

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

2

SENATE BILL 708
Judiciary II Committee Substitute Adopted 4/23/03

Short Title: Volunteer Fire Dept. Crim. Background Checks.

(Public)

Sponsors:

Referred to:

April 2, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE
3 MEMBERS OF VOLUNTEER FIRE DEPARTMENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 4 of Chapter 114 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 114-19.12. Criminal history record checks of applicants to volunteer fire**
8 **departments.**

9 (a) Definitions. – As used in this section, the term:

10 (1) "Applicant" means an applicant for a paid or volunteer position with a
11 volunteer fire department in a unit of local government.

12 (2) "Criminal history" means a State or federal history of conviction of a
13 crime, whether a misdemeanor or felony, that bears upon a covered
14 person's fitness for holding a paid or volunteer position with a
15 volunteer fire department. The crimes include, but are not limited to,
16 criminal offenses as set forth in any of the following Articles of
17 Chapter 14 of the General Statutes: Article 5, Counterfeiting and
18 Issuing Monetary Substitutes; Article 5A, Endangering Executive and
19 Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other
20 Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and
21 Abduction; Article 13, Malicious Injury or Damage by Use of
22 Explosive or Incendiary Device or Material; Article 14, Burglary and
23 Other Housebreakings; Article 15, Arson and Other Burnings; Article
24 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article
25 19, False Pretenses and Cheats; Article 19A, Obtaining Property or
26 Services by False or Fraudulent Use of Credit Device or Other Means;
27 Article 19B, Financial Transaction Card Crime Act; Article 20,
28 Frauds; Article 21, Forgery; Article 26, Offenses Against Public
29 Morality and Decency; Article 26A, Adult Establishments; Article 27,

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

11 (b) When requested by a local Homeland Security agency, the North Carolina
12 Department of Justice may provide to the requesting agency an applicant's criminal
13 history from the State and National Repository of Criminal Histories. The local
14 Homeland Security agency shall provide to the North Carolina Department of Justice
15 the fingerprints of the applicant to be checked, any additional information required by
16 the Department of Justice, and a form signed by the applicant to be checked consenting
17 to the check of the criminal record and to the use of fingerprints and other identifying
18 information required by the State or National Repositories. The fingerprints of the
19 individual shall be forwarded to the State Bureau of Investigation for a search of the
20 State criminal history record file and the State Bureau of Investigation shall forward a
21 set of fingerprints to the Federal Bureau of Investigation for a national criminal history
22 record check. The local Homeland Security agency shall keep all information pursuant
23 to this section confidential. The Department of Justice shall charge a reasonable fee for
24 conducting the checks of the criminal history records authorized by this section.

25 (c) All releases of criminal history information to the local Homeland Security
26 agency shall be subject to, and in compliance with, rules governing the dissemination of
27 criminal history record checks as adopted by the North Carolina Division of Criminal
28 Information. All of the information the local Homeland Security agency receives
29 through the checking of the criminal history is privileged information and for the
30 exclusive use of that agency.

31 (d) If the applicant's verified criminal history record check reveals one or more
32 convictions covered under subsection (a) of this section, then the conviction shall
33 constitute just cause for not selecting the applicant for the position, or for dismissing the
34 person from a current position with the local volunteer fire department. The conviction
35 shall not automatically prohibit volunteering or employment; however, the following
36 factors shall be considered by the local Homeland Security agency in determining
37 whether the position shall be denied:

- 38 (1) The level and seriousness of the crime;
- 39 (2) The date of the crime;
- 40 (3) The age of the person at the time of the conviction;
- 41 (4) The circumstances surrounding the commission of the crime, if
42 known;
- 43 (5) The nexus between the criminal conduct of the person and the duties
44 of the person;

1 (6) The prison, jail, probation, parole, rehabilitation, and employment
2 records of the person since the date the crime was committed; and

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

5 (e) The local volunteer fire department may deny the applicant the position or
6 dismiss an applicant who refuses to consent to a criminal history record check or use of
7 fingerprints or other identifying information required by the State or National
8 Repositories of Criminal Histories. This refusal constitutes just cause for the denial of
9 the position or the dismissal from the position.

10 (f) The local volunteer fire department may extend a conditional offer of the
11 position pending the results of a criminal history record check authorized by this
12 section."

13 **SECTION 2.** This act is effective when it becomes law.