

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1659  
Committee Substitute Favorable 5/17/07

Short Title: Criminal History Checks/DPI Employees.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL HISTORY RECORD CHECKS OF  
EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE  
DEPARTMENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

b. An independent contractor or an employee of an independent  
contractor that has contracted to provide services to the  
Department of Public Instruction.

(2) "Criminal history" means a State or federal history of conviction of a  
crime, whether a misdemeanor or felony, that bears upon a covered  
person's fitness for employment in the Department of Public  
Instruction. The crimes include, but are not limited to, criminal  
offenses as set forth in any of the following Articles of Chapter 14 of  
the General Statutes: Article 5, Counterfeiting and Issuing Monetary  
Substitutes; Article 5A, Endangering Executive and Legislative  
Officers; Article 6, Homicide; Article 7A, Rape and Other Sex  
Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction;  
Article 13, Malicious Injury or Damage by Use of Explosive or  
Incendiary Device or Material; Article 14, Burglary and Other  
Housebreakings; Article 15, Arson and Other Burnings; Article 16,  
Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,

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

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

37 (c) All releases of criminal history information to the Department of Public  
38 Instruction shall be subject to, and in compliance with, rules governing the  
39 dissemination of criminal history record checks as adopted by the North Carolina  
40 Division of Criminal Information. All of the information either department receives  
41 through the checking of the criminal history is privileged information and for the  
42 exclusive use of that department.

43 (d) If the covered person's verified criminal history record check reveals one or  
44 more convictions covered under subsection (a) of this section, then the conviction shall

1 constitute just cause for not selecting the person for employment, or for dismissing the  
2 person from current employment with the Department of Public Instruction. The  
3 conviction shall not automatically prohibit employment; however, the following factors  
4 shall be considered by the Department of Public Instruction in determining whether  
5 employment shall be denied:

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

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

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

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