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PROPOSED SENATE COMMITTEE SUBSTITUTE H378-PCS30385-CE-21

Short Title: Firefighters Criminal History Record Checks.

(Public)

Sponsors:

Referred to:

March 16, 2023

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT CRIMINAL HISTORY RECORD CHECKS MAY BE CONDUCTED THROUGH THE DEPARTMENT OF PUBLIC SAFETY, CLERK OF COURT, OR A THIRD-PARTY VENDOR FOR FIREFIGHTER APPLICANTS AND CURRENT MEMBERS WHO HAVE BEEN RESIDENTS OF THE STATE FOR FIVE OR MORE YEARS, PROVIDING THAT THE FIREFIGHTER CRIMINAL HISTORY RECORD CHECK REQUIREMENT SHALL NOT APPLY TO JUNIOR MEMBER APPLICANTS AND CURRENT MEMBERS UNDER EIGHTEEN, AND CLARIFYING THAT CRIMINAL HISTORY RECORD CHECKS ARE REQUIRED FOR FIREFIGHTERS PRIOR TO OFFERING THE POSITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-943 reads as rewritten:

"§ 143B-943. Criminal history record checks of applicants to and current members of 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, Legislative, and Court Officers; Article 6, Homicide; Article 7B, 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 22, Damages and Other Offenses to Land and Fixtures; Article 26, Offenses



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

12 (3) Current member. – A person who serves in a paid or volunteer position with
13 a fire department or an emergency medical service.

14 (4) Requesting entity. – A designated local Homeland Security director, a local
15 fire chief of a rated fire department, a fire chief of a nonprofit volunteer fire
16 department, a county fire marshal, or an emergency services director, or, if
17 there is no designated local Homeland Security director, local fire chief of a
18 rated fire department, fire chief of a nonprofit volunteer fire department,
19 county fire marshal, emergency services director, a local law enforcement
20 agency, or their designee.

21 (5) State resident. – An individual who is an applicant or current member with a
22 fire department who attests to the following:

23 a. The individual has resided in the State for the prior five years.

24 b. The individual has no charges or convictions.

25 (b) ~~When requested by a designated local Homeland Security director, a local fire chief~~
26 ~~of a rated fire department, a county fire marshal, an emergency services director, or if there is no~~
27 ~~designated local Homeland Security director, local fire chief of a rated fire department, county~~
28 ~~fire marshal, or emergency services director, when requested by a local law enforcement agency,~~
29 ~~a requesting entity, the North Carolina Department of Public Safety may provide to the requesting~~
30 ~~director, chief, marshal, or agency-requesting entity an applicant's or current member's criminal~~
31 ~~history from the State and National Repositories of Criminal Histories. The local Homeland~~
32 ~~Security director, local fire chief, marshal, director, or local law enforcement agency requesting~~
33 ~~entity shall provide to the North Carolina Department of Public Safety the fingerprints of the~~
34 ~~applicant to be checked, any additional information required by the Department of Public Safety,~~
35 ~~and a form signed by the applicant to be checked consenting to the (i) check of the criminal~~
36 ~~record and (ii) use of fingerprints and other identifying information required by the State or~~
37 ~~National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau~~
38 ~~of Investigation for a search of the State criminal history record file, and the State Bureau of~~
39 ~~Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a~~
40 ~~national criminal history record check. The local Homeland Security director, local fire chief,~~
41 ~~county fire marshal, emergency services director, or local law enforcement agency shall keep all~~
42 ~~information pursuant to this section confidential. The Department of Public Safety shall charge~~
43 ~~a reasonable fee for conducting the checks of the criminal history records authorized by this~~
44 ~~section. The requesting local Homeland Security director, local fire chief, county fire marshal,~~
45 ~~or local law enforcement agency may charge an applicant or current member the fee amount~~
46 ~~charged by the Department of Public Safety for the criminal history record check of the applicant~~
47 ~~or current member.~~

48 (b1) A statewide criminal history record check without fingerprints may be conducted as
49 provided for in this subsection in lieu of the criminal history record check in subsection (b) of
50 this section for a State resident. The requesting entity may request the statewide criminal history
51 record check under this subsection through either of the following ways:

1 (1) A statewide criminal history record check without fingerprints may be
2 conducted by the North Carolina Department of Public Safety. The requesting
3 entity shall provide to the North Carolina Department of Public Safety any
4 information required by the Department to conduct a name only search and a
5 form signed by the State resident to be checked consenting to the (i) check of
6 the criminal record and (ii) use of other identifying information required by
7 the State Repository. The name and other required information shall be
8 forwarded to the State Bureau of Investigation for a search of the State
9 criminal history record file.

10 (2) A statewide criminal history record check of the State resident's name may be
11 conducted by a third-party vendor. The requesting entity and State resident
12 shall provide the third-party vendor's required documentation to complete the
13 request.

14 (3) A statewide criminal history record check of the State resident's name may be
15 conducted and certified by the clerk of court, at the clerk's discretion.

16 (b2) Applicants for junior membership and current junior members of a fire department
17 under the age of 18 shall be exempt from the criminal history record check.

18 (c) All releases of criminal history information by the North Carolina Department of
19 Public Safety to the local Homeland Security director, local fire chief, county fire marshal,
20 emergency services director, or local law enforcement agency requesting entity shall be subject
21 to, and in compliance with, rules governing the dissemination of criminal history record checks
22 as adopted by the North Carolina Department of Public Safety. All of the information the local
23 Homeland Security director, local fire chief, county fire marshal, emergency services director, or
24 local law enforcement agency requesting entity receives through the checking of the criminal
25 history is privileged information and for the exclusive use of that director, chief, marshal, or
26 agency requesting entity. The requesting entity shall keep all information received pursuant to
27 this section confidential.

28 (d) If the applicant's or current member's verified criminal history record check reveals
29 one or more convictions of a crime listed in subsection (a) of this section, then the conviction
30 constitutes just cause for not selecting the applicant for the position or for dismissing the current
31 member from a current position with the local fire department or emergency medical services.
32 Except as provided in subsection (d1) of this section, the conviction does not automatically
33 prohibit volunteering or employment; however, the following factors shall be considered by the
34 local Homeland Security director, local fire chief, county fire marshal, emergency services
35 director, or local law enforcement agency the requesting entity in determining whether the
36 applicant shall be denied or the current member dismissed from a current position:

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.

45 (7) The subsequent commission by the person of a crime listed in subsection (a)
46 of this section.

47 (d1) An applicant is prohibited from serving in a paid or volunteer position with a fire
48 department if the applicant's verified criminal history record check reveals a conviction of arson
49 or another felony conviction involving burning or setting fire under Article 15, Article 22, or any
50 other Article of Chapter 14 of the General Statutes. A local Homeland Security director, local
51 fire chief, county fire marshal, or local law enforcement agency, as applicable, requesting entity

1 shall request, and an applicant shall disclose, any pending felony charges involving burning or
 2 setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes.
 3 Upon becoming aware of pending felony charges, through the required disclosure or by other
 4 means, a ~~local Homeland Security director, local fire chief, county fire marshal, or local law~~
 5 ~~enforcement agency requesting entity~~ shall not offer the applicant a paid or volunteer position,
 6 except as provided in subsection (f) of this section. This subsection does not apply to an applicant
 7 for a paid or volunteer position with an emergency medical service.

8 ...

9 (f) The local fire department shall deny an applicant the position and may dismiss a
 10 current member who refuses to consent to a criminal history record check or use of fingerprints
 11 or other identifying information required by the State or National Repositories of Criminal
 12 ~~Histories. Histories, a clerk of court, or third-party vendor.~~ This refusal constitutes just cause for
 13 the denial of the position or the dismissal from a current position. The local fire department may
 14 extend a conditional offer of the position pending the (i) results of a criminal history record check
 15 required by this section or (ii) final disposition of felony charges disclosed as required by this
 16 section or otherwise discovered.

17 ...

18 (h) Except as provided for in subsection (i) of this section, the Department of Public
 19 Safety shall charge a reasonable fee for conducting the checks of the criminal history records
 20 authorized by this section. If the requesting entity is charged a fee for obtaining a criminal history
 21 record check, the requesting entity may require the applicant or current member to reimburse the
 22 requesting entity the cost incurred.

23 (i) The Department of Public Safety may charge the fire chief of a nonprofit volunteer
 24 fire department a fee to cover the cost associated with submission of fingerprints to the Federal
 25 Bureau of Investigation for a national criminal history record check provided in accordance with
 26 subsection (b) of this section. The Department of Public Safety shall not charge a fee for
 27 conducting a statewide criminal history record check for a fire chief of a nonprofit volunteer fire
 28 department provided in accordance with subsection (b) or (b1) of this section."

29 **SECTION 2.** G.S. 153A-233 reads as rewritten:

30 "**§ 153A-233. Fire-fighting and prevention services.**

31 A county may establish, organize, equip, support, and maintain a fire department; may
 32 prescribe the duties of the fire department; may provide financial assistance to ~~incorporated~~
 33 nonprofit volunteer fire departments; may contract for fire-fighting or prevention services with
 34 one or more counties, cities or other units of local government, ~~incorporated nonprofit~~ volunteer
 35 fire departments, or with an agency of the State government; and may for these purposes
 36 appropriate funds not otherwise limited as to use by law. A county shall ensure that any county,
 37 city or other unit of local government, or ~~incorporated nonprofit~~ volunteer fire department with
 38 whom the county contracts for fire-fighting or prevention services shall obtain a criminal history
 39 record check ~~of any person who applies for~~ for an applicant prior to offering that applicant a paid
 40 or volunteer position providing fire-fighting or prevention services. The criminal history record
 41 check shall be conducted and evaluated as provided in G.S. 143B-943. The county may also
 42 designate fire districts or parts of existing districts and prescribe the boundaries thereof for
 43 insurance grading purposes."

44 **SECTION 3.** G.S. 153A-234(b) reads as rewritten:

45 "(b) The fire marshal shall obtain a criminal history record check ~~of any person who~~
 46 applies for for an applicant prior to offering that applicant a paid or volunteer position with the
 47 fire department. The criminal history record check shall be conducted and evaluated as provided
 48 in G.S. 143B-943."

49 **SECTION 4.** G.S. 160A-292(b) reads as rewritten:

50 "(b) The fire chief shall obtain a criminal history record check ~~of any person who applies~~
 51 for for an applicant prior to offering that applicant a paid or volunteer position with the fire

1 department. The criminal history record check shall be conducted and evaluated as provided in
2 G.S. 143B-943."

3 **SECTION 5.** This act is effective when it becomes law and applies to applications
4 submitted and current members serving on or after that date.