

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

2

HOUSE BILL 409
Committee Substitute Favorable 4/11/17

Short Title: State Agencies/Adjust Hiring Practices.

(Public)

Sponsors:

Referred to:

March 21, 2017

1 A BILL TO BE ENTITLED
2 AN ACT DIRECTING STATE AGENCIES TO ADJUST EMPLOYMENT PRACTICES TO
3 REDUCE BARRIERS TO EMPLOYMENT FOR INDIVIDUALS WITH A CRIMINAL
4 HISTORY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 6 of Chapter 126 of the General Statutes is amended by
7 adding a new section to read:

8 "**§ 126-20. State agency hiring practices; criminal histories.**

9 (a) Definitions. – The following definitions apply in this section:

10 (1) Applicant. – Any individual considered for, or who requests to be considered
11 for, employment with the State or any current State employee considered
12 for, or who requests to be considered for, another position in State
13 employment.

14 (2) Criminal history. – A State or federal conviction of a crime, whether a
15 misdemeanor or felony, that bears upon an applicant's fitness for public
16 employment. The term includes a record of arrests that have not resulted in a
17 conviction and those that have resulted in a favorable disposition such as a
18 dismissal or a verdict of not guilty.

19 (3) Inquiry. – Any direct or indirect conduct intended to gather information,
20 using any mode of communication.

21 (b) Findings and Purpose. – The General Assembly finds that the ability to procure
22 meaningful employment is essential to reinstating good citizenship for individuals who have a
23 criminal record. The General Assembly declares that the State encourages the successful
24 reintegration of people with a criminal history and recognizes that reducing barriers to
25 employment for persons with a criminal history is a matter of statewide concern. The purpose
26 of this section is to implement hiring practices that will increase employment opportunities and
27 will reduce recidivism and improve community stability.

28 (c) Scope. – This section applies to all State agencies and positions in State government
29 employment, except that this section does not apply to any of the following:

30 (1) A public employer that is required by State or federal law to conduct a
31 criminal history inquiry as a preliminary qualification to be considered for
32 public employment.

33 (2) A position that includes law enforcement or public safety.

34 (3) A position that involves direct interaction with minors or the elderly.

35 (d) Applicant Criminal History. – An applicant shall not be asked to disclose, orally or
36 in writing, information concerning the applicant's criminal record or history, including any



1 inquiry on any employment application, until the applicant (i) has signed the appropriate waiver
2 authorizing release, (ii) is being considered for a specific position, and (iii) has received an
3 interview.

4 (e) Considerations. – If a background check has been lawfully completed and a criminal
5 history exists, the following criteria shall be considered by the State agency before either
6 proffering or denying an offer of employment:

7 (1) The nature and gravity of the offense.

8 (2) The length of time that has elapsed since the offense occurred.

9 (3) The age of the person at the time of the conviction.

10 (4) Whether the offense is reasonably related to the duties and responsibilities of
11 the employment sought by the applicant.

12 (5) Any information pertaining to the degree of rehabilitation that may have
13 taken place in the applicant.

14 The State agency must inform the applicant of the potential adverse employment decision
15 based on the background check report prior to a final decision and must provide the applicant
16 an opportunity to demonstrate that the applicant was not correctly identified in the background
17 check report or that the report is otherwise inaccurate.

18 (f) Record of Arrest. – A record of arrest that did not result in conviction shall not be
19 the basis for disqualification from public employment.

20 (g) Violations of This Section. – A grievance concerning an alleged violation of this
21 section may be brought by an applicant under G.S. 126-34.01 and G.S. 126-34.02.

22 (h) Data Collection. – The Office of State Human Resources shall do the following:

23 (1) Record and log the positions that are statutorily required to conduct
24 background checks prior to a conditional offer of employment.

25 (2) Conduct quarterly reviews to determine compliance with this Article and
26 make a report on all such reviews to the General Assembly annually.

27 (3) Collect, and make available to the public, data on:

28 a. The number of applicants for public employment with criminal
29 histories given conditional offers of employment.

30 b. The number of applicants for public employment with criminal
31 histories who are subsequently employed.

32 c. The retention rate of public employees with criminal histories.

33 (i) Non-State Employers. – The General Assembly encourages comparable hiring
34 practices among local governments and private employers operating in the State."

35 **SECTION 2.** G.S. 126-34.02(b) is amended by adding a new subdivision to read:

36 "(b) The following issues may be heard as contested cases after completion of the
37 agency grievance procedure and the Office of State Human Resources review:

38 ...

39 (7) Criminal history. – A grievance arising under G.S. 126-20 that is related to
40 an applicant's or State employee's criminal history."

41 **SECTION 3.** G.S. 126-5 is amended by adding a new subsection to read:

42 "(c14) Notwithstanding any other provision of this Chapter, the provisions of G.S. 126-20
43 apply to all State employees and applicants for State employment, except as specifically
44 excluded by that section."

45 **SECTION 4.** This act is effective when it becomes law and applies to positions
46 posted for State employment on or after that date.