

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1055

Rules and Operations of the Senate Committee Substitute Adopted 4/29/97

House Committee Substitute Favorable 6/26/97

Short Title: Public Hospital Personnel Act.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE PUBLIC HOSPITAL PERSONNEL ACT AND
AMENDING THE LAW GOVERNING DISPOSAL OF FETAL REMAINS.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "Public Hospital Personnel Act of 1997".

Section 2. Chapter 131E of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15A.

"PUBLIC HOSPITAL PERSONNEL ACT.

"§ 131E-257. Title; purpose; applicability of other laws; 'public hospital' defined.

(a) This Article shall be known and may be cited as the 'Public Hospital Personnel Act'.

(b) The purpose of this Article is to protect the privacy of the personnel records of public hospital employees and to authorize public hospitals to determine employee compensation and personnel policies and to establish employee benefit plans.

(c) Unless otherwise provided, none of the provisions of Part 4, Article 5, Chapter 153A and Part 4, Article 7, Chapter 160A shall apply to public hospitals.

1 (d) If any provision of this Article is inconsistent with any provision of any other
2 law, the provision of this Article shall be controlling.

3 (e) As used in this Article, unless the context clearly indicates otherwise, the term
4 'public hospital' has the same meaning as in G.S. 159-39.

5 **"§ 131E-257.1. Compensation; personnel policies; employee benefits plans.**

6 (a) A public hospital shall determine the pay, expense allowances, and other
7 compensation of its officers and employees, and may establish position classification and
8 pay plans and incentive compensation plans.

9 (b) A public hospital may:

10 (1) Adopt personnel policies and procedures regarding, without limitation,
11 vacations, personal leave, service award programs, other personnel
12 policies and procedures, and any other measures that enhance the ability
13 of a public hospital to hire and retain employees.

14 (2) Determine the work hours, workdays, and holidays applicable to its
15 employees.

16 (3) Establish and pay all or part of the cost of benefit plans for its
17 employees and former employees, including without limitation, life,
18 health and disability plans, pension, profit sharing, deferred
19 compensation and other retirement plans, and other fringe benefit plans.

20 (4) Pay severance payments and provide other employee severance benefits
21 to its employees and former employees pursuant to a severance plan
22 established in connection with a reduction in the size of the workforce
23 of a public hospital or, with respect to an individual employee, pursuant
24 to an employment agreement entered into prior to the date the employee
25 receives notice of termination of employment.

26 (c) The provisions of G.S. 159-30 and G.S. 159-31 are not applicable to public
27 hospitals with respect to the investment of escrowed or trustee retirement and deferred
28 compensation funds. Public hospitals may invest such escrowed and trustee funds in
29 property or securities in which trustees, guardians, personal representatives, and others
30 acting in a fiduciary capacity may legally invest funds under their control.

31 **"§ 131E-257.2. Privacy of employee personnel records.**

32 (a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local
33 act concerning access to public records, personnel files of employees and applicants for
34 employment maintained by a public hospital are subject to inspection and may be
35 disclosed only as provided by this section. For purposes of this section, an employee's
36 personnel file consists of any information in any form gathered by the public hospital
37 with respect to an employee and, by way of illustration but not limitation, relating to the
38 employee's application, selection or nonselection, performance, promotions, demotions,
39 transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and
40 termination of employment. As used in this section, 'employee' includes both current and
41 former employees of a public hospital.

42 (b) The following information with respect to each public hospital employee is a
43 matter of public record:

- 1 (1) Name.
- 2 (2) Age.
- 3 (3) Date of original employment.
- 4 (4) Current position title, current salary, and the date and amount of the
5 most recent increase or decrease in salary.
- 6 (5) Date of the most recent promotion, demotion, transfer, suspension,
7 separation or other change in position classification.
- 8 (6) The office to which the employee is currently assigned.

9 In addition, the following information with respect to each licensed medical provider
10 employed by or having privileges to practice in a public hospital shall be a matter of
11 public record: educational history and qualifications, date and jurisdiction or original and
12 current licensure; and information relating to medical board certifications or other
13 qualifications of medical specialists.

14 The governing board of a public hospital shall determine in what form and by whom
15 this information will be maintained. Any person may have access to this information for
16 the purpose of inspection, examination, and copying, during regular business hours,
17 subject only to such rules and regulations for the safekeeping of public records as the
18 governing board of the public hospital may have adopted. Any person denied access to
19 this information may apply to the appropriate division of the General Court of Justice for
20 an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

21 (c) All information contained in a public hospital employee's personnel file, other
22 than the information made public by subsection (b) of this section, is confidential and
23 shall be open to inspection only in the following instances:

- 24 (1) The employee or the employee's duly authorized agent may examine all
25 portions of the employee's personnel file, except letters of reference
26 solicited prior to employment.
- 27 (2) A licensed physician designated in writing by the employee may
28 examine the employee's medical record.
- 29 (3) A public hospital employee having supervisory authority over the
30 employee may examine all material in the employee's personnel file.
- 31 (4) By order of a court of competent jurisdiction, any person may examine
32 such portion of an employee's personnel file as may be ordered by the
33 court.
- 34 (5) An official of an agency of the State or federal government, or any
35 political subdivision of the State, may inspect any portion of a personnel
36 file when the inspection is deemed by the person having custody of the
37 file to be inspected to be necessary and essential to the pursuance of a
38 proper function of the inspecting agency, but no information shall be
39 divulged for the purpose of assisting in criminal prosecution of the
40 employee, or for the purpose of assisting in an investigation of the
41 employee's tax liability. However, the official having custody of the
42 records may release the name, address, and telephone number from a
43 personnel file for the purpose of assisting in a criminal investigation.

1 (6) An employee may sign a written release, to be placed with the
2 employee's personnel file, that permits the person with custody of the
3 file to provide, either in person, by telephone, or by mail, information
4 specified in the release to prospective employers, educational
5 institutions, or other persons specified in the release.

6 (d) Even if considered part of an employee's personnel file, the following
7 information need not be disclosed to an employee nor to any other person:

8 (1) Testing or examination material used solely to determine individual
9 qualifications for appointment, employment, or promotion in the public
10 hospital's service, when disclosure would compromise the objectivity or
11 the fairness of the testing or examination process.

12 (2) Investigative reports or memoranda and other information concerning
13 the investigation of possible criminal actions of an employee, until the
14 investigation is completed and no criminal action taken, or until the
15 criminal action is concluded.

16 (3) Information that might identify an undercover law enforcement officer
17 or a law enforcement informer.

18 (4) Notes, preliminary drafts, and internal communications concerning an
19 employee. In the event such materials are used for any official
20 personnel decision, then the employee or his duly authorized agent shall
21 have a right to inspect such materials.

22 (e) The governing board of a public hospital may permit access, subject to
23 limitations they may impose, to selected personnel files by a professional representative
24 of a training, research, or academic institution if that representative certifies that he or she
25 will not release information identifying the employees whose files are opened and that
26 the information will be used solely for statistical, research, or teaching purposes. This
27 certification shall be retained by the public hospital as long as each personnel file so
28 examined is retained.

29 (f) The governing board of a public hospital that maintains personnel files
30 containing information other than the information mentioned in subsection (b) of this
31 section shall establish procedures whereby an employee who objects to material in his or
32 her file on grounds that it is inaccurate or misleading may seek to have the material
33 removed from the file or may place in the file a statement relating to the material.

34 (g) A public hospital director, trustee, officer, or employee who knowingly,
35 willfully, and with malice permits any person to have access to information contained in
36 a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor;
37 however, conviction under this subsection shall be punishable only by a fine not to
38 exceed five hundred dollars (\$500.00).

39 (h) Any person not specifically authorized by this section to have access to a
40 personnel file designated as confidential, who shall knowingly and willfully examine in
41 its official filing place, or remove, or copy any portion of a confidential personnel file
42 shall be guilty of a Class 3 misdemeanor; however, conviction under this subsection shall

1 be punishable, in the discretion of the court, by a fine not to exceed five hundred dollars
2 (\$500.00)."

3 Section 3. G.S. 131E-97.1(b) is repealed.

4 Section 4. G.S. 130A-131.10 reads as rewritten:

5 "**§ 130A-131.10. Manner of disposition of remains of ~~terminated~~ pregnancies.**

6 (a) The Commission for Health Services shall adopt rules to ensure that all
7 facilities authorized to terminate pregnancies, and all medical or research laboratories or
8 facilities to which the remains of terminated pregnancies are sent by facilities authorized
9 to terminate pregnancies, shall dispose of the remains in a manner limited to burial,
10 cremation, ~~or~~ or, except as prohibited by subsection (b) of this section, approved hospital
11 type of incineration. Rules adopted pursuant to this section shall provide that the obligation to
12 dispose of the remains of terminated pregnancies by a facility authorized to terminate
13 pregnancies ceases as to any remains of terminated pregnancies that the facility has sent to a
14 medical or research laboratory or facility.

15 (b) A hospital or other medical facility or a medical or research laboratory or
16 facility shall dispose of the remains of a recognizable fetus only by burial or cremation.
17 The Commission shall adopt rules to implement this subsection.

18 (c) A hospital or other medical facility is relieved from the obligation to
19 dispose of the remains in accordance with subsections (a) and (b) of this section if it
20 sends the remains to a medical or research laboratory or facility.

21 (d) This section does not impose liability on a permitted medical waste treatment
22 facility for a hospital's or other medical facility's violation of this section nor does it
23 impose any additional duty on the treatment facility to inspect waste received from the
24 hospital or medical facility to determine compliance with this section."

25 Section 5. Section 4 of this act becomes effective October 1, 1997. The
26 remainder of this act is effective when it becomes law.