

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 799
Judiciary Committee Substitute Adopted 4/30/97

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, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee, or any employee of any county or municipality, local board of education, or 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 employment application 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 military records. Letters of recommendation are public records
6 so long as the person who writes the recommendation does not object in writing to public
7 disclosure of the letter of recommendation.

8 (c) Records related to serious disciplinary actions imposed on a public employee
9 are public records. As used in this Article, serious disciplinary actions are dismissal,
10 demotion, or suspension. At a minimum, every supervisor shall place in the public
11 employee's personnel record a written summary of the serious disciplinary action
12 imposed on the public employee, including the circumstances that led to the disciplinary
13 action, the nature of the disciplinary action taken, and the effective dates of the
14 disciplinary action.

15 (d) Information identifying the public employee who provides information
16 confidentially to persons investigating whether to bring a disciplinary action against
17 another public employee is not a public record.

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

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

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

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

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

37 (j) For purposes of this section, 'public employee' shall mean any employee,
38 former employee, or applicant for employment by any department, agency, institution,
39 commission, or bureau of the State of North Carolina, any employee of The University of
40 North Carolina or its constituent institutions, any public hospital employee, or any
41 employee of any county or municipality, local board of education, or area mental health
42 authority."

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

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

5 **"§ 115C-321. Confidential information in personnel files; access to information.**

6 All information contained in a personnel file, except as otherwise provided in G.S.
7 132-1.5 or in this Chapter, is confidential and shall not be open for inspection and
8 examination except to the following persons:

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

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

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

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

1 education to remove any information from his personnel file that he deems invalid,
2 irrelevant, or outdated. The board may order the superintendent to remove said
3 information if it finds the information is invalid, irrelevant, or outdated.

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

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

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

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

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

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

24 **"§ 115D-29. Confidential information in personnel files; access to information.**

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

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

1 not be divulged for purposes of assisting in a criminal prosecution, nor
2 for purposes of assisting in a tax investigation.
3 Notwithstanding any other provision of this Article, any president may, in his discretion,
4 or shall at the direction of the board of trustees, inform any person or corporation of any
5 promotion, demotion, suspension, reinstatement, transfer, separation, dismissal,
6 employment or nonemployment of any applicant, employee or former employee
7 employed by or assigned to the board of trustees or whose personnel file is maintained by
8 the board and the reasons therefor and may allow the personnel file of the person or any
9 portion to be inspected and examined by any person or corporation provided that the
10 board has determined that the release of the information or the inspection and
11 examination of the file or any portion is essential to maintaining the integrity of the board
12 or to maintaining the level or quality of services provided by the board; provided, that
13 prior to releasing the information or making the file or any portion available as provided
14 herein, the president shall prepare a memorandum setting forth the circumstances which
15 he and the board deem to require the disclosure and the information to be disclosed. The
16 memorandum shall be retained in the files of the president and shall be a public record."
17 Section 8. This act becomes effective January 1, 1998.