

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 796

Short Title: Criminal Record Checks/Archaeological Ops.

(Public)

Sponsors: Senator Thomas.

Referred to: Judiciary II.

March 23, 2005

A BILL TO BE ENTITLED

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:

"§ 114-19.16. Criminal record checks of applicants for permit or licensure to conduct exploration, recovery, or salvage operations and archaeological investigations.

(a) 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, upon the request of the Department of Cultural Resources. 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 pursuant to this section confidential, and the information shall be maintained in compliance with rules governing the dissemination of criminal history record checks adopted by the North Carolina Division of Criminal Information. The information obtained pursuant to this section is privileged and shall be for the exclusive use of the Department of Cultural Resources. The Department of Justice may charge a reasonable fee to offset the cost incurred by it to conduct a

1 criminal record check under this section. The fee shall not exceed the actual cost of
2 locating, editing, researching, and retrieving the information.

3 (b) As used in this section, the term "criminal history" means a State or federal
4 history of conviction of a crime, whether a misdemeanor or felony, that bears upon an
5 applicant's fitness for surveillance, protection, preservation, survey, and archaeological
6 recovery of property subject to the exclusive dominion and control of the State pursuant
7 to G.S. 121-22 and an applicant's fitness for archaeological investigations pursuant to
8 G.S. 70-13."

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

10 **"§ 121-25. License to conduct exploration, recovery or salvage operations.**

11 (a) Any qualified person, firm or corporation desiring to conduct any type of
12 exploration, recovery or salvage operations, in the course of which any part of a derelict
13 vessel or its contents or other archaeological site may be removed, displaced or
14 destroyed, shall first make application to the Department of Cultural Resources ~~for~~ and
15 obtain a permit or license to conduct such operations.

16 (b) If the Department requires a criminal history record check of the applicant for
17 a permit or license, the applicant shall furnish the Department a complete set of
18 fingerprints and a recent photograph in a form prescribed by the Department. In the case
19 of an applicant who is not an individual, fingerprints shall be provided for the
20 principals, officers, directors, and controlling persons of the entities. Each set of
21 fingerprints shall be certified by an authorized law enforcement officer.

22 Applicants for whom criminal history record checks are conducted shall consent to a
23 criminal history record check pursuant to G.S. 114-19.16. If the verified criminal history
24 record check reveals one or more convictions, then the conviction or convictions shall
25 constitute just cause for not approving the permit or license. The conviction shall not
26 automatically prohibit approval of the application, but the following factors shall be
27 considered by the Department of Cultural Resources in determining whether the permit
28 or license shall be denied:

29 (1) The level and seriousness of the crime.

30 (2) The date of the crime.

31 (3) The age of the person at the time of conviction.

32 (4) The circumstances surrounding the commission of the crime, if known.

33 (5) The nexus between the criminal conduct of the person and the person's
34 responsibilities pursuant to the application.

35 (6) The incarceration, probation, parole, rehabilitation, and employment
36 records of the person since the date the crime was committed.

37 (7) The subsequent commission by the person of a crime.

38 (c) The Department of Cultural Resources may deny the application for permit or
39 license of any applicant for refusal to consent to a criminal history record check or to
40 the use of fingerprints or other identifying information required by either the State or
41 National Repositories of Criminal Histories. The refusal shall constitute just cause for
42 the denial of the permit or license.

43 (d) If the Department of Cultural Resources shall find that the granting of such
44 permit or license is in the best interest of the State, it may grant such applicant a permit

1 or license for such a period of time and under such conditions as the Department may
2 deem to be in the best interest of the State. Such permit or license may include but need
3 not be limited to the following:

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

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

17 **SECTION 3.** G.S. 70-13 is amended by adding the following new
18 subsections to read:

19 "(a1) If the Department requires a criminal history record check of the applicant for
20 a permit or license, the applicant shall furnish the Department a complete set of
21 fingerprints and a recent photograph in a form prescribed by the Department. In the case
22 of an applicant who is not an individual, fingerprints shall be provided for the
23 principals, officers, directors, and controlling persons of the entities. Each set of
24 fingerprints shall be certified by an authorized law enforcement officer.

25 Applicants for whom criminal history record checks are conducted shall consent to a
26 criminal history record check pursuant to G.S. 114-19.16. If the verified criminal history
27 record check reveals one or more convictions, then the conviction or convictions shall
28 constitute just cause for not approving the permit or license. The conviction shall not
29 automatically prohibit approval of the application, but the following factors shall be
30 considered by the Department of Cultural Resources in determining whether the permit
31 or license shall be denied:

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

41 (a2) The Department of Cultural Resources may deny the application for permit or
42 license of any applicant for refusal to consent to a criminal history record check or to
43 the use of fingerprints or other identifying information required by either the State or

1 National Repositories of Criminal Histories. The refusal shall constitute just cause for
2 the denial of the permit or license."

3 **SECTION 4.** This act becomes effective October 1, 2005, and applies to
4 applications for permits or licenses submitted to the Department of Cultural Resources
5 on or after that date.