

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE BILL 41

Short Title: Fire Protection Applicants/Criminal History. (Public)

Sponsors: Representative Moore.

Referred to: Rules, Calendar, and Operations of the House.

February 4, 2009

A BILL TO BE ENTITLED
AN ACT TO ALLOW NONGOVERNMENTAL FIRE PROTECTION ENTITIES TO
OBTAIN CRIMINAL HISTORY DETERMINATIONS ON APPLICANTS.

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 and emergency medical services.

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

(1) Applicant. – A person who applies for a paid or volunteer position with a fire department or an emergency medical service.

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



1 (b) When requested by a designated local Homeland Security director a local fire chief,
2 a county fire marshal, or an emergency services director or, when there is no designated local
3 Homeland Security director, local fire chief, county fire marshal, or emergency services
4 director, by a local law enforcement agency, the North Carolina Department of Justice may
5 provide to the requesting director, chief, marshal, director, or agency an applicant's criminal
6 history from the State and National Repositories of Criminal Histories. The local Homeland
7 Security director, local fire chief, marshal, director, or local law enforcement agency shall
8 provide to the North Carolina Department of Justice the fingerprints of the applicant to be
9 checked, any additional information required by the Department of Justice, and a form signed
10 by the applicant to be checked consenting to the check of the criminal record and to the use of
11 fingerprints and other identifying information required by the State or National Repositories.
12 The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a
13 search of the State criminal history record file, and the State Bureau of Investigation shall
14 forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal
15 history record check. The local Homeland Security director, local fire chief, county fire
16 marshal, emergency services director, or local law enforcement agency shall keep all
17 information pursuant to this section confidential. The Department of Justice shall charge a
18 reasonable fee for conducting the checks of the criminal history records authorized by this
19 section.

20 (c) All releases of criminal history information to the local Homeland Security director,
21 local fire chief, county fire marshal, emergency services director, or local law enforcement
22 agency shall be subject to, and in compliance with, rules governing the dissemination of
23 criminal history record checks as adopted by the North Carolina Division of Criminal
24 Information. All of the information the local Homeland Security director, local fire chief,
25 county fire marshal, emergency services director, or local law enforcement agency receives
26 through the checking of the criminal history is privileged information and for the exclusive use
27 of that director, chief, marshal, or ~~agency~~ agency, except as provided in subsection (h) of this
28 section.

29 (d) If the applicant's verified criminal history record check reveals one or more
30 convictions covered under subdivision (a)(2) of this section, then the conviction shall constitute
31 just cause for not selecting the applicant for the position or for dismissing the person from a
32 current position with the local fire department or emergency medical services. The conviction
33 shall not automatically prohibit volunteering or employment; however, the following factors
34 shall be considered by the local Homeland Security director, local fire chief, county fire
35 marshal, emergency services director, or local law enforcement agency in determining whether
36 the position shall be denied:

- 37 (1) The level and seriousness of the crime;
- 38 (2) The date of the crime;
- 39 (3) The age of the person at the time of the conviction;
- 40 (4) The circumstances surrounding the commission of the crime, if known;
- 41 (5) The nexus between the criminal conduct of the person and the duties of the
42 person;
- 43 (6) The prison, jail, probation, parole, rehabilitation, and employment records of
44 the person since the date the crime was committed; and
- 45 (7) The subsequent commission by the person of a crime listed in subsection (a)
46 of this section.

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

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

4 (g) For purposes of this section, "local fire chief" shall include only fire chiefs who are
5 paid employees of a city; "county fire marshal" shall include only fire marshals who are paid
6 employees of a county; and "emergency services director" shall include only emergency
7 services directors who are paid employees of a city or county.

8 (h) A fire protection entity that is prohibited by federal law or policy from obtaining
9 criminal history information about applicants because it is not a governmental entity may
10 request that an entity not under such a restriction seek to obtain criminal history information on
11 the requesting entity's behalf. However, an agency that receives a request under this subsection
12 shall not provide any criminal history information to the requesting entity but shall instead
13 provide the entity only a statement as to whether or not the agency deems the applicant's
14 criminal history information as providing just cause for not selecting the applicant under
15 subsection (d) of this section."

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