

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1659

Short Title: Criminal History Checks/DPI Employees.

(Public)

Sponsors: Representative Fisher.

Referred to: State Personnel, if favorable, Judiciary II.

April 19, 2007

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING CRIMINAL HISTORY RECORD CHECKS OF
3 EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE
4 DEPARTMENT OF PUBLIC INSTRUCTION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 114 of the General Statutes is amended by adding a
7 new section to read:

8 **"§ 114-19.20. Criminal history record checks of employees of and applicants for**
9 **employment with the Department of Public Instruction.**

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

11 (1) "Covered person" means any of the following:

12 a. An applicant for employment or a current employee in a
13 position in the Department of Public Instruction who has direct
14 or indirect ability to access Public Instruction records,
15 documents, or electronic data.

16 b. A person who supervises positions in the Department of Public
17 Instruction with direct or indirect ability to access Public
18 Instruction records, documents, or electronic data.

19 c. An applicant for employment or a current employee in a
20 position in the Department of Public Instruction.

21 d. An independent contractor or an employee of an independent
22 contractor that has contracted to provide services to the
23 Department of Public Instruction.

24 (2) "Criminal history" means a State or federal history of conviction of a
25 crime, whether a misdemeanor or felony, that bears upon a covered
26 person's fitness for employment in the Department of Public
27 Instruction. The crimes include, but are not limited to, criminal
28 offenses as set forth in any of the following Articles of Chapter 14 of
29 the General Statutes: Article 5, Counterfeiting and Issuing Monetary

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

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

1 (c) All releases of criminal history information to the Department of Public
2 Instruction shall be subject to, and in compliance with, rules governing the
3 dissemination of criminal history record checks as adopted by the North Carolina
4 Division of Criminal Information. All of the information either department receives
5 through the checking of the criminal history is privileged information and for the
6 exclusive use of that department.

7 (d) If the covered person's verified criminal history record check reveals one or
8 more convictions covered under subsection (a) of this section, then the conviction shall
9 constitute just cause for not selecting the person for employment, or for dismissing the
10 person from current employment with the Department of Public Instruction. The
11 conviction shall not automatically prohibit employment; however, the following factors
12 shall be considered by the Department of Public Instruction in determining whether
13 employment shall be denied:

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

15 (2) The date of the crime;

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

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

19 (5) The nexus between the criminal conduct of the person and job duties
20 of the person;

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

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

25 (e) The Department of Public Instruction may deny employment to or dismiss a
26 covered person who refuses to consent to a criminal history record check or use of
27 fingerprints or other identifying information required by the State or National
28 Repositories of Criminal Histories. Any such refusal shall constitute just cause for the
29 employment denial or the dismissal from employment.

30 (f) The Department of Public Instruction may extend a conditional offer of
31 employment pending the results of a criminal history record check authorized by this
32 section."

33 **SECTION 2.** This act becomes effective October 1, 2007.