

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1322

Short Title: Fire Chiefs Can Request Criminal Histories. (Public)

Sponsors: Representatives Clary, Moore (Primary Sponsors); Brown, Current, Faison, Hurley, Pate, Setzer, Spear, and Walker.

Referred to: Judiciary I.

April 5, 2007

A BILL TO BE ENTITLED

1
2 AN ACT PROVIDING LOCAL FIRE CHIEFS WITH THE AUTHORITY TO
3 REQUEST CRIMINAL HISTORIES FROM THE DEPARTMENT OF JUSTICE
4 FOR APPLICANTS TO FIRE DEPARTMENTS IN UNITS OF LOCAL
5 GOVERNMENT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 114-19.12 reads as rewritten:

8 **"§ 114-19.12. Criminal history record checks of applicants to fire departments.**

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

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

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

1 Morality and Decency; Article 26A, Adult Establishments; Article 27,
2 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
3 Misconduct in Public Office; Article 35, Offenses Against the Public
4 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection
5 of Minors; Article 40, Protection of the Family; Article 59, Public
6 Intoxication; and Article 60, Computer-Related Crime. The crimes
7 also include possession or sale of drugs in violation of the North
8 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the
9 General Statutes, and alcohol-related offenses such as sale to underage
10 persons in violation of G.S. 18B-302, or driving while impaired in
11 violation of G.S. 20-138.1 through G.S. 20-138.5.

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

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

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

1 agency director, local law enforcement agency, or local fire chief in determining whether
2 the position shall be denied:

- 3 (1) The level and seriousness of the crime;
- 4 (2) The date of the crime;
- 5 (3) The age of the person at the time of the conviction;
- 6 (4) The circumstances surrounding the commission of the crime, if
7 known;
- 8 (5) The nexus between the criminal conduct of the person and the duties
9 of the person;
- 10 (6) The prison, jail, probation, parole, rehabilitation, and employment
11 records of the person since the date the crime was committed; and
- 12 (7) The subsequent commission by the person of a crime listed in
13 subsection (a) of this section.

14 (e) The local fire department may deny the applicant the position or dismiss an
15 applicant who refuses to consent to a criminal history record check or use of fingerprints
16 or other identifying information required by the State or National Repositories of
17 Criminal Histories. This refusal constitutes just cause for the denial of the position or
18 the dismissal from the position.

19 (f) The local fire department may extend a conditional offer of the position
20 pending the results of a criminal history record check authorized by this section."

21 **SECTION 2.** This act is effective when it becomes law.