

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 723
Committee Substitute Favorable 5/26/05
Committee Substitute #2 Favorable 6/8/05
Senate Judiciary II Committee Substitute Adopted 8/11/05

Short Title: UNC/Criminal Record Checks/Fee.-AB

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN
CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE
CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A
CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE
BASIS OF A CRIMINAL RECORD CHECK.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-19.2A. Criminal record checks of University personnel.

(a) The Department of Justice may provide a criminal record check to administrators of The University of North Carolina, or of any of its institutions or entities, concerning a person who has applied for employment or a promotion in The University of North Carolina System, or its institutions or entities, if the applicant consents to the record check. The Department may also provide a criminal record check to The University of North Carolina by fingerprint card from National Repositories of Criminal Histories, in accordance with G.S. 116-40.5A. The information shall be kept confidential as provided in G.S. 116-40.5A.

(b) University law enforcement personnel who are certified DCI operators may conduct the criminal record check, to the extent permitted by law. For a criminal record check performed by the Department of Justice, the Department shall charge The University of North Carolina System, or its institutions or entities, a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c) The Department of Justice shall adopt rules to implement this section."

SECTION 2. Part 3 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

1 **"§ 116-40.5A. University personnel criminal history checks.**

2 (a) As used in this section:

3 (1) "Criminal history" means a county, State, or federal criminal history of
4 conviction of a crime, whether a misdemeanor or a felony, that
5 indicates the applicant (i) poses a threat to the physical safety of
6 students or personnel, or (ii) has demonstrated that he or she does not
7 have the integrity or honesty to fulfill his or her duties for The
8 University of North Carolina. These crimes include the following
9 crimes contained in any of the following Articles of Chapter 14 of the
10 General Statutes: Article 4A, Prohibited Secret Societies and
11 Activities; Article 5, Counterfeiting and Issuing Monetary Substitutes;
12 Article 5A, Endangering Executive, Legislative, and Court Officers;
13 Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article
14 8, Assaults; Article 9, Hazing; Article 10, Kidnapping and Abduction;
15 Article 11, Abortion and Kindred Offenses; Article 13, Malicious
16 Injury or Damage by Use of Explosive or Incendiary Device or
17 Material; Article 14, Burglary and Other Housebreakings; Article 15,
18 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery;
19 Article 18, Embezzlement; Article 19, False Pretenses and Cheats;
20 Article 19A, Obtaining Property or Services by False or Fraudulent
21 Use of Credit Device or Other Means; Article 19B, Financial
22 Transaction Card Crime Act; Article 19C, Financial Identity Fraud;
23 Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against
24 Public Morality and Decency; Article 26A, Adult Establishments;
25 Article 27, Prostitution; Article 27A, Sex Offender and Public
26 Protection Registration Programs; Article 28, Perjury; Article 29,
27 Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses
28 Against the Public Peace; Article 36, Offenses Against the Public
29 Safety; Article 36A, Riots and Civil Disorders; Article 36B, Nuclear,
30 Biological, or Chemical Weapons of Mass Destruction; Article 39,
31 Protection of Minors; Article 47, Cruelty to Animals; Article 51,
32 Protection of Athletic Contests; Article 52, Miscellaneous Police
33 Regulations; Article 58, Records, Tapes and Other Recorded Devices;
34 and Article 60, Computer-Related Crime.

35 These crimes also include possession or sale of drugs in violation
36 of the North Carolina Controlled Substances Act, Article 5 of Chapter
37 90 of the General Statutes, and alcohol-related offenses such as sale to
38 underage persons in violation of G.S. 18B-302 or driving while
39 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

40 In addition to the crimes listed in this subdivision, these crimes also
41 include similar crimes under federal law or under the laws of other
42 states.

43 (2) "University personnel" means any:

- 1 a. Applicant for employment or promotion with The University of
2 North Carolina or any of its institutions or entities whether
3 full-time or part-time, or
4 b. Independent contractor or employee of an independent
5 contractor of The University of North Carolina, or any of its
6 institutions or entities, if the independent contractor carries out
7 duties customarily performed by University personnel, whether
8 paid with federal, State, local, or other funds.

9 (3) "University" means The University of North Carolina, or any of its
10 institutions or entities, including the University of North Carolina
11 Health Care System.

12 (b) The Board of Governors shall adopt a policy to be applied uniformly to all
13 constituent institutions of the University and the General Administration. The Board of
14 Directors of the University of North Carolina Health Care System shall adopt a policy to
15 be applied uniformly to the Health Care System. Each policy shall specify whether and
16 under what circumstances an applicant for a position or promotion shall be required to
17 be checked for a criminal history before the applicant is offered an unconditional job or
18 promotion. Each constituent institution and other entities of the University shall apply
19 its policy uniformly in requiring applicants for University positions or promotions to be
20 checked for a criminal history. The University may employ an applicant conditionally
21 while the University is checking the person's criminal history and making a decision
22 based on the results of the check.

23 (c) The Department of Justice shall provide to the University the criminal history
24 from the State and National Repositories of Criminal Histories of any applicant for a
25 University position or promotion in the University, or any of its institutions or entities,
26 which requires a criminal history check. The University shall require the person to be
27 checked by the Department of Justice to (i) be fingerprinted and to provide any
28 additional information required by the Department of Justice to a person designated by
29 the University, or to the local sheriff or the municipal police, whichever is more
30 convenient for the person, and (ii) sign a form consenting to the check of the criminal
31 record and to the use of fingerprints and other identifying information required by the
32 repositories. The University shall consider refusal to consent when making employment
33 decisions and decisions with regard to independent contractors.

34 (d) The University shall review the criminal history it receives on a person. The
35 University shall determine whether the results of the review indicate that the person (i)
36 poses a threat to the physical safety of students or personnel, or (ii) has demonstrated
37 that he or she does not have the integrity or honesty to fulfill his or her duties as a
38 University employee and shall use the information when making employment decisions
39 and decisions with regard to independent contractors. The University shall make written
40 findings with regard to how it used the information when making employment decisions
41 and decisions with regard to independent contractors. The University may delegate any
42 of the duties in this section to one or more of its administrators.

43 (e) All the information received by the University through the checking of the
44 criminal history in accordance with this section is privileged information and is not a

1 public record but is for the exclusive use of the University. The University may destroy
2 the information after it is used for the employment purposes authorized by this section
3 after one calendar year.

4 (f) There shall be no liability for negligence on the part of the University, or its
5 employees, arising from any act taken or omission by any of them in carrying out the
6 provisions of this section. The immunity established by this subsection shall not extend
7 to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be
8 actionable. The immunity established by this subsection shall be deemed to have been
9 waived to the extent of indemnification under Article 31A of Chapter 143 of the
10 General Statutes, and to the extent sovereign immunity is waived under the Tort Claims
11 Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

12 (g) Any applicant for employment or promotion who willfully furnishes,
13 supplies, or otherwise gives false information on an employment application that is the
14 basis for a criminal history record check under this section shall be guilty of a Class A1
15 misdemeanor."

16 **SECTION 3.** This act becomes effective December 1, 2005.
17 G.S. 116-40.5A(f), as enacted by this act, applies to offenses committed on or after that
18 date.