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SENATE BILL 799  
Judiciary Committee Substitute Adopted 4/30/97  
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Short Title: Discipline Disclosure Act.

(Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 132 of the General Statutes is amended by adding a new section to read:

**"§ 132-1.5. Public employee's personnel records.**

(a) Each department, agency, institution, commission, bureau of the State of North Carolina, The University of North Carolina and its constituent institutions, public hospital, county, municipality, local board of education and area mental health authority shall maintain a record of each of its employees, showing the following information with respect to each such public employee: name, age, date of original employment or appointment to the service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the public employee is currently assigned. Such information is a public record.

1       **(b)** Information contained in a public employee's personnel record that  
2 demonstrates the employee's qualifications for the position held by a public employee is a  
3 public record. Such information includes, but is not limited to, educational degrees,  
4 previous employment experience, and the dates the public employee held previous  
5 relevant employment and dates of military service and highest rank attained. Letters of  
6 recommendation written on or after January 1, 1998, are public records so long as the  
7 person who writes the recommendation does not object in writing to public disclosure of  
8 the letter of recommendation. The use of the word 'confidential' on a letter of  
9 recommendation will suffice to keep said letter confidential.

10       **(c)** Records related to serious disciplinary actions imposed on a public employee  
11 are public records after the disciplinary determination by the public employer is final and  
12 all rights to administrative appeal by the public employee have been exhausted or waived.  
13 As used in this Article, serious disciplinary actions are dismissal, demotion, or  
14 suspension. At a minimum, every supervisor shall place in the public employee's  
15 personnel record a written summary of the serious disciplinary action imposed on the  
16 public employee, including the circumstances that led to the disciplinary action, the  
17 nature of the disciplinary action taken, and the effective dates of the disciplinary action.

18       **(d)** Information identifying the public employee who provides information  
19 confidentially to persons investigating whether to bring a disciplinary action against  
20 another public employee is not a public record.

21       **(e)** All records related to official commendations or awards bestowed upon public  
22 employees are public records; provided, however, that such records may be withheld  
23 from public inspection until the commendation or award has been received by or  
24 bestowed upon the public employee.

25       **(f)** Once two serious disciplinary actions have been imposed on a public employee  
26 within a three-year period, all records of that public employee's performance, including  
27 evaluations or appraisals, are public records.

28       **(g)** Subject only to rules and regulations for the safekeeping of the records,  
29 adopted by the appropriate oversight body, every person having custody of personnel  
30 records that are public records under this section shall permit them to be inspected and  
31 examined during regular business hours. Any person who is denied access to any such  
32 record for the purpose of inspecting, examining, or copying the same shall have a right to  
33 compel compliance with the provisions of this section by application to a court of  
34 competent jurisdiction for a writ of mandamus or other appropriate relief.

35       **(h)** Any person employed by a public agency acting in good faith to comply with  
36 the disclosure requirements of this section is not subject to liability.

37       **(i)** Any public employee may waive the confidentiality of the employee's  
38 personnel file by making a written request that the information in the file, or the records  
39 obtained as a result of an investigation of the employee, be made public.

40       **(j)** For purposes of this section, 'public employee' shall mean any employee,  
41 former employee, or applicant for employment by any department, agency, institution,  
42 commission, or bureau of the State of North Carolina, any employee of The University of  
43 North Carolina or its constituent institutions, any public hospital employee, or any

1 employee of any county or municipality, local board of education, or area mental health  
2 authority. For the purposes of this section 'public employer' shall mean any  
3 governmental entity employing a public employee."

4 Section 2. G.S. 115C-319, 115C-320, 115D-27, 115D-28, 122C-158(a), 122C-  
5 158(b), 126-23, 153A-98(a), 153A-98(b), 160A-168(a), 160A-168(b), 162A-6.1(a) and  
6 162A-6.1(b) are repealed.

7 Section 3. G.S. 115C-321 reads as rewritten:

8 **"§ 115C-321. Confidential information in personnel files; access to information.**

9 All information contained in a personnel file, except as otherwise provided in G.S.  
10 132-1.5 or in this Chapter, is confidential and shall not be open for inspection and  
11 examination except to the following persons:

- 12 (1) The employee, applicant for employment, former employee, or his  
13 properly authorized agent, who may examine his own personnel file at  
14 all reasonable times in its entirety except for letters of reference  
15 solicited prior to employment;
- 16 (2) The superintendent and other supervisory personnel;
- 17 (3) Members of the local board of education and the board's attorney;
- 18 (4) A party by authority of a subpoena or proper court order may inspect  
19 and examine a particular confidential portion of an employee's  
20 personnel file.

21 Notwithstanding any other provision of this Chapter, any superintendent may, in his  
22 discretion, or shall at the direction of the Board of Education, inform any person or  
23 corporation of any promotion, demotion, suspension, reinstatement, transfer, separation,  
24 dismissal, employment or nonemployment of any applicant, employee or former  
25 employee employed by or assigned to the local board of education or whose personnel  
26 file is maintained by the board and the reasons therefor and may allow the personnel file  
27 of the person or any portion to be inspected and examined by any person or corporation  
28 provided that the board has determined that the release of the information or the  
29 inspection and examination of the file or any portion is essential to maintaining the  
30 integrity of the board or to maintaining the level or quality of services provided by the  
31 board; provided, that prior to releasing the information or making the file or any portion  
32 available as provided herein, the superintendent shall prepare a memorandum setting  
33 forth the circumstances which he and the board deem to require the disclosure and the  
34 information to be disclosed. The memorandum shall be retained in the files of the  
35 superintendent and shall be a public record."

36 Section 4. G.S. 115C-325(b) reads as rewritten:

37 "(b) Personnel Files. – The superintendent shall maintain in his office a personnel  
38 file for each teacher that contains any complaint, commendation, or suggestion for  
39 correction or improvement about the teacher's professional conduct, except that the  
40 superintendent may elect not to place in a teacher's file (i) a letter of complaint that  
41 contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint  
42 when there is no documentation of an attempt to resolve the issue. The complaint,  
43 commendation, or suggestion shall be signed by the person who makes it and shall be

1 placed in the teacher's file only after five days' notice to the teacher. Any denial or  
2 explanation relating to such complaint, commendation, or suggestion that the teacher  
3 desires to make shall be placed in the file. Any teacher may petition the local board of  
4 education to remove any information from his personnel file that he deems invalid,  
5 irrelevant, or outdated. The board may order the superintendent to remove said  
6 information if it finds the information is invalid, irrelevant, or outdated.

7 The personnel file shall be open for the teacher's inspection at all reasonable times but  
8 shall be open to ~~other persons only in accordance with such rules and regulations as the~~  
9 ~~board adopts. Any preemployment data or other information obtained about a teacher~~  
10 ~~before his employment by the board may be kept in a file separate from his personnel file~~  
11 ~~and need not be made available to him. No data placed in the preemployment file may be~~  
12 ~~introduced as evidence at a hearing on the dismissal or demotion of a teacher. the public~~  
13 ~~only as provided for in G.S. 132-1.5."~~

14 Section 5. G.S. 17C-7(c) reads as rewritten:

15 "(c) Any papers, documents, or other records which become the property of the  
16 Commission that are placed in the criminal justice officer's personnel file maintained by  
17 the Commission shall be subject to the same disclosure requirements as set forth in  
18 ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 regarding the privacy of  
19 personnel records."

20 Section 6. G.S. 74E-5(b) reads as rewritten:

21 "(b) Any papers, documents, or other records that become the property of the  
22 Company Police Program and are placed in a company police officer's personnel file  
23 maintained by the Attorney General are subject to the same restrictions concerning  
24 disclosure as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5  
25 for other personnel records."

26 Section 7. G.S. 115D-29 reads as rewritten:

27 **"§ 115D-29. Confidential information in personnel files; access to information.**

28 All information contained in a personnel file, except as otherwise provided in this  
29 ~~Article, Article~~ or in G.S. 132-1.5, is confidential and shall not be open for inspection and  
30 examination except to the following persons:

- 31 (1) The employee, applicant for employment, former employee, or his  
32 properly authorized agent, who may examine his own personnel file at  
33 all reasonable times in its entirety except for letters of reference  
34 solicited prior to employment;
- 35 (2) The president and other supervisory personnel;
- 36 (3) Members of the board of trustees and the board's attorney;
- 37 (4) A party by authority of a subpoena or proper court order may inspect  
38 and examine a particular confidential portion of an employee's  
39 personnel file; and
- 40 (5) An official of an agency of the federal government, State government or  
41 any political subdivision thereof. Such an official may inspect any  
42 personnel records when such inspection is deemed by the college of the  
43 employee, applicant, or former employee whose record is to be

1 inspected as necessary and essential to the pursuance of a proper  
2 function of said agency; provided, however, that such information shall  
3 not be divulged for purposes of assisting in a criminal prosecution, nor  
4 for purposes of assisting in a tax investigation.

5 Notwithstanding any other provision of this Article, any president may, in his discretion,  
6 or shall at the direction of the board of trustees, inform any person or corporation of any  
7 promotion, demotion, suspension, reinstatement, transfer, separation, dismissal,  
8 employment or nonemployment of any applicant, employee or former employee  
9 employed by or assigned to the board of trustees or whose personnel file is maintained by  
10 the board and the reasons therefor and may allow the personnel file of the person or any  
11 portion to be inspected and examined by any person or corporation provided that the  
12 board has determined that the release of the information or the inspection and  
13 examination of the file or any portion is essential to maintaining the integrity of the board  
14 or to maintaining the level or quality of services provided by the board; provided, that  
15 prior to releasing the information or making the file or any portion available as provided  
16 herein, the president shall prepare a memorandum setting forth the circumstances which  
17 he and the board deem to require the disclosure and the information to be disclosed. The  
18 memorandum shall be retained in the files of the president and shall be a public record."

19 Section 8. G.S. 122C-158(c) reads as rewritten:

20 "(c) All information contained in an employee's personnel file, other than the  
21 information made public by G.S. 132-1.5, ~~subsection (b) of this section~~, is confidential and  
22 is open to inspection only in the following instances:

- 23 (1) The employee or an authorized agent may examine portions of his  
24 personnel file except (i) letters of reference solicited before  
25 employment, and (ii) information concerning a medical disability,  
26 mental or physical, that a prudent physician would not divulge to a  
27 patient.
- 28 (2) A licensed physician designated in writing by the employee may  
29 examine the employee's medical record.
- 30 (3) An area authority employee having supervisory authority over the  
31 employee may examine all material in the employee's personnel file.
- 32 (4) By order of a court of competent jurisdiction, any person may examine  
33 the part of an employee's personnel file that is ordered by the court.
- 34 (5) An official of an agency of the State or federal government, or any  
35 political subdivision of the State, may inspect any part of a personnel  
36 file pursuant to G.S. 122C-25(b) or G.S. 122C-192(a) or when the  
37 inspection is considered by the official having custody of the records to  
38 be inspected to be necessary and essential to the pursuance of a proper  
39 function of the inspecting agency. No information may be divulged for  
40 the purpose of assisting in a criminal prosecution of the employee or for  
41 the purpose of assisting in an investigation of the employee's tax  
42 liability. However, the official having custody of the records may

1 release the name, address, and telephone number from a personnel file  
2 for the purpose of assisting in a criminal investigation.

3 (6) An employee may sign a written release, to be placed with the  
4 employee's personnel file, that permits the person with custody of the  
5 file to provide, either in person, by telephone or by mail, information  
6 specified in the release to prospective employers, educational  
7 institutions, or other persons specified in the release.

8 (7) The area authority may tell any person of the employment or  
9 nonemployment, promotion, demotion, suspension, or other disciplinary  
10 action, reinstatement, transfer, or termination of an employee and the  
11 reasons for that personnel action. Before releasing the information, the  
12 area authority shall determine in writing that the release is essential to  
13 maintaining public confidence in the administration of services or to  
14 maintaining the level and quality of services. This written  
15 determination shall be retained as a record for public inspection and  
16 shall become part of the employee's personnel file."

17 Section 9. G.S. 126-24 reads as rewritten:

18 **"§ 126-24. Confidential information in personnel files; access to such information.**

19 All other information contained in a personnel ~~file~~-file, except as provided in G.S.  
20 132-1.5, is confidential and shall not be open for inspection and examination except to  
21 the following persons:

22 (1) The employee, applicant for employment, former employee, or his  
23 properly authorized agent, who may examine his own personnel file in  
24 its entirety except for (i) letters of reference solicited prior to  
25 employment, or (ii) information concerning a medical disability, mental  
26 or physical, that a prudent physician would not divulge to a patient. An  
27 employee's medical record may be disclosed to a licensed physician  
28 designated in writing by the employee;

29 (2) The supervisor of the employee;

30 (3) Members of the General Assembly who may inspect and examine  
31 personnel records under the authority of G.S. 120-19;

32 (4) A party by authority of a proper court order may inspect and examine a  
33 particular confidential portion of a State employee's personnel file; and

34 (5) An official of an agency of the federal government, State government or  
35 any political subdivision thereof. Such an official may inspect any  
36 personnel records when such inspection is deemed by the department  
37 head of the employee whose record is to be inspected or, in the case of  
38 an applicant for employment or a former employee, by the department  
39 head of the agency in which the record is maintained as necessary and  
40 essential to the pursuance of a proper function of said agency; provided,  
41 however, that such information shall not be divulged for purposes of  
42 assisting in a criminal prosecution, nor for purposes of assisting in a tax  
43 investigation.

1 Notwithstanding any other provision of this Chapter, any department head may, in his  
2 discretion, inform any person or corporation of any promotion, demotion, suspension,  
3 reinstatement, transfer, separation, dismissal, employment or nonemployment of any  
4 applicant, employee or former employee employed by or assigned to his department or  
5 whose personnel file is maintained in his department and the reasons therefor and may  
6 allow the personnel file of such person or any portion thereof to be inspected and  
7 examined by any person or corporation when such department head shall determine that  
8 the release of such information or the inspection and examination of such file or portion  
9 thereof is essential to maintaining the integrity of such department or to maintaining the  
10 level or quality of services provided by such department; provided that prior to releasing  
11 such information or making such file or portion thereof available as provided herein, such  
12 department head shall prepare a memorandum setting forth the circumstances which the  
13 department head deems to require such disclosure and the information to be disclosed.  
14 The memorandum shall be retained in the files of said department head and shall be a  
15 public record."

16 Section 10. G.S. 153A-98(c) reads as rewritten:

17 "(c) All information contained in a county employee's personnel file, other than the  
18 information made public by G.S. 132-1.5, ~~subsection (b) of this section~~, is confidential and  
19 shall be open to inspection only in the following instances:

- 20 (1) The employee or his duly authorized agent may examine all portions of  
21 his personnel file except (i) letters of reference solicited prior to  
22 employment, and (ii) information concerning a medical disability,  
23 mental or physical, that a prudent physician would not divulge to his  
24 patient.
- 25 (2) A licensed physician designated in writing by the employee may  
26 examine the employee's medical record.
- 27 (3) A county employee having supervisory authority over the employee  
28 may examine all material in the employee's personnel file.
- 29 (4) By order of a court of competent jurisdiction, any person may examine  
30 such portion of an employee's personnel file as may be ordered by the  
31 court.
- 32 (5) An official of an agency of the State or federal government, or any  
33 political subdivision of the State, may inspect any portion of a personnel  
34 file when such inspection is deemed by the official having custody of  
35 such records to be inspected to be necessary and essential to the  
36 pursuance of a proper function of the inspecting agency, but no  
37 information shall be divulged for the purpose of assisting in a criminal  
38 prosecution of the employee, or for the purpose of assisting in an  
39 investigation of the employee's tax liability. However, the official  
40 having custody of such records may release the name, address, and  
41 telephone number from a personnel file for the purpose of assisting in a  
42 criminal investigation.

- 1 (6) An employee may sign a written release, to be placed with his personnel  
2 file, that permits the person with custody of the file to provide, either in  
3 person, by telephone, or by mail, information specified in the release to  
4 prospective employers, educational institutions, or other persons  
5 specified in the release.
- 6 (7) The county manager, with concurrence of the board of county  
7 commissioners, or, in counties not having a manager, the board of  
8 county commissioners may inform any person of the employment or  
9 nonemployment, promotion, demotion, suspension or other disciplinary  
10 action, reinstatement, transfer, or termination of a county employee and  
11 the reasons for that personnel action. Before releasing the information,  
12 the manager or board shall determine in writing that the release is  
13 essential to maintaining public confidence in the administration of  
14 county services or to maintaining the level and quality of county  
15 services. This written determination shall be retained in the office of the  
16 manager or the county clerk, is a record available for public inspection  
17 and shall become part of the employee's personnel file."

18 Section 11. G.S. 160A-168(c) reads as rewritten:

19 "(c) All information contained in a city employee's personnel file, other than the  
20 information made public by G.S. 132-1.5, ~~subsection (b) of this section~~, is confidential and  
21 shall be open to inspection only in the following instances:

- 22 (1) The employee or his duly authorized agent may examine all portions of  
23 his personnel file except (i) letters of reference solicited prior to  
24 employment, and (ii) information concerning a medical disability,  
25 mental or physical, that a prudent physician would not divulge to his  
26 patient.
- 27 (2) A licensed physician designated in writing by the employee may  
28 examine the employee's medical record.
- 29 (3) A city employee having supervisory authority over the employee may  
30 examine all material in the employee's personnel file.
- 31 (4) By order of a court of competent jurisdiction, any person may examine  
32 such portion of an employee's personnel file as may be ordered by the  
33 court.
- 34 (5) An official of an agency of the State or federal government, or any  
35 political subdivision of the State, may inspect any portion of a personnel  
36 file when such inspection is deemed by the official having custody of  
37 such records to be inspected to be necessary and essential to the  
38 pursuance of a proper function of the inspecting agency, but no  
39 information shall be divulged for the purpose of assisting in a criminal  
40 prosecution (of the employee), or for the purpose of assisting in an  
41 investigation of (the employee's) tax liability. However, the official  
42 having custody of such records may release the name, address, and



1 telephone number from a personnel file for the purpose of assisting in a  
2 criminal investigation.

3 (6) An employee may sign a written release, to be placed with his personnel  
4 file, that permits the person with custody of the file to provide, either in  
5 person, by telephone, or by mail, information specified in the release to  
6 prospective employers, educational institutions, or other persons  
7 specified in the release.

8 (7) The city manager, with concurrence of the council, or, in cities not  
9 having a manager, the council may inform any person of the  
10 employment or nonemployment, promotion, demotion, suspension or  
11 other disciplinary action, reinstatement, transfer, or termination of a city  
12 employee and the reasons for that personnel action. Before releasing  
13 the information, the manager or council shall determine in writing that  
14 the release is essential to maintaining public confidence in the  
15 administration of city services or to maintaining the level and quality of  
16 city services. This written determination shall be retained in the office  
17 of the manager or the city clerk, and is a record available for public  
18 inspection and shall become part of the employee's personnel file."

19 Section 12. G.S. 162A-6.1(c) reads as rewritten:

20 "(c) All information contained in an authority employee's personnel file, other than  
21 the information made public by G.S. 132-1.5, ~~subsection (b) of this section~~, is confidential  
22 and shall be open to inspection only in the following instances:

23 (1) The employee or his duly authorized agent may examine all portions of  
24 his personnel file except (i) letters of reference solicited prior to  
25 employment, and (ii) information concerning a medical disability,  
26 mental or physical, that a prudent physician would not divulge to his  
27 patient.

28 (2) A licensed physician designated in writing by the employee may  
29 examine the employee's medical record.

30 (3) An authority employee having supervisory authority over the employee  
31 may examine all material in the employee's personnel file.

32 (4) By order of a court of competent jurisdiction, any person may examine  
33 such portion of an employee's personnel file as may be ordered by the  
34 court.

35 (5) An official of an agency of the State or federal government, or any  
36 political subdivision of the State, may inspect any portion of a personnel  
37 file when such inspection is deemed by the official having custody of  
38 such records to be inspected to be necessary and essential to the  
39 pursuance of a proper function of the inspecting agency, but no  
40 information shall be divulged for the purpose of assisting in a criminal  
41 prosecution (of the employee), or for the purpose of assisting in an  
42 investigation of (the employee's) tax liability. However, the official  
43 having custody of such records may release the name, address, and

- 1 telephone number from a personnel file for the purpose of assisting in a  
2 criminal investigation.
- 3 (6) An employee may sign a written release, to be placed with his personnel  
4 file, that permits the person with custody of the file to provide, either in  
5 person, by telephone, or by mail, information specified in the release to  
6 prospective employers, educational institutions, or other persons  
7 specified in the release.
- 8 (7) The chief administrative officer, with concurrence of the authority, may  
9 inform any person of the employment or nonemployment, promotion,  
10 demotion, suspension or other disciplinary action, reinstatement,  
11 transfer, or termination of an authority employee and the reasons for  
12 that personnel action. Before releasing the information, the chief  
13 administrative officer or authority shall determine in writing that the  
14 release is essential to maintaining public confidence in the  
15 administration of authority services or to maintaining the level and  
16 quality of authority services. This written determination shall be  
17 retained in the office of the chief administrative officer or the secretary  
18 of the authority, and is a record available for public inspection and shall  
19 become part of the employee's personnel file."
- 20 Section 13. This act becomes effective January 1, 1998.