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SENATE BILL 924

Children & Human Resources Committee Substitute Adopted 4/30/97

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Short Title: Criminal Record Checks/DHR.

(Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CRIMINAL RECORD CHECKS OF EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 114 of the General Statutes is amended by adding the following new section to read:

**"§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Human Resources.**

(a) Definitions. – As used in this section, the term:

(1) 'Criminal history' means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Human Resources. The crimes include, but are not limited to, criminal offenses as 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,

1 Homicide; Article 7A, Rape and Other Sex Offenses; Article 8,  
2 Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious  
3 Injury or Damage by Use of Explosive or Incendiary Device or  
4 Material; Article 14, Burglary and Other Housebreakings; Article 15,  
5 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery;  
6 Article 18, Embezzlement; Article 19, False Pretenses and Cheats;  
7 Article 19A, Obtaining Property or Services by False or Fraudulent Use  
8 of Credit Device or Other Means; Article 19B, Financial Transaction  
9 Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26,  
10 Offenses Against Public Morality and Decency; Article 26A, Adult  
11 Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29,  
12 Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses  
13 Against the Public Peace; Article 36A, Riots and Civil Disorders;  
14 Article 39, Protection of Minors; Article 40, Protection of the Family;  
15 Article 59, Public Intoxication; and Article 60, Computer-Related  
16 Crime. The crimes also include possession or sale of drugs in violation  
17 of the North Carolina Controlled Substances Act, Article 5 of Chapter  
18 90 of the General Statutes, and alcohol-related offenses such as sale to  
19 underage persons in violation of G.S. 18B-302, or driving while  
20 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

21 (2) 'Covered person' means:

- 22 a. An applicant for employment or a current employee in a position  
23 in the Department of Human Resources who provides direct care  
24 for a client, patient, student, resident or ward of the Department;  
25 or  
26 b. Supervises positions providing direct care as outlined in sub-  
27 subdivision a. of this subdivision.

28 (b) When requested by the Department of Human Resources, the North Carolina  
29 Department of Justice may provide to the Department of Human Resources a covered  
30 person's criminal history from the State Repository of Criminal Histories. Such requests  
31 shall not be due to a person's age, sex, race, color, national origin, religion, creed,  
32 political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests  
33 for a State criminal history record check only, the Department of Human Resources shall  
34 provide to the Department of Justice a form consenting to the check signed by the  
35 covered person to be checked and any additional information required by the Department  
36 of Justice. National criminal record checks are authorized for covered applicants who  
37 have not resided in the State of North Carolina during the past five years. For national  
38 checks the Department of Human Resources shall provide to the North Carolina  
39 Department of Justice the fingerprints of the covered person to be checked, any additional  
40 information required by the Department of Justice, and a form signed by the covered  
41 person to be checked consenting to the check of the criminal record and to the use of  
42 fingerprints and other identifying information required by the State or National  
43 Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of

1 Investigation for a search of the State criminal history record file and the State Bureau of  
2 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for  
3 a national criminal history record check. The Department of Human Resources shall  
4 keep all information pursuant to this section confidential. The Department of Justice  
5 shall charge a reasonable fee for conducting the checks of the criminal history records  
6 authorized by this section.

7 (c) All releases of criminal history information to the Department of Human  
8 Resources shall be subject to, and in compliance with, rules governing the dissemination  
9 of criminal history record checks as adopted by the North Carolina Division of Criminal  
10 Information. All of the information the Department of Human Resources receives  
11 through the checking of the criminal history is privileged information and for the  
12 exclusive use of the Department of Human Resources.

13 (d) If the covered person's verified criminal history record check reveals one or  
14 more convictions covered under subsection (a) of this section, then the conviction shall  
15 constitute just cause for not selecting the person for employment, or for dismissing the  
16 person from current employment with the Department of Human Resources. The  
17 conviction shall not automatically prohibit employment; however, the following factors  
18 shall be considered by the Department of Human Resources in determining whether  
19 employment shall be denied:

20 (1) The level and seriousness of the crime;

21 (2) The date of the crime;

22 (3) The age of the person at the time of the conviction;

23 (4) The circumstances surrounding the commission of the crime, if known;

24 (5) The nexus between the criminal conduct of the person and job duties of  
25 the person;

26 (6) The prison, jail, probation, parole, rehabilitation, and employment  
27 records of the person since the date the crime was committed; and

28 (7) The subsequent commission by the person of a crime listed in  
29 subsection (a) of this section.

30 (e) The Department of Human Resources may deny employment to or dismiss a  
31 covered person who refuses to consent to a criminal history record check or use of  
32 fingerprints or other identifying information required by the State or National  
33 Repositories of Criminal Histories. Any such refusal shall constitute just cause for the  
34 employment denial or the dismissal from employment.

35 (f) The Department of Human Resources may extend a conditional offer of  
36 employment pending the results of a criminal history record check authorized by this  
37 section."

38 Section 2. The Department of Human Resources shall use funds available to  
39 cover the costs of implementing Section 1 of this act.

40 Section 3. This act becomes effective October 1, 1997.