

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE BILL 1433

Short Title: Long-Term Care Criminal Backg. Checks.

(Public)

Sponsors: Senator Rand.

Referred to: Appropriations/Base Budget.

May 27, 2004

A BILL TO BE ENTITLED

1 AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN
2 SERVICES TO ESTABLISH A SYSTEM FOR REVIEWING THE CRIMINAL
3 HISTORY OF INDIVIDUALS CONDITIONALLY EMPLOYED IN OR
4 SEEKING EMPLOYMENT IN NURSING HOMES AND ADULT CARE HOMES
5 AND DETERMINING THE INDIVIDUAL'S FITNESS TO BE RESPONSIBLE
6 FOR THE SAFETY AND WELL-BEING OF AGED OR DISABLED PERSONS
7 RESIDING IN THE HOMES; AND TO PROVIDE THAT INDIVIDUALS
8 DETERMINED TO BE UNFIT TO BE RESPONSIBLE FOR THE SAFETY AND
9 WELL-BEING OF AGED OR DISABLED INDIVIDUALS RESIDING IN
10 NURSING HOMES OR ADULT CARE HOMES MAY NOT BE EMPLOYED BY
11 THE NURSING HOME OR ADULT CARE HOME; AND TO APPROPRIATE
12 FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO
13 REVIEW CRIMINAL HISTORY RECORD CHECKS TO DETERMINE FITNESS
14 FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING HOMES, AND
15 CHILD CARING FACILITIES; AND TO APPROPRIATE FUNDS TO THE
16 DEPARTMENT OF JUSTICE FOR EXPEDITING THE PROCESSING OF
17 CRIMINAL RECORD CHECKS.
18

19 The General Assembly of North Carolina enacts:

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

21 **"§ 131D-40. Criminal history record checks required for certain applicants for**
22 **employment.**

23 (a) Requirement; Adult Care Home. – An offer of employment by an adult care
24 home licensed under this Chapter to an applicant to fill a position that does not require
25 the applicant to have an occupational license is conditioned on consent to a criminal
26 history record check of the applicant. If the applicant has been a resident of this State
27 for less than five years, then the offer of employment is conditioned on consent to a
28 State and national criminal history record check of the applicant. The national criminal
29 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. If the adult care home
11 receives the criminal history information from a private entity, then within two business
12 days of receiving the criminal history information, the adult care home shall forward the
13 information to the Department of Health and Human Services for a determination of the
14 individual's fitness as required by this section. All criminal history information received
15 by the home is confidential and may not be disclosed, except to the applicant as
16 provided in subsection (b) of this section.

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

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

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

10 ~~The fact of conviction of a relevant offense alone shall not be a bar to employment;~~
11 ~~however, the listed factors shall be considered by the adult care home or the contract~~
12 ~~agency of the adult care home. If the adult care home or a contract agency of the adult~~
13 ~~care home disqualifies an applicant after consideration of the relevant factors, then the~~
14 ~~adult care home or the contract agency may disclose information contained in the~~
15 ~~criminal history record check that is relevant to the disqualification, but may not provide~~
16 ~~a copy of the criminal history record check to the applicant. Except as provided in~~
17 ~~subsection (f) of this section, an adult care home or contract agency of an adult care~~
18 ~~home shall not employ an individual who is subject to a criminal history record check~~
19 ~~under this section until the criminal history has been reviewed and a determination~~
20 ~~made by the Department of Health and Human Services in accordance with this section~~
21 ~~that the individual is fit to be responsible for the safety and well-being of aged or~~
22 ~~disabled persons. If the adult care home or contract agency of the adult care home~~
23 ~~disqualifies an applicant or terminates a conditional employee based on the~~
24 ~~Department's determination, then the adult care home or contract agency may disclose~~
25 ~~public criminal history information or public information that in the Department's~~
26 ~~determination is relevant to the disqualification but may not provide the criminal record~~
27 ~~check to the applicant.~~

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

32 (d) Relevant Offense. – ~~As used in this section, "relevant offense" means a State~~
33 ~~crime, Criminal History.~~ – 'Criminal history' means a county, state, or federal criminal
34 history of a conviction or pending indictment of a crime, whether a misdemeanor or
35 felony, that bears upon an individual's fitness to have responsibility for the safety and
36 well-being of aged or disabled persons. These crimes include the criminal offenses set
37 forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5,
38 Counterfeiting and Issuing Monetary Substitutes; ~~Article 5A, Endangering Executive~~
39 ~~and Legislative Officers;~~ Article 6, Homicide; Article 7A, Rape and Other Sex
40 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
41 Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material;
42 Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings;
43 Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False
44 Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or

1 Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction
2 Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against
3 Public Morality and Decency; ~~Article 26A, Adult Establishments; Article 27,~~
4 ~~Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public~~
5 ~~Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil~~
6 ~~Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family;~~
7 ~~Article 59, Public Intoxication; and Article 60, Computer Related Crime. and Article~~
8 59, Public Intoxication. These crimes also include possession or sale of drugs in
9 violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of
10 the General Statutes, and alcohol-related offenses such as ~~sale to underage persons in~~
11 ~~violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1~~
12 ~~through G.S. 20-138.5.~~

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

17 (f) Conditional Employment. – An adult care home may employ an applicant
18 conditionally prior to obtaining ~~the results of a criminal history record check regarding~~
19 ~~the applicant a determination from the Department based on its review of the criminal~~
20 history conducted under subsection (i) of this section if both of the following
21 requirements are met:

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

26 (2) The adult care home shall submit the request for a criminal history
27 record check not later than five business days after the individual
28 begins conditional employment.

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

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

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

40 **"NOTICE**

41
42 **MANDATORY CRIMINAL HISTORY CHECK**

1 **NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL**
2 **HISTORY CHECK BE CONDUCTED ON ALL PERSONS**
3 **WHO PROVIDE CARE TO RESIDENTS OF ADULT CARE**
4 **HOMES AND WHO ARE NOT REQUIRED TO HAVE AN**
5 **OCCUPATIONAL LICENSE TO PROVIDE THAT CARE."**

6
7 'Criminal history' includes county, state, and federal convictions or
8 pending indictments of any of the following crimes: the following
9 Articles of Chapter 14 of the General Statutes: Article 5,
10 Counterfeiting and Issuing Money Substitutes; Article 6, Homicide;
11 Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article
12 10, Kidnapping and Abduction; Article 13, Malicious Injury or
13 Damage by Use of Explosive or Incendiary Device or Material; Article
14 14, Burglary and Other Housebreakings; Article 15, Arson and Other
15 Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,
16 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A,
17 Obtaining Property or Services by False or Fraudulent Use of Credit
18 Device or Other Means; Article 19B, Financial Transaction Card
19 Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26,
20 Offenses Against Public Morality and Decency; Article 39, Protection
21 of Minors; and Article 59, Public Intoxication; violation of the North
22 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the
23 General Statutes, and alcohol-related offenses such as driving while
24 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or
25 similar crimes under federal law or under the laws of other states. Your
26 fingerprints will be used to check the criminal history records of the
27 State Bureau of Investigation (SBI) and the Federal Bureau of
28 Investigation (FBI).

29 If you have ever been convicted of homicide or rape you will be
30 determined as unfit to have responsibility for the safety and well-being
31 of aged or disabled persons. If you have been convicted of any of the
32 crimes other than homicide or rape, the Department may determine
33 your fitness based on your criminal history information and whether
34 your name is listed in the Health Care Personnel Registry pursuant to
35 G.S. 131E-256.

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

42 If you disagree with the determination of the Department of Health
43 and Human Services on your fitness to provide care, you may file a
44 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. – The Department of Health and
7 Human Services shall establish a system for reviewing criminal history information of
8 an individual conditionally employed or an applicant for employment obtained by the
9 Department in accordance with this section and making a determination as to the fitness
10 of the individual to be responsible for the safety and well-being of aged or disabled
11 persons. The system shall provide for written notice of the Department's determination
12 to the adult care home or contract agency of the adult care home, and to the applicant or
13 conditional employee. The notice shall contain the basis on which the determination is
14 made and shall also provide that if the individual disagrees with the Department's
15 determination, the individual may petition for a hearing under Chapter 150B of the
16 General Statutes within 60 days of the date the individual receives the Department's
17 determination. A determination issued by the Department to the adult care home or
18 contract agency of the adult care home is a final agency decision. An individual denied
19 employment or terminated from conditional employment based on the Department's
20 determination may file a petition for a contested case under Chapter 150B of the
21 General Statutes within 60 days of the date the individual receives the Department's
22 determination. All information that the Department receives through the checking of the
23 criminal history is privileged information and is not a public record but is for the
24 exclusive use of the Department and those persons authorized under this section and
25 federal law to receive the information. The Department may destroy the information
26 after it is used for purposes authorized by this section after one calendar year.

27 (j) Fitness for Employment. – An applicant is unfit to be responsible for the
28 safety and well-being of aged or disabled persons if the applicant's criminal history
29 shows that the applicant was convicted of any of the offenses of homicide under Article
30 6 of Chapter 14 of the General Statutes or Rape and Other Sex Offenses under Article
31 7A of Chapter 14 of the General Statutes. If the Department determines that the safety
32 and well-being of residents of the adult care home would be at risk based on the
33 criminal history of an individual required to be checked pursuant to this section, the
34 Department shall inform the adult care home or contract agency that the individual is
35 unfit for employment and the adult care home or contract agency shall not employ the
36 individual."

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

38 **"§ 131E-265. Criminal history record checks required for certain applicants for**
39 **employment.**

40 (a) **Requirement; Nursing Home or Home Care Agency. – An offer of**
41 **employment by a nursing home licensed under this Chapter to an applicant to fill a**
42 **position that does not require the applicant to have an occupational license is**
43 **conditioned on consent to a criminal history record check of the applicant. If the**
44 **applicant has been a resident of this State for less than five years, then the offer of**

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

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

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

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

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

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

40 Except as provided in subsection (f) of this section, a nursing home, home care
41 agency, or contract agency of a nursing home or home care agency shall not employ an
42 individual who is subject to a criminal history record check under this section until the
43 criminal history has been reviewed and a determination made by the Department of
44 Health and Human Services in accordance with this section that the individual is fit to

1 be responsible for the safety and well-being of aged or disabled persons. If the nursing
2 home, home care agency, or contract agency of a nursing home or home care agency
3 disqualifies an applicant or terminates a conditional employee based on the
4 Department's determination, then the nursing home, home care agency, or contract
5 agency may disclose public criminal history information or public information that in
6 the Department's determination is relevant to the disqualification but may not provide
7 the criminal record check to the applicant.

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

12 (d) ~~Relevant Offense. — As used in this section, the term "relevant offense" has~~
13 ~~the same meaning as in G.S. 131D-40.~~ Criminal History. — 'Criminal history' means a
14 county, state, or federal criminal history of conviction or pending indictment of a crime,
15 whether a misdemeanor or felony, that bears upon the individual's fitness to have
16 responsibility for the safety and well-being of aged or disabled persons. These crimes
17 include the criminal offenses set forth in any of the following Articles of Chapter 14 of
18 the General Statutes: Article 5, Counterfeiting and Issuing Money Substitutes; Article 6,
19 Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10,
20 Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of
21 Explosive or Incendiary Device or Material; Article 14, Burglary and Other
22 Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17,
23 Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article
24 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or
25 Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds;
26 Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article
27 39, Protection of Minors; and Article 59, Public Intoxication. These crimes also include
28 possession or sale of drugs in violation of the North Carolina Controlled Substances
29 Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such
30 as driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

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

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

- 41 (1) The nursing ~~home or home care home, home care agency, or contract~~
42 agency shall not employ an applicant prior to obtaining the applicant's
43 consent for a criminal history record check as required in subsection

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

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

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

(g) Immunity From Liability. – An entity and officers and employees of an entity shall be immune from civil liability for 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.

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

"NOTICE

MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CARE TO RESIDENTS OF NURSING HOMES AND PERSONS EMPLOYED BY HOME CARE AGENCIES AND WHO ARE NOT REQUIRED TO HAVE AN OCCUPATIONAL LICENSE TO PROVIDE THAT CARE."

'Criminal history' includes county, state, and federal convictions or pending indictments of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Money Substitutes; 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 39, Protection of Minors; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the

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

7 If you have ever been convicted of homicide or rape you will be
8 determined as unfit to have responsibility for the safety and well-being
9 of aged or disabled persons. If you have been convicted of any of the
10 crimes other than homicide or rape, the Department may determine
11 your fitness based on your criminal history information whether your
12 name is listed in the Health Care Personnel Registry pursuant to
13 G.S. 131E-256.

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

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

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

28 (i) Department Review of Criminal History. – The Department of Health and
29 Human Services shall establish a system for reviewing criminal history information of
30 an individual conditionally employed or an applicant for employment obtained by the
31 Department in accordance with this section and making a determination as to the fitness
32 of the individual to be responsible for the safety and well being of aged or disabled
33 persons. The system shall provide for written notice of the Department's determination
34 to the nursing home, home care agency, or contract agency and to the individual
35 applicant or conditional employee. The notice shall contain the basis on which the
36 determination is made and shall also provide that if the individual disagrees with the
37 Department's determination, the individual may petition for a hearing under Chapter
38 150B of the General Statutes within 60 days of the date the individual receives the
39 Department's determination. A determination issued by the Department to the nursing
40 home, home care agency, or contract agency is a final agency decision. An individual
41 denied employment or terminated from conditional employment based on the
42 Department's determination may file a petition for a contested case under Chapter 150B
43 of the General Statutes within 60 days of the date the individual receives the
44 Department's determination. All information that the Department receives through the

1 checking of the criminal history is privileged information and is not a public record but
2 is for the exclusive use of the Department and those persons authorized under this
3 section and federal law to receive the information. The Department may destroy the
4 information after it is used for purposes authorized by this section after one calendar
5 year.

6 (j) Fitness for Employment. – An applicant is unfit to be responsible for the
7 safety and well-being of aged or disabled persons if the applicant's criminal history
8 shows that the applicant was convicted of any of the offenses of Homicide under Article
9 6 of Chapter 14 of the General Statutes or Rape and Other Sex Offenses under Article
10 7A of Chapter 14 of the General Statutes. If the Department determines that the safety
11 and well-being of residents of the nursing home or clients of the home care agency
12 would be at risk based on the criminal history of the individual required to be checked
13 pursuant to this section, the Department shall inform the nursing home, home care
14 agency, or contract agency that the individual is unfit for employment and the nursing
15 home, home care agency, or contract agency shall not employ the individual."

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

17 **"§ 114-19.10. Criminal history record checks for adult care homes, nursing homes,**
18 **home care agencies, and area mental health, developmental disabilities,**
19 **and substance abuse services authorities.**

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

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

37 ~~The~~ For national checks, the criminal history shall be provided to nursing homes and
38 home care agencies for employment positions covered by Public Law 105-277. For
39 employment positions in nursing homes and home care agencies or home health care
40 agencies not covered by Public Law 105-277, and for all other agencies listed in this
41 section, the national criminal history shall be provided to the Department of Health and
42 Human Services. For State checks, the criminal history shall be provided to nursing
43 homes and home care agencies in accordance with G.S. 131E-265, to adult care homes
44 in accordance with G.S. 131D-40, and to area mental health, developmental disabilities,

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

16 **SECTION 4.** There is appropriated from the General Fund to the
17 Department of Health and Human Services the sum of one million two hundred
18 thirty-eight thousand two hundred sixty-six dollars (\$1,238,266) for the 2004-2005
19 fiscal year. These funds shall be used for start-up, administrative, and operating costs,
20 including 30 FTE positions, of the criminal record check system established under this
21 act. These funds shall not be used to supplant existing State or federal funds available
22 to the Department for this or other purposes.

23 **SECTION 5.** There is appropriated from the General Fund to the
24 Department of Justice the sum of eight hundred thirteen thousand dollars (\$813,000) for
25 the 2004-2005 fiscal year. These funds shall be used to expedite the processing of
26 criminal record checks required pursuant to this act under the Statewide Automated
27 Fingerprint Identification System (SAFIS). These funds may be used for additional
28 positions, office space, and new web-based billing software and hardware.

29 **SECTION 6.** There is appropriated from the General Fund to the
30 Department of Health and Human Services, Division of Child Development, the sum of
31 one hundred seventy-eight thousand eighty-two dollars (\$178,082) for the 2004-2005
32 fiscal year. These funds shall be used for four FTE positions for criminal record checks.

33 **SECTION 7.** Sections 1 through 3 of this act become effective January 1,
34 2005, only if funds are appropriated by the 2003 General Assembly, 2004 Regular
35 Session, to implement this act. The remainder of this act becomes effective July 1,
36 2004.