

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 223

Short Title: Sch. Emp'ee Record Checks.

(Public)

Sponsors: Senators Winner; Dannelly, Gulley, Blackmon, Simpson, Odom, Conder, and Foxx.

Referred to: Judiciary I/Constitution.

February 16, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CRIMINAL RECORD CHECKS OF PUBLIC SCHOOL
3 EMPLOYEES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 22 of Chapter 115C of the General Statutes is amended by
6 adding a new Part to read:

7 **"PART 6. CRIMINAL HISTORY CHECKS.**

8 **"§ 115C-332. School personnel criminal history checks.**

9 (a) As used in this section:

10 (1) 'Criminal history' means a county, State, or federal criminal history of
11 conviction of a crime, whether a misdemeanor or a felony, that indicates
12 the employee (i) poses a threat to the physical safety of students or
13 personnel, or (ii) has demonstrated that he or she does not have the
14 integrity or honesty to fulfill his or her duties as public school
15 personnel. Such a crime includes the following North Carolina crimes
16 contained in any of the following Articles of Chapter 14 of the General
17 Statutes: Article 5A, Endangering Executive and Legislative Officers;
18 Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8,
19 Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious

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

18 (2) 'School personnel' means any:

- 19 a. Employee of a local board of education whether full-time or part-
20 time, or
21 b. Independent contractor or employee of an independent contractor
22 of a local board of education, if the independent contractor
23 carries out duties customarily performed by school personnel,
24 whether paid with federal, State, local, or other funds, who has
25 significant access to students. School personnel includes substitute
26 teachers, driver training teachers, bus drivers, clerical staff, and
27 custodians.

28 (b) Each local board of education shall adopt a policy on whether and under what
29 circumstances an applicant for a school personnel position shall be required to be
30 checked for a criminal history before the applicant is offered an unconditional job. Each
31 local board of education shall apply its policy uniformly in requiring applicants for
32 school personnel positions to be checked for a criminal history. A local board of
33 education that requires a criminal history check for an applicant may employ an applicant
34 conditionally while the board is checking the person's criminal history and making a
35 decision based on the results of the check.

36 A local board of education shall not require an applicant to pay for the criminal
37 history check authorized under this subsection.

38 (c) The Department of Justice shall provide to the local board of education the
39 criminal history from the State and National Repositories of Criminal Histories of any
40 applicant for a school personnel position in the local school administrative unit for which
41 a local board of education requires a criminal history check. The local board of education
42 shall require the person to be checked by the Department of Justice to (i) be fingerprinted
43 by the local sheriff or the municipal police, whichever is more convenient for the person,

1 (ii) provide to the local sheriff or the municipal police any additional information
2 required by the Department of Justice, and (iii) sign a form consenting to the check of the
3 criminal record and to the use of fingerprints and other identifying information required
4 by the repositories. The local board of education shall consider refusal to consent when
5 making employment decisions and decisions with regard to independent contractors.

6 The local board of education shall not require an applicant to pay for being
7 fingerprinted.

8 (d) The local board of education shall investigate the criminal history it receives
9 on a person. The local board shall determine whether the results of the investigation
10 indicate that the employee (i) poses a threat to the physical safety of students or
11 personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to
12 fulfill his or her duties as public school personnel and shall use the information when
13 making employment decisions and decisions with regard to independent contractors. The
14 local board shall make written findings with regard to how it used the information when
15 making employment decisions and decisions with regard to independent contractors.

16 (e) The local board of education shall provide to the State Board of Education the
17 criminal history it receives on a person who is certificated, certified, or licensed by the
18 State Board of Education. The State Board of Education shall investigate the criminal
19 history and determine whether the person's certificate or license should be revoked in
20 accordance with State laws and rules regarding revocation.

21 (f) All the information received by the local board of education through the
22 checking of the criminal history or by the State Board of Education in accordance with
23 subsection (d) of this section is privileged information and for the exclusive use of the
24 local board of education or the State Board of Education. The local board of education or
25 the State Board of Education may destroy the information after it is used for the purposes
26 authorized by this section after one calendar year.

27 (g) No action for civil or criminal liability shall be brought against a local board of
28 education or the State Board of Education as a result of actions taken to carry out its
29 duties under this section if the local board of education or the State Board of Education
30 was acting in good faith and in accordance with this section and the rules established
31 pursuant to it."

32 Sec. 2. G.S. 114-19.2(a) reads as rewritten:

33 "(a) The Department of Justice may provide a criminal record check to the local
34 board of education of a person who is employed in a public school in that local school
35 district or of a person who has applied for employment in a public school in that local
36 school district, if the employee or applicant consents to the record check. The
37 Department may also provide a criminal record check of school personnel as defined in
38 G.S. 115C-332 by fingerprint card to the local board of education from National
39 Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information
40 shall be kept confidential by the local board of education as provided in Article 21A of
41 Chapter 115C."

1 Sec. 3. The State Board of Education, in consultation with the Division of
2 Criminal Information of the Department of Justice, shall adopt rules to implement this
3 act.

4 Sec. 4. For the 1995-96 fiscal year, the fee charged for being fingerprinted by
5 local law enforcement agencies in accordance with Section 1 of this act shall not exceed
6 the current rate of five dollars (\$5.00).

7 Sec. 5. This act becomes effective July 1, 1995.