

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-371
SENATE BILL 195**

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE AS REGISTERED NURSES OR LICENSED PRACTICAL NURSES UPON THE REQUEST OF THE NORTH CAROLINA BOARD OF NURSING, TO AUTHORIZE THE BOARD OF NURSING TO REQUIRE CRIMINAL HISTORY RECORD CHECKS OF PERSONS APPLYING TO PRACTICE NURSING IN THE STATE OF NORTH CAROLINA, AND TO AMEND THE POWERS OF THE BOARD OF NURSING TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS UPON THE BOARD'S REQUEST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-19.11. Criminal record checks of applicants for licensure as registered nurses or licensed practical nurses.

The Department of Justice may provide to the North Carolina Board of Nursing from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a registered nurse or licensed practical nurse under Article 9A of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. Article 9A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-171.48. Criminal history record checks of applicants for licensure.

(a) Definitions. – The following definitions shall apply in this section:

- (1) Applicant. – A person applying for licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 and G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32.
- (2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes;

Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including 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.

(b) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subsection (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

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

If, after reviewing the factors, the Board determines that the grounds set forth in subsections (1), (2), (3), (4), (5), or (6) of G.S. 90-171.37 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision.

However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 3. G.S. 90-171.23(b) is amended by adding a new subdivision to read:

"(b) Duties, powers. The Board is empowered to:

...
(19) Request that the Department of Justice conduct criminal history record checks of applicants for licensure pursuant to G.S. 114-19.11."

SECTION 4. This act becomes effective January 1, 2002.

In the General Assembly read three times and ratified this the 8th day of August, 2001.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 11:54 a.m. this 17th day of August, 2001