

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1659  
Committee Substitute Favorable 5/17/07  
Senate Judiciary II (Criminal) Committee Substitute Adopted 7/23/07

Short Title: Criminal History Checks/DPI Employees. (Public)

Sponsors:

Referred to:

April 19, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING CRIMINAL HISTORY RECORD CHECKS OF  
3 EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE  
4 DEPARTMENT OF PUBLIC INSTRUCTION.

5 The General Assembly of North Carolina enacts:

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

8 **§ 114-19.21. Criminal history record checks of employees of and applicants for**  
9 **employment with the Department of Public Instruction.**

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

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

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

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

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

1            Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,  
2            False Pretenses and Cheats; Article 19A, Obtaining Property or  
3            Services by False or Fraudulent Use of Credit Device or Other Means;  
4            Article 19B, Financial Transaction Card Crime Act; Article 20,  
5            Frauds; Article 21, Forgery; Article 26, Offenses Against Public  
6            Morality and Decency; Article 26A, Adult Establishments; Article 27,  
7            Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,  
8            Misconduct in Public Office; Article 35, Offenses Against the Public  
9            Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection  
10           of Minors; Article 40, Protection of the Family; Article 59, Public  
11           Intoxication; and Article 60, Computer-Related Crime. The crimes  
12           also include possession or sale of drugs in violation of the North  
13           Carolina Controlled Substances Act, Article 5 of Chapter 90 of the  
14           General Statutes, and alcohol-related offenses such as sale to underage  
15           persons in violation of G.S. 18B-302, or driving while impaired  
16           violation of G.S. 20-138.1 through G.S. 20-138.5.

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

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

1        (d) If the covered person's verified criminal history record check reveals one or  
2 more convictions covered under subsection (a) of this section, then the conviction shall  
3 constitute just cause for not selecting the person for employment, or for dismissing the  
4 person from current employment with the Department of Public Instruction. The  
5 conviction shall not automatically prohibit employment; however, the following factors  
6 shall be considered by the Department of Public Instruction in determining whether  
7 employment shall be denied:

8            (1) The level and seriousness of the crime;

9            (2) The date of the crime;

10           (3) The age of the person at the time of the conviction;

11           (4) The circumstances surrounding the commission of the crime, if  
12 known;

13           (5) The nexus between the criminal conduct of the person and job duties  
14 of the person;

15           (6) The prison, jail, probation, parole, rehabilitation, and employment  
16 records of the person since the date the crime was committed; and

17           (7) The subsequent commission by the person of a crime listed in  
18 subsection (a) of this section.

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

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

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