

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 708
Judiciary II Committee Substitute Adopted 4/23/03
House Committee Substitute Favorable 5/27/03

Short Title: Fire Dept. Crim. Background Checks.

(Public)

Sponsors:

Referred to:

April 2, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE
3 MEMBERS OF FIRE DEPARTMENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 4 of Chapter 114 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 114-19.12. Criminal history record checks of applicants to fire departments.**

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

9 (1) "Applicant" means an applicant for a paid or volunteer position with a
10 fire department in a unit of local government.

11 (2) "Criminal history" means a State or federal history of conviction of a
12 crime, whether a misdemeanor or felony, that bears upon a covered
13 person's fitness for holding a paid or volunteer position with a fire
14 department. The crimes include, but are not limited to, criminal
15 offenses as set forth in any of the following Articles of Chapter 14 of
16 the General Statutes: Article 5, Counterfeiting and Issuing Monetary
17 Substitutes; Article 5A, Endangering Executive and Legislative
18 Officers; Article 6, Homicide; Article 7A, Rape and Other Sex
19 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction;
20 Article 13, Malicious Injury or Damage by Use of Explosive or
21 Incendiary Device or Material; Article 14, Burglary and Other
22 Housebreakings; Article 15, Arson and Other Burnings; Article 16,
23 Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,
24 False Pretenses and Cheats; Article 19A, Obtaining Property or
25 Services by False or Fraudulent Use of Credit Device or Other Means;
26 Article 19B, Financial Transaction Card Crime Act; Article 20,
27 Frauds; Article 21, Forgery; Article 26, Offenses Against Public
28 Morality and Decency; Article 26A, Adult Establishments; Article 27,

1 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
2 Misconduct in Public Office; Article 35, Offenses Against the Public
3 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection
4 of Minors; Article 40, Protection of the Family; Article 59, Public
5 Intoxication; and Article 60, Computer-Related Crime. The crimes
6 also include possession or sale of drugs in violation of the North
7 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the
8 General Statutes, and alcohol-related offenses such as sale to underage
9 persons in violation of G.S. 18B-302, or driving while impaired in
10 violation of G.S. 20-138.1 through G.S. 20-138.5.

11 (b) When requested by a designated local Homeland Security director or, when
12 there is no designated local Homeland Security director, by a local law enforcement
13 agency, the North Carolina Department of Justice may provide to the requesting director
14 or agency an applicant's criminal history from the State and National Repositories of
15 Criminal Histories. The local Homeland Security director or local law enforcement
16 agency shall provide to the North Carolina Department of Justice the fingerprints of the
17 applicant to be checked, any additional information required by the Department of
18 Justice, and a form signed by the applicant to be checked consenting to the check of the
19 criminal record and to the use of fingerprints and other identifying information required
20 by the State or National Repositories. The fingerprints of the individual shall be
21 forwarded to the State Bureau of Investigation for a search of the State criminal history
22 record file, and the State Bureau of Investigation shall forward a set of fingerprints to
23 the Federal Bureau of Investigation for a national criminal history record check. The
24 local Homeland Security director or local law enforcement agency shall keep all
25 information pursuant to this section confidential. The Department of Justice shall charge
26 a reasonable fee for conducting the checks of the criminal history records authorized by
27 this section.

28 (c) All releases of criminal history information to the local Homeland Security
29 director or local law enforcement agency shall be subject to, and in compliance with,
30 rules governing the dissemination of criminal history record checks as adopted by the
31 North Carolina Division of Criminal Information. All of the information the local
32 Homeland Security director or local law enforcement agency receives through the
33 checking of the criminal history is privileged information and for the exclusive use of
34 that director or agency.

35 (d) If the applicant's verified criminal history record check reveals one or more
36 convictions covered under subdivision (a)(2) of this section, then the conviction shall
37 constitute just cause for not selecting the applicant for the position or for dismissing the
38 person from a current position with the local fire department. The conviction shall not
39 automatically prohibit volunteering or employment; however, the following factors shall
40 be considered by the local Homeland Security director or local law enforcement agency
41 in determining whether the position shall be denied:

- 42 (1) The level and seriousness of the crime;
- 43 (2) The date of the crime;
- 44 (3) The age of the person at the time of the conviction;

- 1 (4) The circumstances surrounding the commission of the crime, if
2 known;
3 (5) The nexus between the criminal conduct of the person and the duties
4 of the person;
5 (6) The prison, jail, probation, parole, rehabilitation, and employment
6 records of the person since the date the crime was committed; and
7 (7) The subsequent commission by the person of a crime listed in
8 subsection (a) of this section.
9 (e) The local fire department may deny the applicant the position or dismiss an
10 applicant who refuses to consent to a criminal history record check or use of fingerprints
11 or other identifying information required by the State or National Repositories of
12 Criminal Histories. This refusal constitutes just cause for the denial of the position or
13 the dismissal from the position.
14 (f) The local fire department may extend a conditional offer of the position
15 pending the results of a criminal history record check authorized by this section."
16 **SECTION 2.** This act is effective when it becomes law.