

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1322
Committee Substitute Favorable 5/1/07

Short Title: Fire Chiefs Can Request Criminal Histories.

(Public)

Sponsors:

Referred to:

April 5, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING LOCAL FIRE CHIEFS, COUNTY FIRE MARSHALS, AND LOCAL EMERGENCY SERVICES DIRECTORS WITH THE AUTHORITY TO REQUEST CRIMINAL HISTORIES FROM THE DEPARTMENT OF JUSTICE FOR APPLICANTS TO FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES IN UNITS OF LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.12 reads as rewritten:

"§ 114-19.12. **Criminal history record checks of applicants to fire departments, departments and emergency medical services.**

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

- (1) "Applicant" means an applicant for a paid or volunteer position with a fire department in a unit of local government.
- (2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20,

1 Frauds; Article 21, Forgery; Article 26, Offenses Against Public
2 Morality and Decency; Article 26A, Adult Establishments; Article 27,
3 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
4 Misconduct in Public Office; Article 35, Offenses Against the Public
5 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection
6 of Minors; Article 40, Protection of the Family; Article 59, Public
7 Intoxication; and Article 60, Computer-Related Crime. The crimes
8 also include possession or sale of drugs in violation of the North
9 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the
10 General Statutes, and alcohol-related offenses such as sale to underage
11 persons in violation of G.S. 18B-302, or driving while impaired in
12 violation of G.S. 20-138.1 through G.S. 20-138.5.

13 (b) When requested by a designated local Homeland Security director ~~or a local~~
14 fire chief, a county fire marshal, or an emergency services director or, when there is no
15 designated local Homeland Security ~~director, director, local fire chief, county fire~~
16 marshal, or emergency services director, by a local law enforcement agency, the North
17 Carolina Department of Justice may provide to the requesting ~~director, director, chief,~~
18 marshal, director, or agency an applicant's criminal history from the State and National
19 Repositories of Criminal Histories. The local Homeland Security ~~director, director, local~~
20 fire chief, marshal, director, or local law enforcement agency shall provide to the North
21 Carolina Department of Justice the fingerprints of the applicant to be checked, any
22 additional information required by the Department of Justice, and a form signed by the
23 applicant to be checked consenting to the check of the criminal record and to the use of
24 fingerprints and other identifying information required by the State or National
25 Repositories. The fingerprints of the individual shall be forwarded to the State Bureau
26 of Investigation for a search of the State criminal history record file, and the State
27 Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
28 Investigation for a national criminal history record check. The local Homeland Security
29 ~~director, director, local fire chief, county fire marshal, emergency services director, or~~
30 local law enforcement agency shall keep all information pursuant to this section
31 confidential. The Department of Justice shall charge a reasonable fee for conducting the
32 checks of the criminal history records authorized by this section.

33 (c) All releases of criminal history information to the local Homeland Security
34 ~~director, director, local fire chief, county fire marshal, emergency services director, or~~
35 local law enforcement agency shall be subject to, and in compliance with, rules
36 governing the dissemination of criminal history record checks as adopted by the North
37 Carolina Division of Criminal Information. All of the information the local Homeland
38 Security ~~director, director, local fire chief, county fire marshal, emergency services~~
39 director, or local law enforcement agency receives through the checking of the criminal
40 history is privileged information and for the exclusive use of that director or agency.

41 (d) If the applicant's verified criminal history record check reveals one or more
42 convictions covered under subdivision (a)(2) of this section, then the conviction shall
43 constitute just cause for not selecting the applicant for the position or for dismissing the
44 person from a current position with the local fire ~~department, department or emergency~~

1 medical services. The conviction shall not automatically prohibit volunteering or
2 employment; however, the following factors shall be considered by the local Homeland
3 Security ~~director~~director, local fire chief, county fire marshal, emergency services
4 director, or local law enforcement agency in determining whether the position shall be
5 denied:

- 6 (1) The level and seriousness of the crime;
- 7 (2) The date of the crime;
- 8 (3) The age of the person at the time of the conviction;
- 9 (4) The circumstances surrounding the commission of the crime, if
10 known;
- 11 (5) The nexus between the criminal conduct of the person and the duties
12 of the person;
- 13 (6) The prison, jail, probation, parole, rehabilitation, and employment
14 records of the person since the date the crime was committed; and
- 15 (7) The subsequent commission by the person of a crime listed in
16 subsection (a) of this section.

17 (e) The local fire ~~department~~department or emergency medical services may
18 deny the applicant the position or dismiss an applicant who refuses to consent to a
19 criminal history record check or use of fingerprints or other identifying information
20 required by the State or National Repositories of Criminal Histories. This refusal
21 constitutes just cause for the denial of the position or the dismissal from the position.

22 (f) The local fire ~~department~~department or emergency medical services may
23 extend a conditional offer of the position pending the results of a criminal history record
24 check authorized by this section.

25 (g) For purposes of this section, 'local fire chief' shall include only fire chiefs
26 who are paid employees of a city and 'county fire marshal' shall include only fire
27 marshals who are paid employees of a county.

28 (h) For purposes of this section 'emergency services director' shall include only
29 emergency services directors who are paid employees of a city or county."

30 **SECTION 2.** This act is effective when it becomes law.