

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-479
HOUSE BILL 1322**

AN ACT PROVIDING LOCAL FIRE CHIEFS, COUNTY FIRE MARSHALS, AND LOCAL EMERGENCY SERVICES DIRECTORS WITH THE AUTHORITY TO REQUEST CRIMINAL HISTORIES FROM THE DEPARTMENT OF JUSTICE FOR APPLICANTS TO FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES IN UNITS OF LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.12 reads as rewritten:

"§ 114-19.12. Criminal history record checks of applicants to fire departments, departments and emergency medical services.

(a) Definitions. – ~~As used in this section, the term:~~The following definitions apply in this section:

- (1) ~~"Applicant" means an applicant~~Applicant. – A person who applies for a paid or volunteer position with a fire department in a unit of local government or an emergency medical service.
- (2) ~~"Criminal history" means a~~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 and Legislative Officers; Article 6, Homicide; Article 7A, 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 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by a designated local Homeland Security director ~~or a local fire chief, a county fire marshal, or an emergency services director~~ or, when there is no designated local Homeland Security ~~director, director, local fire chief, county fire marshal, or emergency services director,~~ by a local law enforcement agency, the North Carolina Department of Justice may provide to the requesting ~~director-director, chief, marshal, director,~~ or agency an applicant's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security ~~director-director, local fire chief, marshal, director,~~ or local law enforcement agency shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form signed by the applicant to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State 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 local Homeland Security ~~director-director, local fire chief, county fire marshal, emergency services director,~~ or local law enforcement agency shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the local Homeland Security ~~director-director, local fire chief, county fire marshal, emergency services director,~~ or local law enforcement agency shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the local Homeland Security ~~director-director, local fire chief, county fire marshal, emergency services director,~~ or local law enforcement agency receives through the checking of the criminal history is privileged information and for the exclusive use of that ~~director-director, chief, marshal,~~ or agency.

(d) If the applicant's verified criminal history record check reveals one or more convictions covered under subdivision (a)(2) of this section, then the conviction shall constitute just cause for not selecting the applicant for the position or for dismissing the person from a current position with the local fire ~~department-department or emergency medical services.~~ The conviction shall not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security ~~director-director, local fire chief, county fire marshal, emergency services director,~~ or local law enforcement agency in determining whether the position shall be denied:

- (1) The level and seriousness of the crime;
- (2) The date of the crime;
- (3) The age of the person at the time of the conviction;
- (4) The circumstances surrounding the commission of the crime, if known;
- (5) The nexus between the criminal conduct of the person and the duties of the person;
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

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

(f) The local fire ~~department~~ department or emergency medical services may extend a conditional offer of the position pending the results of a criminal history record check authorized by this section.

(g) For purposes of this section, 'local fire chief' shall include only fire chiefs who are paid employees of a city; 'county fire marshal' shall include only fire marshals who are paid employees of a county; and 'emergency services director' shall include only emergency services directors who are paid employees of a city or county.'

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

In the General Assembly read three times and ratified this the 1st day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:00 p.m. this 29th day of August, 2007