

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-367
SENATE BILL 796

AN ACT TO PROVIDE FOR CRIMINAL RECORD CHECKS OF APPLICANTS
FOR PERMITS AND LICENSES TO CONDUCT ARCHAEOLOGICAL
OPERATIONS AND INVESTIGATIONS.

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:

"§ 114-19.17. Criminal record checks of applicants for permit or license to conduct exploration, recovery, or salvage operations and archaeological investigations.

The Department of Justice may provide to the Department of Cultural Resources from the State and National Repositories of Criminal Histories the criminal history of any applicant for a permit or license under Article 3 of Chapter 121 of the General Statutes or Article 2 of Chapter 70 of the General Statutes. Along with the request, the Department of Cultural Resources shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Cultural Resources shall keep all information obtained under this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. G.S. 121-25 reads as rewritten:

"§ 121-25. License to conduct exploration, recovery or salvage operations.

Any qualified person, firm or corporation desiring to conduct any type of exploration, recovery or salvage operations, in the course of which any part of a derelict vessel or its contents or other archaeological site may be removed, displaced or destroyed, shall first make application to the Department of Cultural Resources ~~for~~ and obtain a permit or license to conduct such operations. If the Department of Cultural Resources shall find that the granting of such permit or license is in the best interest of the State, it may grant such applicant a permit or license for such a period of time and

under such conditions as the Department may deem to be in the best interest of the State. Such permit or license may include but need not be limited to the following:

- (1) Payment of monetary fee to be set by the Department;
- (2) That a portion or all of the historic material or artifacts be delivered to custody and possession of the Department;
- (3) That a portion of all of such relics or artifacts may be sold or retained by the licensee;
- (4) That a portion or all of such relics or artifacts may be sold or traded by the Department.

Permits or licenses may be renewed upon or prior to expiration upon such terms as the applicant and the Department may mutually agree. Holders of permits or licenses shall be responsible for obtaining permission of any federal agencies having jurisdiction, including the United States Coast Guard, the United States Department of the Navy and the United States Army Corps of Engineers prior to conducting any salvaging operations."

SECTION 3. Article 3 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"§ 121-25.1. Criminal record checks of applicants for permit or license.

(a) The following definitions apply to this section:

- (1) Applicant. – A person or entity applying for a permit or license under G.S. 121-25 to conduct any type of exploration, recovery, or salvage operations of any part of a derelict vessel or its contents or other archaeological site.
- (2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses 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 and Court 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 19C, Financial Identity Fraud; 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.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.
- (6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a crime."

SECTION 4. Article 2 of Chapter 70 of the General Statutes is amended by adding a new section to read:

"§ 70-13.1. Criminal record checks of applicants for permit or license.

(a) The following definitions apply to this section:

- (1) Applicant. – A person or entity applying for a permit or license under G.S. 70-13 to conduct any type of archaeological investigation on State lands.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigations under G.S. 70-13. The crimes include the criminal offenses 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 and Court 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 19C, Financial Identity Fraud; 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.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not

automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.
- (6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a crime."

SECTION 5. This act becomes effective October 1, 2005, and applies to applications for permits or licenses submitted to the Department of Cultural Resources on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:30 p.m. this 8th day of September, 2005