

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 867  
Education/Higher Education Committee Substitute Adopted 5/24/16  
Judiciary I Committee Substitute Adopted 5/26/16  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S867-PCS45527-TC-81

Short Title: Protect Students in Schools.

(Public)

Sponsors:

Referred to:

May 11, 2016

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR TEACHER LICENSURE  
AND SCHOOL PERSONNEL EMPLOYMENT AND FOR BOARD MEMBERS OF  
NONPROFITS SEEKING INITIAL APPROVAL TO ESTABLISH A CHARTER SCHOOL.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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



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

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

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

14 ...."

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

17 **"§ 115C-297.1. School personnel criminal history checks.**

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

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

1       **(b)**    The State Board of Education shall require applicants to be checked for a criminal  
2 history before the applicant is issued a license. The State Board of Education shall require an  
3 applicant to pay for the criminal history check authorized under this subsection, but a local board  
4 of education may pay for the criminal history check on behalf of the applicant.

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

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

24       **(e)**    Within the six months following licensure, the State Board of Education may provide  
25 upon request the criminal history it receives on a person to a local board of education, regional  
26 board of directors, or charter board of directors considering employment of that individual.

27       **(f)**    All the information received by the State Board of Education through the checking of  
28 the criminal history in accordance with this section is privileged information and is not a public  
29 record but is for the exclusive and confidential use of the State Board of Education and a local  
30 board of education, regional board of directors, or charter board of directors considering  
31 employment of an individual granted licensure. The State Board of Education, local board of  
32 education, regional board of directors, or charter board of directors may destroy the information  
33 after it is used for the purposes authorized by this section after one calendar year.

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

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

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

47       "§ 143B-931.1. Criminal background checks for applications for teacher licenses and  
48 members of boards of directors of nonprofits seeking initial approval of charters.

49       The Department of Public Safety may provide to the State Board of Education from the State  
50 and National Repositories of Criminal Histories the criminal history of (i) any applicant for  
51 licensure for a teaching position under Article 20 of Chapter 115C of the General Statutes or (ii)

1 the member of a board of directors of a nonprofit seeking initial approval to establish a charter  
2 school under Article 14A of Chapter 115C of the General Statutes. Along with the request, the  
3 Board shall provide to the Department of Public Safety the fingerprints of the applicant or  
4 member, a form signed by the applicant or member consenting to the criminal record check and  
5 use of fingerprints and other identifying information required by the State and National  
6 Repositories of Criminal Histories, and any additional information required by the Department of  
7 Public Safety. The applicant or member's fingerprints shall be forwarded to the State Bureau of  
8 Investigation for a search of the State's criminal history record file, and the State Bureau of  
9 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a  
10 national criminal history record check. The State Board of Education shall keep all information  
11 obtained pursuant to this section confidential. The Department of Public Safety may charge a fee  
12 to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall  
13 not exceed the actual cost of locating, editing, researching, and retrieving the information."

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

15 "(b) Criminal History Checks. –

16 (1) ~~If the local board of education of the local school administrative unit in which a~~  
17 ~~charter school is located has adopted a policy requiring criminal history checks~~  
18 ~~under G.S. 115C-332, then the~~ The board of directors of each charter school  
19 located in that local school administrative unit shall adopt a policy mirroring  
20 the local board of education policy that requires an applicant for employment to  
21 be checked for a criminal history, as defined provided in G.S. 115C-332. Each  
22 charter school board of directors shall apply its policy uniformly in requiring  
23 applicants for employment to be checked for a criminal history before the  
24 applicant is given an unconditional job offer. A charter school board of  
25 directors may employ an applicant conditionally while the board is checking the  
26 person's criminal history and making a decision based on the results of the  
27 check.

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

45 (2) There shall be no liability for negligence on the part of the State Board of  
46 Education or the board of directors of the charter school, or their employees,  
47 arising from any act taken or omission by any of them in carrying out the  
48 provisions of this subsection. The immunity established by this subsection shall  
49 not extend to gross negligence, wanton conduct, or intentional wrongdoing that  
50 would otherwise be actionable. The immunity established by this subsection  
51 shall be deemed to have been waived to the extent of indemnification by

1 insurance, indemnification under Articles 31A and 31B of Chapter 143 of the  
2 General Statutes, and to the extent sovereign immunity is waived under the Tort  
3 Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

4 (3) All the information received by the charter school board of directors through  
5 the checking of the criminal history or by the State Board of Education in  
6 accordance with this section is privileged information and is not a public record  
7 but is for the exclusive use of the charter school board of directors, appropriate  
8 officers of the charter school as permitted by federal law, or the State Board of  
9 Education. The charter school board of directors or the State Board of  
10 Education may destroy the information after it is used for the purposes  
11 authorized by this section after one calendar year."

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

13 **"§ 115C-238.73. Criminal history record checks.**

14 ...

15 (b) The board of directors shall adopt a policy ~~on whether and under what circumstances~~  
16 ~~school personnel shall be required to be~~ that requires an applicant for a school personnel position  
17 to be checked for a criminal history. history as provided in subsection (c) of this section. The  
18 board of directors shall apply its policy uniformly in requiring applicants for school personnel  
19 positions to be checked for a criminal history. The board of directors may grant conditional  
20 approval of an application while the board of directors is checking a person's criminal history and  
21 making a decision based on the results of the check. An applicant for a school personnel position  
22 shall not be required to be checked for a criminal history if he or she has received a license within  
23 six months of employment that required a criminal history check equivalent to the criminal history  
24 check required in subsection (c) of this section. The board of directors may request the criminal  
25 history check completed for licensure purposes from the State Board of Education as provided in  
26 G.S. 115C-297.1(e).

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

29 (c) The board of directors shall require the person to be checked by the Department of  
30 Public Safety (i) to be fingerprinted and to provide any additional information required by the  
31 Department of Public Safety to a person designated by the board of directors or to the local sheriff  
32 or the municipal police, whichever is more convenient for the person, and (ii) to sign a form  
33 consenting to the check of the criminal record and to the use of fingerprints and other identifying  
34 information required by the repositories. The board of directors shall consider refusal to consent  
35 when making employment decisions and decisions with regard to independent contractors. The  
36 fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search  
37 of the State criminal history record file, and the State Bureau of Investigation shall forward a set of  
38 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.  
39 The Department of Public Safety shall provide to the board of directors the criminal history from  
40 the State and National Repositories of Criminal Histories of any school personnel for which the  
41 board of directors requires a criminal history record check.

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

44 ...."

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

46 **"§ 115C-332. School personnel criminal history checks.**

47 ...

48 (b) Each local board of education shall adopt a policy ~~on whether and under what~~  
49 ~~circumstances an~~ that requires an applicant for a school personnel position ~~shall be required to be~~  
50 checked for a criminal history as provided in subsection (c) of this section before the applicant is  
51 offered an unconditional job. Each local board of education shall apply its policy uniformly in

1 requiring applicants for school personnel positions to be checked for a criminal history. A local  
2 board of education ~~that requires a criminal history check for an applicant may~~ may employ an  
3 applicant conditionally while the board is checking the person's criminal history and making a  
4 decision based on the results of the check. An applicant for a school personnel position shall not  
5 be required to be checked for a criminal history if he or she has received a license within six  
6 months of employment that required a criminal history check equivalent to the criminal history  
7 check required in subsection (c) of this section. The local board of education may request the  
8 criminal history check completed for licensure purposes from the State Board of Education as  
9 provided in G.S. 115C-297.1(e).

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

12 (c) The Department of Public Safety shall provide to the local board of education the  
13 criminal history from the State and National Repositories of Criminal Histories of any applicant  
14 for a school personnel position in the local school administrative unit for which a local board of  
15 education requires a criminal history check. The local board of education shall require the person  
16 to be checked by the Department of Public Safety to (i) be fingerprinted and to provide any  
17 additional information required by the Department of Public Safety to a person designated by the  
18 local board, or to the local sheriff or the municipal police, whichever is more convenient for the  
19 person, and (ii) sign a form consenting to the check of the criminal record and to the use of  
20 fingerprints and other identifying information required by the repositories. The local board of  
21 education shall consider refusal to consent when making employment decisions and decisions with  
22 regard to independent contractors.

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

24 ...."

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

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

34 **SECTION 3.(a)** G.S. 115C-218.1(b)(3) reads as rewritten:

35 "(3) The governance structure of the school including the names of the initial  
36 members of the board of directors of the nonprofit, tax-exempt corporation and  
37 the process to be followed by the school to ensure parental involvement. The  
38 initial members of the board of directors shall consent to a criminal history  
39 check as provided in G.S. 115C-218.115. A teacher employed by the board of  
40 directors to teach in the charter school may serve as a nonvoting member of the  
41 board of directors for the charter school."

42 **SECTION 3.(b)** Article 14A of Chapter 115C of the General Statutes is amended by  
43 adding a new section to read:

44 **§ 115C-218.115. Charter board of director criminal history checks.**

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

46 (1) Member. – An individual who is a member of the board of directors of a  
47 nonprofit seeking initial approval to establish a charter school.

48 (2) Criminal history. – A county, state, or federal criminal history of conviction of,  
49 or a plea of nolo contendere to, a crime, whether a misdemeanor or a felony,  
50 that indicates the applicant (i) poses a threat to the physical safety of students or  
51 personnel, (ii) has demonstrated that he or she does not have the integrity or

1 honesty to fulfill his or her duties as public school personnel, or (iii) otherwise  
2 fails to meet the standards and criteria adopted by the State Board of Education  
3 governing ethics and moral character required for professional educators. Such  
4 crimes include the following North Carolina crimes contained in any of the  
5 following Articles of Chapter 14 of the General Statutes: Article 5A,  
6 Endangering Executive and Legislative Officers; Article 6, Homicide; Article  
7 7B, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping  
8 and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or  
9 Incendiary Device or Material; Article 14, Burglary and Other Housebreakings;  
10 Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17,  
11 Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats;  
12 Article 19A, Obtaining Property or Services by False or Fraudulent Use of  
13 Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article  
14 26, Offenses Against Public Morality and Decency; Article 26A, Adult  
15 Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29,  
16 Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against  
17 the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article  
18 39, Protection of Minors; and Article 60, Computer-Related Crime. Such  
19 crimes also include possession or sale of drugs in violation of the North  
20 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General  
21 Statutes, and alcohol-related offenses such as sale to underage persons in  
22 violation of G.S. 18B-302 or driving while impaired in violation of  
23 G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes  
24 listed in this subsection, such crimes also include similar crimes under federal  
25 law or under the laws of other states.

26 (b) The State Board of Education shall require all members of the board of directors of the  
27 nonprofit to be checked for a criminal history before granting final approval of a charter  
28 application. The State Board of Education shall require a member to pay for the criminal history  
29 check authorized under this subsection, but the nonprofit may pay for the criminal history check  
30 on behalf of the member.

31 (c) The Department of Public Safety shall provide to the State Board of Education the  
32 criminal history from the State and National Repositories of Criminal Histories of any member.  
33 The State Board of Education shall require the person to be checked by the Department of Public  
34 Safety to (i) be fingerprinted and to provide any additional information required by the  
35 Department of Public Safety to a person designated by the State Board of Education and (ii) sign a  
36 form consenting to the check of the criminal record and to the use of fingerprints and other  
37 identifying information required by the repositories. The State Board of Education shall not issue a  
38 charter to a nonprofit with a member who refuses to consent to a criminal history check.

39 (d) The State Board of Education shall review the criminal history it receives on a person  
40 and shall determine whether the results of the review indicate that the member (i) poses a threat to  
41 the physical safety of students or personnel or (ii) has demonstrated that he or she does not have  
42 the integrity or honesty to fulfill his or her duties as a member of the board of directors of a charter  
43 school. If the State Board of Education denies an application for a charter based on its review of  
44 the criminal history it receives on a member, the State Board of Education shall make written  
45 findings with regard to how it used the information when denying the application.

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

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

9       (g)     Any member who willfully furnishes, supplies, or otherwise gives false information for  
10 a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

11             **SECTION 4.** This act is effective when it becomes law and applies to applications for  
12 licensure and employment and application for initial charters that are received 60 or more days  
13 after that date.