than those purposes for which federal funds are
27 received.

28 **SECTION 6.** Sections 1 through 4 of this act become effective January 1,
29 2005. The remainder of this act becomes effective July 1, 2004.