

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 799

Short Title: Discipline Disclosure Act.

(Public)

Sponsors: Senators Cooper and Hoyle.

Referred to: Judiciary.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC
EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL
RECORDS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 132 of the General Statutes is amended by
adding a new section to read:

"§ 132-1.5. Public employee's personnel records.

(a) In order to maintain the confidence in the fitness and performance of public employees who work in the public interest and are paid from public funds, it is the policy of this State to have open access to employee records that pertain to the employee's job performance and qualifications for that job.

(b) Each department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority shall maintain a record of each of its employees, showing the following information with respect to each such public employee: name, age, date of original employment or appointment to the service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other

1 change in position classification, and the office or station to which the public employee is
2 currently assigned. Such information is a public record.

3 (c) A public employee's employment application and any resume, personal history,
4 recommendation, or other information submitted by or on behalf of the public employee
5 in support thereof, are public records.

6 (d) Records related to any personnel action imposed upon a public employee,
7 including, but not limited to, separation, suspension, demotion, reprimand, warning, or
8 transfer, are public records. At a minimum, every supervisor shall place in the public
9 employee's personnel record a written summary of the personnel action imposed upon the
10 public employee, including the circumstances that led to the personnel action, the nature
11 of the action taken, and the effective dates of the action.

12 (e) The names of public employees who provide information confidentially to
13 persons investigating whether to bring a personnel action against a public employee are
14 not public records unless the names are otherwise publicly disclosed.

15 (f) All records related to commendations or awards bestowed upon public
16 employees are public records; provided, however, that such records may be withheld
17 from public inspection until the commendation or award has been received by or
18 bestowed upon the public employee.

19 (g) Once a public employee has been the subject of a personnel action, including,
20 but not limited to, separation, suspension, demotion, reprimand, warning, or transfer, all
21 records of that public employee's performance, including evaluations or appraisals, are
22 public records.

23 (h) Subject only to rules and regulations for the safekeeping of the records,
24 adopted by the appropriate oversight body, every person having custody of such
25 personnel records shall permit them to be inspected and examined during regular business
26 hours. Any person who is denied access to any such record for the purpose of inspecting,
27 examining, or copying the same shall have a right to compel compliance with the
28 provisions of this section by application to a court of competent jurisdiction for a writ of
29 mandamus or other appropriate relief.

30 (i) For purposes of this section, 'public employee' shall mean any employee,
31 former employee, or applicant for employment by any department, agency, institution,
32 commission, or bureau of the State of North Carolina, any employee of The University of
33 North Carolina or its constituent institutions, any public hospital employee or any
34 employee of any county or municipality, local board of education, or area mental health
35 authority."

36 Section 2. G.S. 115C-319, 115C-320, 115D-27, 115D-28, 122C-158(a), 122C-
37 158(b), 126-23, 153A-98(a), 153A-98(b), 160A-168(a), 160A-168(b), and 162A-6.1 are
38 repealed.

39 Section 3. G.S. 115C-321 reads as rewritten:

40 **"§ 115C-321. Confidential information in personnel files; access to information.**

41 All information contained in a personnel file, except as otherwise provided in G.S.
42 132-1.5 or in this Chapter, is confidential and shall not be open for inspection and
43 examination except to the following persons:

- 1 (1) The employee, applicant for employment, former employee, or his
- 2 properly authorized agent, who may examine his own personnel file at
- 3 all reasonable times in its entirety except for letters of reference
- 4 solicited prior to employment;
- 5 (2) The superintendent and other supervisory personnel;
- 6 (3) Members of the local board of education and the board's attorney;
- 7 (4) A party by authority of a subpoena or proper court order may inspect
- 8 and examine a particular confidential portion of an employee's
- 9 personnel file.

10 Notwithstanding any other provision of this Chapter, any superintendent may, in his
11 discretion, or shall at the direction of the Board of Education, inform any person or
12 corporation of any promotion, demotion, suspension, reinstatement, transfer, separation,
13 dismissal, employment or nonemployment of any applicant, employee or former
14 employee employed by or assigned to the local board of education or whose personnel
15 file is maintained by the board and the reasons therefor and may allow the personnel file
16 of the person or any portion to be inspected and examined by any person or corporation
17 provided that the board has determined that the release of the information or the
18 inspection and examination of the file or any portion is essential to maintaining the
19 integrity of the board or to maintaining the level or quality of services provided by the
20 board; provided, that prior to releasing the information or making the file or any portion
21 available as provided herein, the superintendent shall prepare a memorandum setting
22 forth the circumstances which he and the board deem to require the disclosure and the
23 information to be disclosed. The memorandum shall be retained in the files of the
24 superintendent and shall be a public record."

25 Section 4. G.S. 17C-7(c) reads as rewritten:

26 "(c) Any papers, documents, or other records which become the property of the
27 Commission that are placed in the criminal justice officer's personnel file maintained by
28 the Commission shall be subject to the same disclosure requirements as set forth in
29 ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 regarding the privacy of
30 personnel records."

31 Section 5. G.S. 74E-5(b) reads as rewritten:

32 "(b) Any papers, documents, or other records that become the property of the
33 Company Police Program and are placed in a company police officer's personnel file
34 maintained by the Attorney General are subject to the same restrictions concerning
35 disclosure as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5
36 for other personnel records."

37 Section 6. G.S. 115D-29 reads as rewritten:

38 **"§ 115D-29. Confidential information in personnel files; access to information.**

39 All information contained in a personnel file, except as otherwise provided in this
40 ~~Article, Article~~ or in G.S. 132-1.5, is confidential and shall not be open for inspection and
41 examination except to the following persons:

- 42 (1) The employee, applicant for employment, former employee, or his
- 43 properly authorized agent, who may examine his own personnel file at

1 all reasonable times in its entirety except for letters of reference
2 solicited prior to employment;

3 (2) The president and other supervisory personnel;

4 (3) Members of the board of trustees and the board's attorney;

5 (4) A party by authority of a subpoena or proper court order may inspect
6 and examine a particular confidential portion of an employee's
7 personnel file; and

8 (5) An official of an agency of the federal government, State government or
9 any political subdivision thereof. Such an official may inspect any
10 personnel records when such inspection is deemed by the college of the
11 employee, applicant, or former employee whose record is to be
12 inspected as necessary and essential to the pursuance of a proper
13 function of said agency; provided, however, that such information shall
14 not be divulged for purposes of assisting in a criminal prosecution, nor
15 for purposes of assisting in a tax investigation.

16 Notwithstanding any other provision of this Article, any president may, in his discretion,
17 or shall at the direction of the board of trustees, inform any person or corporation of any
18 promotion, demotion, suspension, reinstatement, transfer, separation, dismissal,
19 employment or nonemployment of any applicant, employee or former employee
20 employed by or assigned to the board of trustees or whose personnel file is maintained by
21 the board and the reasons therefor and may allow the personnel file of the person or any
22 portion to be inspected and examined by any person or corporation provided that the
23 board has determined that the release of the information or the inspection and
24 examination of the file or any portion is essential to maintaining the integrity of the board
25 or to maintaining the level or quality of services provided by the board; provided, that
26 prior to releasing the information or making the file or any portion available as provided
27 herein, the president shall prepare a memorandum setting forth the circumstances which
28 he and the board deem to require the disclosure and the information to be disclosed. The
29 memorandum shall be retained in the files of the president and shall be a public record."

30 Section 7. This act becomes effective January 1, 1998.