

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 117
Committee Substitute Favorable 4/4/17

Short Title: Protect Students in Schools.

(Public)

Sponsors:

Referred to:

February 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR PUBLIC SCHOOL
3 PERSONNEL EMPLOYMENT; TO PROVIDE FOR WRITTEN NOTICE PRIOR TO
4 SUSPENDING WITHOUT PAY A TEACHER WHO IS INCARCERATED OR IN
5 CUSTODY; AND TO REQUIRE NOTIFICATION TO THE STATE BOARD OF
6 EDUCATION RELEVANT CRIMINAL HISTORY RELATED TO AN EDUCATOR'S
7 RESIGNATION.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. CRIMINAL BACKGROUND CHECKS FOR LOCAL BOARD OF**
11 **EDUCATION EMPLOYEES**

12 **SECTION 1.** G.S. 115C-238.73 reads as rewritten:

13 **"§ 115C-238.73. Criminal history record checks.**

14 (a) As used in this section:

15 ...

16 (1a) Consumer reporting agency. – An entity which, for monetary fees, dues, or
17 on a cooperative nonprofit basis, regularly engages in whole or in part in the
18 practice of assembling or evaluating consumer credit information or other
19 information on consumers, including criminal history checks, for the
20 purpose of furnishing consumer reports to third parties, and which uses any
21 means or facility of interstate commerce for the purpose of preparing or
22 furnishing consumer reports, and which is regulated as provided in 15
23 U.S.C. § 1681, et seq. A criminal history check by a consumer reporting
24 agency provided for purposes of this section must include all of the
25 following:

- 26 a. A search of the state criminal registry or repository in which the
27 applicant resides.
28 b. A multistate/multijurisdiction database search which includes a
29 follow-up search at the originating source for any information
30 returned by the database search and which confirms final disposition
31 information of the same.
32 c. A search of records obtained from county, state, and federal criminal
33 repositories where the individual resides and has previously resided.
34 d. A search of the National Sex Offender Registry established as
35 provided in 42 U.S.C. § 16919.

36 ...



1 (b) Each local board of education shall adopt a policy ~~on whether and under what~~
 2 ~~circumstances an that requires an~~ applicant for a school personnel position ~~shall be required to~~
 3 be checked for a criminal history as provided in subsection (c) of this section before the
 4 applicant is offered an unconditional job. Each local board of education shall apply its policy
 5 uniformly in requiring applicants for school personnel positions to be checked for a criminal
 6 history. A local board of education ~~that requires a criminal history check for an applicant may~~
 7 may employ an applicant conditionally while the board is checking the person's criminal
 8 history and making a decision based on the results of the check.

9 A local board of education shall not require an applicant to pay for the criminal history
 10 check authorized under this subsection.

11 (c) A local board of education by policy shall uniformly require applicants to be
 12 checked for a criminal history either by a consumer reporting agency, the Department of Public
 13 Safety, or both. The Department of Public Safety shall provide to the local board of education
 14 the criminal history from the State and National Repositories of Criminal Histories of any
 15 applicant for a school personnel position in the local school administrative unit for which a
 16 local board of education requires a criminal history check. ~~The~~ If the local board of education
 17 requires a criminal history check by the Department of Public Safety, the local board of
 18 education shall require the person to be checked by the Department of Public Safety to (i) be
 19 fingerprinted and to provide any additional information required by the Department of Public
 20 Safety to a person designated by the local board, or to the local sheriff or the municipal police,
 21 whichever is more convenient for the person, and (ii) sign a form consenting to the check of the
 22 criminal record and to the use of fingerprints and other identifying information required by the
 23 repositories. The local board of education shall ~~consider refusal to consent when making~~
 24 ~~employment decisions and decisions with regard to independent contractors.~~ not employ or
 25 contract with an individual who refuses to consent to a criminal history check.

26 The local board of education shall not require an applicant to pay for being fingerprinted.

27 ...

28 (i) The local board of education may adopt a policy providing for periodic checks of
 29 criminal history of employees either by a consumer reporting agency, the Department of Public
 30 Safety, or both. Local boards of education shall not require employees to pay for the criminal
 31 history check authorized under this subsection. A local board of education shall indicate, upon
 32 inquiry by any other local board of education, charter school, or regional school in the State as
 33 to the reason for an employee's resignation or dismissal, if an employee's criminal history was
 34 relevant to the employee's resignation or dismissal.

35"

37 PART II. CRIMINAL BACKGROUND CHECKS FOR OTHER PUBLIC SCHOOL 38 EMPLOYEES

39 SECTION 2.(a) G.S. 115C-218.90(b) is repealed.

40 SECTION 2.(b) Article 14A of Chapter 115C of the General Statutes is amended
 41 by adding a new section to read:

42 "**§ 115C-218.92. School personnel criminal history checks.**

43 (a) As used in this section:

44 (1) "Criminal history" means a county, state, or federal criminal history of
 45 conviction of a crime, whether a misdemeanor or a felony, that indicates the
 46 employee (i) poses a threat to the physical safety of students or personnel or
 47 (ii) has demonstrated that he or she does not have the integrity or honesty to
 48 fulfill his or her duties as public school personnel. Such crimes include the
 49 following North Carolina crimes contained in any of the following Articles
 50 of Chapter 14 of the General Statutes: Article 5A, Endangering Executive
 51 and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Kindred

1 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article
2 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device
3 or Material; Article 14, Burglary and Other Housebreakings; Article 15,
4 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article
5 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A,
6 Obtaining Property or Services by False or Fraudulent Use of Credit Device
7 or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses
8 Against Public Morality and Decency; Article 26A, Adult Establishments;
9 Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
10 Misconduct in Public Office; Article 35, Offenses Against the Public Peace;
11 Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection
12 of Minors; and Article 60, Computer-Related Crime. Such crimes also
13 include possession or sale of drugs in violation of the North Carolina
14 Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes,
15 and alcohol-related offenses such as sale to underage persons in violation of
16 G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1
17 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this
18 subdivision, such crimes also include similar crimes under federal law or
19 under the laws of other states.

20 (2) Consumer reporting agency. – An entity which, for monetary fees, dues, or
21 on a cooperative nonprofit basis, regularly engages in whole or in part in the
22 practice of assembling or evaluating consumer credit information or other
23 information on consumers, including criminal history checks, for the
24 purpose of furnishing consumer reports to third parties, and which uses any
25 means or facility of interstate commerce for the purpose of preparing or
26 furnishing consumer reports, and which is regulated as provided in 15
27 U.S.C. § 1681, et seq. A criminal history check by a consumer reporting
28 agency provided for purposes of this section must include all of the
29 following:

- 30 a. A search of the state criminal registry or repository in which the
31 applicant resides.
32 b. A multistate/multijurisdictional database search which includes a
33 follow-up search at the originating source for any information
34 returned by the database search and which confirms final disposition
35 information of the same.
36 c. A search of records obtained from county, state, and federal criminal
37 repositories where the individual resides and has previously resided.
38 d. A search of the National Sex Offender Registry established as
39 provided in 42 U.S.C. § 16919.

40 (3) "School personnel" means any of the following:

- 41 a. Member of the board of directors.
42 b. Employee of the charter school.
43 c. Independent contractor or employee of an independent contractor of
44 the charter school if the independent contractor carries out duties
45 customarily performed by school personnel, whether paid with
46 federal, State, local, or other funds, who has significant access to
47 students or who has responsibility for the fiscal management of the
48 charter school.

49 (b) The charter school board of directors shall adopt a policy that requires an applicant
50 for a school personnel position to be checked for a criminal history as provided in subsection
51 (c) of this section. The board of directors shall apply its policy uniformly in requiring

1 applicants for school personnel positions to be checked for a criminal history. The board of
2 directors may grant conditional approval of an application while the board of directors is
3 checking a person's criminal history and making a decision based on the results of the check.
4 The board of directors shall not require school personnel to pay for the criminal history record
5 check authorized under this section.

6 (c) The charter school board of directors shall uniformly require applicants to be
7 checked for a criminal history either by a consumer reporting agency, the Department of Public
8 Safety, or both. If the local board of education requires a criminal history check by the
9 Department of Public Safety, the board of directors shall require the person to be checked by
10 the Department of Public Safety (i) to be fingerprinted and to provide any additional
11 information required by the Department of Public Safety to a person designated by the board of
12 directors or to the local sheriff or the municipal police, whichever is more convenient for the
13 person, and (ii) to sign a form consenting to the check of the criminal record and to the use of
14 fingerprints and other identifying information required by the repositories. The board of
15 directors shall not employ or contract with an individual who refuses to consent to a criminal
16 history check. The fingerprints of the individual shall be forwarded to the State Bureau of
17 Investigation for a search of the State criminal history record file, and the State Bureau of
18 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a
19 national criminal history record check. The Department of Public Safety shall provide to the
20 board of directors the criminal history from the State and National Repositories of Criminal
21 Histories of any school personnel for which the board of directors requires a criminal history
22 record check.

23 The board of directors shall not require school personnel to pay for the fingerprints
24 authorized under this section.

25 (d) The charter school board of directors shall review the criminal history it receives on
26 an individual. The board of directors shall determine whether the results of the review indicate
27 that the individual (i) poses a threat to the physical safety of students or personnel or (ii) has
28 demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as
29 school personnel and shall use the information when making employment decisions and
30 decisions with regard to independent contractors. The board of directors shall make written
31 findings with regard to how it used the information when making employment decisions and
32 decisions with regard to independent contractors. The board of directors may delegate any of
33 the duties in this subsection to the principal.

34 (e) The charter school board of directors, or the principal, or equivalent position, if
35 designated by the board of directors, shall provide to the State Board of Education the criminal
36 history it receives on a person who is certificated, certified, or licensed by the State Board of
37 Education. The State Board of Education shall review the criminal history and determine
38 whether the person's certificate or license should be revoked in accordance with State laws and
39 rules regarding revocation.

40 (f) All the information received by the charter school board of directors through the
41 checking of the criminal history or by the State Board of Education in accordance with this
42 section is privileged information and is not a public record but is for the exclusive use of the
43 board of directors or the State Board of Education. The board of directors or the State Board of
44 Education may destroy the information after it is used for the purposes authorized by this
45 section after one calendar year.

46 (g) There shall be no liability for negligence on the part of the charter school board of
47 directors, or its employees, or the State Board of Education, or its employees, arising from any
48 act taken or omission by any of them in carrying out the provisions of this section. The
49 immunity established by this subsection shall not extend to gross negligence, wanton conduct,
50 or intentional wrongdoing that would otherwise be actionable. The immunity established by
51 this subsection shall be deemed to have been waived to the extent of indemnification by

1 insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes,
2 and, to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in
3 Article 31 of Chapter 143 of the General Statutes.

4 (h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives
5 false information on an employment application that is the basis for a criminal history record
6 check under this section shall be guilty of a Class A1 misdemeanor.

7 (i) The charter school board of directors may adopt a policy providing for uniform
8 periodic checks of criminal history of employees either by a consumer reporting agency, the
9 Department of Public Safety, or both. Boards of directors shall not require employees to pay for
10 the criminal history check authorized under this subsection.

11 (j) A charter school board of directors shall indicate, upon inquiry by any other charter
12 school, local board of education, or regional school in the State as to the reason for an
13 employee's resignation or dismissal, if an employee's criminal history was relevant to the
14 employee's resignation or dismissal. If a teacher's criminal history is relevant to a teacher's
15 resignation, the board of directors shall report to the State Board of Education the reason for an
16 employee's resignation."

17 **SECTION 2.(c)** G.S. 115C-238.73 reads as rewritten:

18 **"§ 115C-238.73. Criminal history record checks.**

19 (a) As used in this section:

20 ...

21 (1a) Consumer reporting agency. – An entity which, for monetary fees, dues, or
22 on a cooperative nonprofit basis, regularly engages in whole or in part in the
23 practice of assembling or evaluating consumer credit information or other
24 information on consumers, including criminal history checks, for the
25 purpose of furnishing consumer reports to third parties, and which uses any
26 means or facility of interstate commerce for the purpose of preparing or
27 furnishing consumer reports, and which is regulated as provided in 15
28 U.S.C. § 1681, et seq. A criminal history check by a consumer reporting
29 agency provided for purposes of this section must include all of the
30 following:

- 31 a. A search of the state criminal registry or repository in which the
32 applicant resides.
33 b. A multistate/multijurisdictional database search which includes a
34 follow-up search at the originating source for any information
35 returned by the database search and which confirms final disposition
36 information of the same.
37 c. A search of records obtained from county, state, and federal criminal
38 repositories where the individual resides and has previously resided.
39 d. A search of the National Sex Offender Registry established as
40 provided in 42 U.S.C. § 16919.

41 ...

42 (b) The board of directors shall adopt a policy ~~on whether and under what~~
43 circumstances ~~school personnel shall be required to be that~~ requires an applicant for a school
44 personnel position to be checked for a criminal ~~history-~~history as provided in subsection (c) of
45 this section. The board of directors shall apply its policy uniformly in requiring applicants for
46 school personnel positions to be checked for a criminal history. The board of directors may
47 grant conditional approval of an application while the board of directors is checking a person's
48 criminal history and making a decision based on the results of the check.

49 The board of directors shall not require school personnel to pay for the criminal history
50 record check authorized under this section.

1 (c) The board of directors shall uniformly require applicants to be checked for a
2 criminal history either by a consumer reporting agency, the Department of Public Safety, or
3 both. If the local board of education requires a criminal history check by the Department of
4 Public Safety, the board of directors shall require the person to be checked by the Department
5 of Public Safety (i) to be fingerprinted and to provide any additional information required by
6 the Department of Public Safety to a person designated by the board of directors or to the local
7 sheriff or the municipal police, whichever is more convenient for the person, and (ii) to sign a
8 form consenting to the check of the criminal record and to the use of fingerprints and other
9 identifying information required by the repositories. The board of directors shall ~~consider~~
10 ~~refusal to consent when making employment decisions and decisions with regard to~~
11 ~~independent contractors.~~not employ or contract with an individual who refuses to consent to a
12 criminal history check. The fingerprints of the individual shall be forwarded to the State Bureau
13 of Investigation for a search of the State criminal history record file, and the State Bureau of
14 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a
15 national criminal history record check. The Department of Public Safety shall provide to the
16 board of directors the criminal history from the State and National Repositories of Criminal
17 Histories of any school personnel for which the board of directors requires a criminal history
18 record check.

19 The board of directors shall not require school personnel to pay for the fingerprints
20 authorized under this section.

21 ...

22 (i) The board of directors may adopt a policy providing for uniform periodic checks of
23 criminal history of employees either by a consumer reporting agency, the Department of Public
24 Safety, or both. Boards of directors shall not require employees to pay for the criminal history
25 check authorized under this subsection.

26 (j) A board of directors shall indicate, upon inquiry by any other local board of
27 education, charter school, or regional school in the State as to the reason for an employee's
28 resignation or dismissal, if an employee's criminal history was relevant to the employee's
29 resignation or dismissal. If a teacher's criminal history is relevant to a teacher's resignation, the
30 board of directors shall report to the State Board of Education the reason for an employee's
31 resignation."

32 33 **PART III. SUSPENSION WITHOUT PAY FOR TEACHERS WHO ARE** 34 **INCARCERATED OR IN CUSTODY**

35 **SECTION 3.(a)** G.S. 115C-325(f)(1) reads as rewritten:

36 "(f) (1) Suspension without Pay. – If a superintendent believes that cause exists for
37 dismissing a career employee for any reason specified in
38 G.S. 115C-325(e)(1) and that immediate suspension of the career employee
39 is necessary, the superintendent may suspend the career employee without
40 pay. Before suspending a career employee without pay, the superintendent
41 shall meet with the career employee and give him written notice of the
42 charges against him, an explanation of the bases for the charges, and an
43 opportunity to respond. However, if the teacher is incarcerated or is in the
44 custody of a local, State, private, or federal correctional facility, the
45 superintendent shall not be required to meet with the teacher before
46 suspending that teacher without pay but may instead provide written notice
47 of the charges against the teacher, provide a written explanation of the basis
48 for the charges, and provide an opportunity for the teacher to respond in
49 writing. Within five days after a suspension under this paragraph, the
50 superintendent shall initiate a dismissal, demotion, or disciplinary
51 suspension without pay as provided in this section. If it is finally determined

1 that no grounds for dismissal, demotion, or disciplinary suspension without
2 pay exist, the career employee shall be reinstated immediately, shall be paid
3 for the period of suspension, and all records of the suspension shall be
4 removed from the career employee's personnel file."

5 **SECTION 3.(b)** G.S. 115C-325.5(a) reads as rewritten:

6 "(a) Immediate Suspension Without Pay. – If a superintendent believes that cause exists
7 for dismissing a teacher for any reason specified in G.S. 115C-325.4 and that immediate
8 suspension of the teacher is necessary, the superintendent may suspend the teacher without pay.
9 Before suspending a teacher without pay, the superintendent shall meet with the teacher and
10 give him or her written notice of the charges against the teacher, an explanation of the basis for
11 the charges, and an opportunity to respond. However, if the teacher is incarcerated or is in the
12 custody of a local, State, private, or federal correctional facility, the superintendent shall not be
13 required to meet with the teacher before suspending that teacher without pay but may instead
14 provide written notice of the charges against the teacher, provide a written explanation of the
15 basis for the charges, and provide an opportunity for the teacher to respond in writing. Within
16 five days after a suspension under this subsection, the superintendent shall initiate a dismissal,
17 demotion, or disciplinary suspension without pay as provided in this section. If it is finally
18 determined that no grounds for dismissal, demotion, or disciplinary suspension without pay
19 exist, the teacher shall be reinstated immediately, shall be paid for the period of suspension, and
20 all records of the suspension shall be removed from the teacher's personnel file."

21
22 **PART IV. NOTIFICATION TO STATE BOARD OF EDUCATION WHEN TEACHER**
23 **RESIGNS FOR REASONS RELATED TO CRIMINAL HISTORY**

24 **SECTION 4.(a)** G.S. 115C-325(o)(2) reads as rewritten:

25 "(2) A teacher, career or probationary, who is not recommended for dismissal
26 should not resign without the consent of the superintendent unless he or she
27 has given at least 30 days' notice. If a teacher who is not recommended for
28 dismissal does resign without giving at least 30 days' notice, the board may
29 request that the State Board of Education revoke the teacher's license for the
30 remainder of that school year. A copy of the request shall be placed in the
31 teacher's personnel file. If a teacher's criminal history is relevant to the
32 teacher's resignation, regardless of whether the teacher has given at least 30
33 days' notice, the board shall report to the State Board of Education the reason
34 for an employee's resignation."

35 **SECTION 4.(b)** G.S. 115C-325.9(b) reads as rewritten:

36 "(b) Thirty Days' Notice Resignation Requirement. – A teacher who is not recommended
37 for dismissal should not resign during the term of the contract without the consent of the
38 superintendent unless he or she has given at least 30 days' notice. If a teacher who is not
39 recommended for dismissal does resign during the term of the contract without giving at least
40 30 days' notice, the board may request that the State Board of Education revoke the teacher's
41 license for the remainder of that school year. A copy of the request shall be placed in the
42 teacher's personnel file. If a teacher's criminal history is relevant to the teacher's resignation,
43 regardless of whether the teacher has given at least 30 days' notice, the board shall report to the
44 State Board of Education the reason for an employee's resignation."

45
46 **PART V. EFFECTIVE DATE**

47 **SECTION 5.** This act is effective when it becomes law and applies to applications
48 for employment that are received on or after January 1, 2018.