

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 796
Judiciary II Committee Substitute Adopted 6/14/05
Finance Committee Substitute Adopted 6/23/05

Short Title: Criminal Record Checks/Archaeological Ops.

(Public)

Sponsors:

Referred to:

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 license to conduct exploration, recovery, or salvage operations and archaeological investigations.

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. 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 under this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

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

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

1 Any qualified person, firm or corporation desiring to conduct any type of
2 exploration, recovery or salvage operations, in the course of which any part of a derelict
3 vessel or its contents or other archaeological site may be removed, displaced or
4 destroyed, shall first make application to the Department of Cultural Resources ~~for~~ and
5 obtain a permit or license to conduct such operations. If the Department of Cultural
6 Resources shall find that the granting of such permit or license is in the best interest of
7 the State, it may grant such applicant a permit or license for such a period of time and
8 under such conditions as the Department may deem to be in the best interest of the
9 State. Such permit or license may include but need not be limited to the following:

- 10 (1) Payment of monetary fee to be set by the Department;
- 11 (2) That a portion or all of the historic material or artifacts be delivered to
12 custody and possession of the Department;
- 13 (3) That a portion of all of such relics or artifacts may be sold or retained
14 by the licensee;
- 15 (4) That a portion or all of such relics or artifacts may be sold or traded by
16 the Department.

17 Permits or licenses may be renewed upon or prior to expiration upon such terms as
18 the applicant and the Department may mutually agree. Holders of permits or licenses
19 shall be responsible for obtaining permission of any federal agencies having
20 jurisdiction, including the United States Coast Guard, the United States Department of
21 the Navy and the United States Army Corps of Engineers prior to conducting any
22 salvaging operations."

23 **SECTION 3.** Article 3 of Chapter 121 of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 121-25.1. Criminal record checks of applicants for permit or license.**

26 (a) The following definitions apply to this section:

- 27 (1) Applicant. – A person or entity applying for a permit or license under
28 G.S. 121-25 to conduct any type of exploration, recovery, or salvage
29 operations of any part of a derelict vessel or its contents or other
30 archaeological site.
- 31 (2) Criminal history. – A history of conviction of a state or federal crime,
32 whether a misdemeanor or felony, that bears upon an applicant's
33 fitness to conduct activities related to the surveillance, protection,
34 preservation, and archaeological recovery of property subject to the
35 exclusive dominion and control of the State under G.S. 121-22. The
36 crimes include the criminal offenses set forth in any of the following
37 Articles of Chapter 14 of the General Statutes: Article 5,
38 Counterfeiting and Issuing Monetary Substitutes; Article 5A,
39 Endangering Executive and Legislative Officers and Court Officers;
40 Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article
41 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
42 Malicious Injury or Damage by Use of Explosive or Incendiary Device
43 or Material; Article 14, Burglary and Other Housebreakings; Article
44 15, Arson and Other Burnings; Article 16, Larceny; Article 17,

1 Robbery; Article 18, Embezzlement; Article 19, False Pretenses and
2 Cheats; Article 19A, Obtaining Property or Services by False or
3 Fraudulent Use of Credit Device or Other Means; Article 19B,
4 Financial Transaction Card Crime Act; Article 19C, Financial Identity
5 Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses
6 Against Public Morality and Decency; Article 26A, Adult
7 Establishments; Article 27, Prostitution; Article 28, Perjury; Article
8 29, Bribery; Article 31, Misconduct in Public Office; Article 35,
9 Offenses Against the Public Peace; Article 36A, Riots and Civil
10 Disorders; Article 39, Protection of Minors; Article 40, Protection of
11 the Family; Article 59, Public Intoxication; and Article 60,
12 Computer-Related Crime. The crimes also include possession or sale
13 of drugs in violation of the North Carolina Controlled Substances Act,
14 Article 5 of Chapter 90 of the General Statutes, and alcohol-related
15 offenses such as sale to underage persons in violation of G.S. 18B-302,
16 or driving while impaired in violation of G.S. 20-138.1 through
17 G.S. 20-138.5.

18 (b) All applicants shall consent to a criminal history record check. Refusal to
19 consent to a criminal history record check or to the use of fingerprints or other
20 identifying information may constitute grounds for the Department of Cultural
21 Resources to deny a permit or a license to an applicant. The Department of Cultural
22 Resources shall be responsible for providing to the North Carolina Department of
23 Justice the fingerprints of the applicant to be checked, a form signed by the applicant
24 consenting to the criminal record check and the use of fingerprints and other identifying
25 information required by the State or National Repositories of Criminal Histories, and
26 any additional information required by the Department of Justice. If the applicant is not
27 an individual, the applicant shall provide fingerprints for the principals, officers,
28 directors, and controlling persons of the applicant. Each set of fingerprints shall be
29 certified by an authorized law enforcement officer. The Department of Cultural
30 Resources shall keep all information obtained under this section confidential.

31 (c) If an applicant's criminal history record check reveals one or more
32 convictions listed under subdivision (a)(2) of this section, the conviction shall not
33 automatically bar the issuance of a permit or a license. When determining whether to
34 issue a permit or license to an applicant, the Department of Cultural Resources shall
35 consider all of the following factors regarding the conviction:

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

1 **SECTION 4.** Article 2 of Chapter 70 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 70-13.1. Criminal record checks of applicants for permit or license.**

4 (a) The following definitions apply to this section:

5 (1) Applicant. – A person or entity applying for a permit or license under
6 G.S. 70-13 to conduct any type of archaeological investigation on
7 State lands.

8 (2) Criminal history. – A history of conviction of a state or federal crime,
9 whether a misdemeanor or felony, that bears upon an applicant's
10 fitness to conduct archaeological investigations under G.S. 70-13. The
11 crimes include the criminal offenses set forth in any of the following
12 Articles of Chapter 14 of the General Statutes: Article 5,
13 Counterfeiting and Issuing Monetary Substitutes; Article 5A,
14 Endangering Executive and Legislative Officers and Court Officers;
15 Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article
16 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
17 Malicious Injury or Damage by Use of Explosive or Incendiary Device
18 or Material; Article 14, Burglary and Other Housebreakings; Article
19 15, Arson and Other Burnings; Article 16, Larceny; Article 17,
20 Robbery; Article 18, Embezzlement; Article 19, False Pretenses and
21 Cheats; Article 19A, Obtaining Property or Services by False or
22 Fraudulent Use of Credit Device or Other Means; Article 19B,
23 Financial Transaction Card Crime Act; Article 19C, Financial Identity
24 Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses
25 Against Public Morality and Decency; Article 26A, Adult
26 Establishments; Article 27, Prostitution; Article 28, Perjury; Article
27 29, Bribery; Article 31, Misconduct in Public Office; Article 35,
28 Offenses Against the Public Peace; Article 36A, Riots and Civil
29 Disorders; Article 39, Protection of Minors; Article 40, Protection of
30 the Family; Article 59, Public Intoxication; and Article 60,
31 Computer-Related Crime. The crimes also include possession or sale
32 of drugs in violation of the North Carolina Controlled Substances Act,
33 Article 5 of Chapter 90 of the General Statutes, and alcohol-related
34 offenses such as sale to underage persons in violation of G.S. 18B-302,
35 or driving while impaired in violation of G.S. 20-138.1 through
36 G.S. 20-138.5.

37 (b) All applicants shall consent to a criminal history record check. Refusal to
38 consent to a criminal history record check or to the use of fingerprints or other
39 identifying information may constitute grounds for the Department of Cultural
40 Resources to deny a permit or a license to an applicant. The Department of Cultural
41 Resources shall be responsible for providing to the North Carolina Department of
42 Justice the fingerprints of the applicant to be checked, a form signed by the applicant
43 consenting to the criminal record check and the use of fingerprints and other identifying
44 information required by the State or National Repositories of Criminal Histories, and

1 any additional information required by the Department of Justice. If the applicant is not
2 an individual, the applicant shall provide fingerprints for the principals, officers,
3 directors, and controlling persons of the applicant. Each set of fingerprints shall be
4 certified by an authorized law enforcement officer. The Department of Cultural
5 Resources shall keep all information obtained under this section confidential.

6 (c) If an applicant's criminal history record check reveals one or more
7 convictions listed under subdivision (a)(2) of this section, the conviction shall not
8 automatically bar the issuance of a permit or a license. When determining whether to
9 issue a permit or license to an applicant, the Department of Cultural Resources shall
10 consider all of the following factors regarding the conviction:

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

12 (2) The date of the crime.

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

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

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

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

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

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