

§ 85B-3.2. Criminal history record checks of applicants for licensure.

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

- (1) Applicant. – An applicant for initial licensure as an auctioneer, apprentice auctioneer, or auction firm.
- (2) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to be licensed as an auctioneer, apprentice auctioneer, or auction firm.

(b) The Commission shall ensure that the State criminal history of an applicant is checked. National criminal history checks are authorized for an applicant who has not resided in the State of North Carolina during the past five years. The Commission shall provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant to be checked consenting to the check of the criminal history and to the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Public Safety.

(c) All releases of criminal history information to the Commission are subject to, and shall comply with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Department of Public Safety. All of the information the Commission receives through the checking of the criminal history is for the exclusive use of the Commission and shall be kept confidential.

(d) If the applicant's verified criminal history record check reveals one or more convictions of a crime that is punishable as a felony offense, or the conviction of any crime involving fraud or moral turpitude, the Commission may deny the applicant's license. However, the conviction does not automatically prohibit licensure, and the following factors shall be considered by the Commission in determining whether to deny licensure:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the applicant and the applicant's duties as an auctioneer, apprentice auctioneer, or auction firm.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (7) The subsequent commission by the person of a crime.

(e) The Commission may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(f) The Commission shall notify the applicant of the applicant's right to review the criminal history information, the procedure for challenging the accuracy of the criminal history, and the applicant's right to contest the Commission's denial of licensure.

(g) The Commission shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check. (1999-142, s. 3; 2000-140, ss. 59(a), (b); 2001-198, s. 1; 2014-100, s. 17.1(o), (q); 2021-88, s. 7.)