

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 867
PROPOSED COMMITTEE SUBSTITUTE S867-PCS15374-TC-74

Short Title: Protect Students in Schools.

(Public)

Sponsors:

Referred to:

May 11, 2016

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR TEACHER LICENSURE
3 AND SCHOOL PERSONNEL EMPLOYMENT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 115C-296 reads as rewritten:

6 **"§ 115C-296. Board sets licensure requirements; reports; lateral entry and mentor**
7 **programs.**

8 (a) The State Board of Education shall have entire control of licensing all applicants for
9 teaching positions in all public schools of North Carolina; and it shall prescribe the rules and
10 regulations for the renewal and extension of all licenses and shall determine and fix the salary for
11 each grade and type of license which it authorizes.

12 The State Board of Education shall require an applicant for an initial bachelors degree license
13 or graduate degree license to demonstrate the applicant's academic and professional preparation by
14 achieving a prescribed minimum score on a standard examination appropriate and adequate for
15 that purpose. Elementary education (K-6) and special education general curriculum teachers shall
16 also achieve a prescribed minimum score on subtests or standard examinations specific to teaching
17 reading and mathematics. The State Board of Education shall permit an applicant to fulfill any
18 such testing requirement before or during the applicant's second year of teaching provided the
19 applicant took the examination at least once during the first year of teaching. The State Board of
20 Education shall make any required standard initial licensure exam rigorous and raise the
21 prescribed minimum score as necessary to ensure that each applicant has received high-quality
22 academic and professional preparation to teach effectively.

23 The State Board of Education shall require all applicants for licensure in the State to be
24 checked for a criminal history, as provided in G.S. 115C-297.1.

25 (a1) The State Board shall adopt policies that establish the minimum scores for any required
26 standard examinations and other measures necessary to assess the qualifications of professional
27 personnel as required under subsection (a) of this section. For purposes of this subsection, the
28 State Board shall not be subject to Article 2A of Chapter 150B of the General Statutes. At least 30
29 days prior to changing any policy adopted under this subsection, the State Board shall provide
30 written notice to all North Carolina schools of education and to all local boards of education. The
31 written notice shall include the proposed revised policy.

32 (a2) The State Board of Education shall establish a schedule of fees for teacher licensure
33 and administrative changes. The fees established under this subsection shall not exceed the actual
34 cost of providing the service. The schedule may include fees for any of the following services:

35 (1) Application for demographic or administrative changes to a license.



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- 1 (2) Application for a duplicate license or for copies of documents in the licensure
- 2 files.
- 3 (3) Application for a renewal, extension, addition, upgrade, reinstatement, and
- 4 variation to a license.
- 5 (4) Initial application for a New, In-State Approved Program Graduate.
- 6 (5) Initial application for an Out-of-State license.
- 7 (6) All other applications.
- 8 (7) Criminal history check.

9 An applicant must pay any nonrefundable service fees at the time an application is submitted.

10"

11 **SECTION 1.(b)** Article 20 of Chapter 115C of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 115C-297.1. School personnel criminal history checks.**

14 (a) As used in this section, the following terms are defined:

- 15 (1) Applicant. – An individual who submits an applicant for licensure as provided
- 16 in G.S. 115C-296, including initial applications, renewal applications, and
- 17 applications for licensure reinstatement.
- 18 (2) Criminal history. – A county, state, or federal criminal history of conviction of,
- 19 or a plea of nolo contendere to, a crime, whether a misdemeanor or a felony,
- 20 that indicates the applicant (i) poses a threat to the physical safety of students or
- 21 personnel, (ii) has demonstrated that he or she does not have the integrity or
- 22 honesty to fulfill his or her duties as public school personnel, or (iii) otherwise
- 23 fails to meet the standards and criteria adopted by the State Board of Education
- 24 governing ethics and moral character required for professional educators. Such
- 25 crimes include the following North Carolina crimes contained in any of the
- 26 following Articles of Chapter 14 of the General Statutes: Article 5A,
- 27 Endangering Executive and Legislative Officers; Article 6, Homicide; Article
- 28 7B, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping
- 29 and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or
- 30 Incendiary Device or Material; Article 14, Burglary and Other Housebreakings;
- 31 Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17,
- 32 Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats;
- 33 Article 19A, Obtaining Property or Services by False or Fraudulent Use of
- 34 Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article
- 35 26, Offenses Against Public Morality and Decency; Article 26A, Adult
- 36 Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29,
- 37 Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against
- 38 the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article
- 39 39, Protection of Minors; and Article 60, Computer-Related Crime. Such
- 40 crimes also include possession or sale of drugs in violation of the North
- 41 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General
- 42 Statutes, and alcohol-related offenses such as sale to underage persons in
- 43 violation of G.S. 18B-302 or driving while impaired in violation of
- 44 G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes
- 45 listed in this subsection, such crimes also include similar crimes under federal
- 46 law or under the laws of other states.

47 (b) The State Board of Education shall require applicants who have not been previously
48 licensed in the State to be checked for a criminal history before the applicant is issued a license.
49 The State Board of Education shall require an applicant to pay for the criminal history check
50 authorized under this subsection, but a local board of education may pay for the criminal history
51 check on behalf of the applicant.

1 (c) The Department of Public Safety shall provide to the State Board of Education the
2 criminal history from the State and National Repositories of Criminal Histories of any applicant
3 for initial licensure. The State Board of Education shall require the person to be checked by the
4 Department of Public Safety to (i) be fingerprinted and to provide any additional information
5 required by the Department of Public Safety to a person designated by the State Board of
6 Education and (ii) sign a form consenting to the check of the criminal record and to the use of
7 fingerprints and other identifying information required by the repositories. The State Board of
8 Education shall not issue a license to an individual who refuses to consent to a criminal history
9 check.

10 (d) The State Board of Education shall review the criminal history it receives on a person.
11 The State Board of Education shall determine whether the results of the review indicate that the
12 applicant (i) poses a threat to the physical safety of students or personnel, (ii) has demonstrated
13 that he or she does not have the integrity or honesty to fulfill his or her duties as public school
14 personnel, or (iii) otherwise fails to meet the standards and criteria adopted by the State Board of
15 Education governing ethics and moral character required for professional educators and shall use
16 the information when making licensure decisions. If the State Board of Education denies an
17 applicant based on its review of the criminal history it receives, the State Board of Education shall
18 make written findings with regard to how it used the information when making licensure
19 decisions.

20 (e) All the information received by the State Board of Education through the checking of
21 the criminal history in accordance with this section is privileged information and is not a public
22 record but is for the exclusive and confidential use of the State Board of Education. The State
23 Board of Education may destroy the information after it is used for the purposes authorized by this
24 section after one calendar year.

25 (f) There shall be no liability for negligence on the part of the State Board of Education, or
26 its employees, arising from any act taken or omission by any of them in carrying out the
27 provisions of this section. The immunity established by this subsection shall not extend to gross
28 negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The
29 immunity established by this subsection shall be deemed to have been waived to the extent of
30 indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the
31 General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set
32 forth in Article 31 of Chapter 143 of the General Statutes.

33 (g) Any applicant for licensure who willfully furnishes, supplies, or otherwise gives false
34 information on a licensure application that is the basis for a criminal history record check under
35 this section shall be guilty of a Class A1 misdemeanor."

36 **SECTION 1.(c)** Article 13 of Chapter 143B of the General Statutes is amended by
37 adding a new section to read:

38 **"§ 143B-931.1. Criminal background checks for applications for teacher licenses.**

39 The Department of Public Safety may provide to the State Board of Education from the State
40 and National Repositories of Criminal Histories the criminal history of any applicant for licensure
41 for a teaching position under Article 20 of Chapter 115C of the General Statutes. Along with the
42 request, the Board shall provide to the Department of Public Safety the fingerprints of the
43 applicant, a form signed by the applicant consenting to the criminal record check and use of
44 fingerprints and other identifying information required by the State and National Repositories of
45 Criminal Histories, and any additional information required by the Department of Public Safety.
46 The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of
47 the State's criminal history record file, and the State Bureau of Investigation shall forward a set of
48 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
49 The State Board of Education shall keep all information obtained pursuant to this section
50 confidential. The Department of Public Safety may charge a fee to offset the cost incurred by it to

1 conduct a criminal record check under this section. The fee shall not exceed the actual cost of
2 locating, editing, researching, and retrieving the information."

3 **SECTION 2.(a)** G.S. 115C-218.90(b) reads as rewritten:

4 "(b) Criminal History Checks. –

5 (1) ~~If the local board of education of the local school administrative unit in which a~~
6 ~~charter school is located has adopted a policy requiring criminal history checks~~
7 ~~under G.S. 115C-332, then the~~The board of directors of each charter school
8 located in that local school administrative unit shall adopt a policy ~~mirroring~~
9 ~~the local board of education policy~~ that requires an applicant for employment to
10 be checked for a criminal history, as ~~defined~~ provided in G.S. 115C-332. Each
11 charter school board of directors shall apply its policy uniformly in requiring
12 applicants for employment to be checked for a criminal history before the
13 applicant is given an unconditional job offer. A charter school board of
14 directors may employ an applicant conditionally while the board is checking the
15 person's criminal history and making a decision based on the results of the
16 check.

17 (1a) The charter school board of directors shall require the person to be checked by
18 the Department of Public Safety (i) to be fingerprinted and to provide any
19 additional information required by the Department of Public Safety to a person
20 designated by the board of directors or to the local sheriff or the municipal
21 police, whichever is more convenient for the person, and (ii) to sign a form
22 consenting to the check of the criminal record and to the use of fingerprints and
23 other identifying information required by the repositories. The board of
24 directors shall consider refusal to consent when making employment decisions
25 and decisions with regard to independent contractors. The fingerprints of the
26 individual shall be forwarded to the State Bureau of Investigation for a search
27 of the State criminal history record file, and the State Bureau of Investigation
28 shall forward a set of fingerprints to the Federal Bureau of Investigation for a
29 national criminal history record check. The Department of Public Safety shall
30 provide to the charter school board of directors the criminal history from the
31 State and National Repositories of Criminal Histories of the school personnel
32 for which the charter school board of directors requires a criminal history
33 record check.

34 (2) There shall be no liability for negligence on the part of the State Board of
35 Education or the board of directors of the charter school, or their employees,
36 arising from any act taken or omission by any of them in carrying out the
37 provisions of this subsection. The immunity established by this subsection shall
38 not extend to gross negligence, wanton conduct, or intentional wrongdoing that
39 would otherwise be actionable. The immunity established by this subsection
40 shall be deemed to have been waived to the extent of indemnification by
41 insurance, indemnification under Articles 31A and 31B of Chapter 143 of the
42 General Statutes, and to the extent sovereign immunity is waived under the Tort
43 Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

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

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

1 **"§ 115C-238.73. Criminal history record checks.**

2 ...

3 (b) The board of directors shall adopt a policy ~~on whether and under what circumstances~~
4 ~~school personnel shall be required to be~~ that requires an applicant for a school personnel position to
5 be checked for a criminal history. ~~history as provided in subsection (c) of this section.~~ The board
6 of directors shall apply its policy uniformly in requiring applicants for school personnel positions
7 to be checked for a criminal history. The board of directors may grant conditional approval of an
8 application while the board of directors is checking a person's criminal history and making a
9 decision based on the results of the check. An applicant for a school personnel position shall not
10 be required to be checked for a criminal history if he or she has received a license within six
11 months of employment that required a criminal history check equivalent to the criminal history
12 check required in subsection (c) of this section.

13 The board of directors ~~shall not~~ may require ~~school personnel~~ an applicant to pay for the
14 criminal history record check authorized under this section.

15 (c) The board of directors shall require the person to be checked by the Department of
16 Public Safety (i) to be fingerprinted and to provide any additional information required by the
17 Department of Public Safety to a person designated by the board of directors or to the local sheriff
18 or the municipal police, whichever is more convenient for the person, and (ii) to sign a form
19 consenting to the check of the criminal record and to the use of fingerprints and other identifying
20 information required by the repositories. The board of directors shall consider refusal to consent
21 when making employment decisions and decisions with regard to independent contractors. The
22 fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search
23 of the State criminal history record file, and the State Bureau of Investigation shall forward a set of
24 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
25 The Department of Public Safety shall provide to the board of directors the criminal history from
26 the State and National Repositories of Criminal Histories of any school personnel for which the
27 board of directors requires a criminal history record check.

28 ~~The board of directors shall not require school personnel to pay for the fingerprints authorized~~
29 ~~under this section.~~

30"

31 **SECTION 2.(c) G.S. 115C-332 reads as rewritten:**

32 **"§ 115C-332. School personnel criminal history checks.**

33 ...

34 (b) Each local board of education shall adopt a policy ~~on whether and under what~~
35 ~~circumstances an~~ that requires an applicant for a school personnel position ~~shall be required to be~~
36 checked for a criminal history as provided in subsection (c) of this section before the applicant is
37 offered an unconditional job. Each local board of education shall apply its policy uniformly in
38 requiring applicants for school personnel positions to be checked for a criminal history. A local
39 board of education ~~that requires a criminal history check for an applicant may~~ may employ an
40 applicant conditionally while the board is checking the person's criminal history and making a
41 decision based on the results of the check. An applicant for a school personnel position shall not
42 be required to be checked for a criminal history if he or she has received a license within six
43 months of employment that required a criminal history check equivalent to the criminal history
44 check required in subsection (c) of this section.

45 A local board of education ~~shall not~~ may require an applicant to pay for the criminal history
46 check authorized under this subsection.

47 (c) The Department of Public Safety shall provide to the local board of education the
48 criminal history from the State and National Repositories of Criminal Histories of any applicant
49 for a school personnel position in the local school administrative unit for which a local board of
50 education requires a criminal history check. The local board of education shall require the person
51 to be checked by the Department of Public Safety to (i) be fingerprinted and to provide any

1 additional information required by the Department of Public Safety to a person designated by the
2 local board, or to the local sheriff or the municipal police, whichever is more convenient for the
3 person, and (ii) sign a form consenting to the check of the criminal record and to the use of
4 fingerprints and other identifying information required by the repositories. The local board of
5 education shall consider refusal to consent when making employment decisions and decisions with
6 regard to independent contractors.

7 ~~The local board of education shall not require an applicant to pay for being fingerprinted.~~
8"

9 **SECTION 2.(d)** G.S. 143B-931 is amended by adding a new subsection to read:

10 "(b1) The Department of Public Safety may provide a criminal history record check to the
11 board of directors of a charter school of a person who is employed at a charter school or of a
12 person who has applied for employment at a charter school if the employee or applicant consents
13 to the record check. The Department may also provide a criminal history record check of school
14 personnel as defined in G.S. 115C-332 by fingerprint card to the board of directors of the charter
15 school from the National Repositories of Criminal Histories, in accordance with
16 G.S. 115C-218.90. The information shall be kept confidential by the board of directors of the
17 charter school as provided in G.S. 115C-218.90."

18 **SECTION 3.** This act is effective when it becomes law and applies to applications for
19 licensure and employment that are received 60 or more days after that date.