

§ 90-288.01. Criminal history record checks of applicants for licensure.

- (a) The following definitions apply in this section:
- (1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.
 - (2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. 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, Legislative, and Court Officers; Article 6, Homicide; Article 7B, 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, Civil Disorders, and Emergencies; 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, 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) Criminal History Record Check. – The Board shall require a criminal history record check of all applicants for initial licensure and temporary licensure. The Board, in its discretion, may require a criminal history record check of an applicant for license renewal. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history 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 Public Safety. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

(c) Convictions. – If the applicant's criminal history record check reveals one or more convictions listed under subdivision (2) of subsection (a) 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 applicant 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 applicant and the job duties of the position to be filled.
- (6) The applicant's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the applicant of a crime listed in subsection (a) of this section.

(d) Denial of Licensure. – Except as otherwise provided by law, if the Board refuses to issue or renew a license based on information obtained in a criminal history record check, the Board shall not provide a copy of the criminal history record check to the applicant. An applicant has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(e) 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 its actions based on information provided in an applicant's criminal history record check. (2008-183, s. 1; 2012-12, s. 2(kk); 2013-346, s. 7; 2014-100, s. 17.1(o); 2015-181, s. 47.)