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SENATE BILL DRS15109-MVf-5

Short Title: Fire Depts/Prohibit Certain Crimes. (Public)

Sponsors: Senators Britt, McInnis, and Johnson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS TO
3 FIRE DEPARTMENTS, TO REQUIRE APPLICANTS TO DISCLOSE CERTAIN
4 CRIMINAL CHARGES, AND TO PROHIBIT APPLICANTS CONVICTED OF
5 CERTAIN CRIMES FROM SERVING AS VOLUNTEER OR PAID MEMBERS OF FIRE
6 DEPARTMENTS.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 143B-943 reads as rewritten:

9 "§ 143B-943. **Criminal history record checks of applicants to and current members of fire
10 departments and emergency medical services.**

11 (a) Definitions. – The following definitions apply in this section:

12 (1) Applicant. – A person who applies for a paid or volunteer position with a fire
13 department or an emergency medical service.

14 (2) Criminal history. – A State or federal history of conviction of a crime, whether
15 a misdemeanor or felony, that bears upon a covered person's fitness for
16 holding a paid or volunteer position with a fire department. The crimes
17 include, but are not limited to, criminal offenses as set forth in any of the
18 following Articles of Chapter 14 of the General Statutes: Article 5,
19 Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering
20 ~~Executive and Legislative~~ Executive, Legislative, and Court Officers; Article
21 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults;
22 Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or
23 Damage by Use of Explosive or Incendiary Device or Material; Article 14,
24 Burglary and Other Housebreakings; Article 15, Arson and Other Burnings;
25 Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article
26 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services
27 by False or Fraudulent Use of Credit Device or Other Means; Article 19B,
28 Financial Transaction Card Crime Act; Article 20, Frauds; Article 21,
29 Forgery; Article 22, Damages and Other Offenses to Land and Fixtures;
30 Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult
31 Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29,
32 Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against
33 the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies;
34 Article 39, Protection of Minors; Article 40, Protection of the Family; Article
35 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes
36 also include possession or sale of drugs in violation of the North Carolina



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1 Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes,
2 and alcohol-related offenses such as sale to underage persons in violation of
3 G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through
4 G.S. 20-138.5.

5 (3) Current member. – A person who serves in a paid or volunteer position with
6 a fire department or an emergency medical service.

7 (b) When requested by a designated local Homeland Security director, a local fire chief
8 of a rated fire department, a county fire marshal, an emergency services director, or if there is no
9 designated local Homeland Security director, local fire chief of a rated fire department, county
10 fire marshal, or emergency services director, when requested by a local law enforcement agency,
11 the North Carolina Department of Public Safety may provide to the requesting director, chief,
12 marshal, ~~director~~, or agency an applicant's or current member's criminal history from the State
13 and National Repositories of Criminal Histories. The local Homeland Security director, local fire
14 chief, marshal, director, or local law enforcement agency shall provide to the North Carolina
15 Department of Public Safety the fingerprints of the applicant to be checked, any additional
16 information required by the Department of Public Safety, and a form signed by the applicant to
17 be checked consenting to the (i) check of the criminal record and ~~to the~~ (ii) use of fingerprints
18 and other identifying information required by the State or National Repositories. The fingerprints
19 of the individual shall be forwarded to the State Bureau of Investigation for a search of the State
20 criminal history record file, and the State Bureau of Investigation shall forward a set of
21 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
22 The local Homeland Security director, local fire chief, county fire marshal, emergency services
23 director, or local law enforcement agency shall keep all information pursuant to this section
24 confidential. The Department of Public Safety shall charge a reasonable fee for conducting the
25 checks of the criminal history records authorized by this section. The requesting local Homeland
26 Security director, local fire chief, county fire marshal, or local law enforcement agency may
27 charge an applicant or current member the fee amount charged by the Department of Public
28 Safety for the criminal history record check of the applicant or current member.

29 (c) All releases of criminal history information to the local Homeland Security director,
30 local fire chief, county fire marshal, emergency services director, or local law enforcement
31 agency shall be subject to, and in compliance with, rules governing the dissemination of criminal
32 history record checks as adopted by the North Carolina Department of Public Safety. All of the
33 information the local Homeland Security director, local fire chief, county fire marshal,
34 emergency services director, or local law enforcement agency receives through the checking of
35 the criminal history is privileged information and for the exclusive use of that director, chief,
36 marshal, or agency.

37 (d) If the applicant's or current member's verified criminal history record check reveals
38 one or more convictions ~~covered under subdivision (a)(2) of a crime listed in subsection (a)~~
39 ~~this section, then the conviction shall constitute~~ constitutes just cause for not selecting the
40 applicant for the position or for dismissing the current member from a current position with the
41 local fire department or emergency medical services. ~~The~~ Except as provided in subsection (d1)
42 of this section, the conviction shall does not automatically prohibit volunteering or employment;
43 however, the following factors shall be considered by the local Homeland Security director, local
44 fire chief, county fire marshal, emergency services director, or local law enforcement agency in
45 determining whether the ~~position applicant~~ applicant shall be denied or the current member dismissed from
46 a current position:

47 (1) The level and seriousness of the ~~crime;~~ crime.

48 (2) The date of the ~~crime;~~ crime.

49 (3) The age of the person at the time of the ~~conviction;~~ conviction.

50 (4) The circumstances surrounding the commission of the crime, if
51 ~~known;~~ known.

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

7 (d1) An applicant is prohibited from serving in a paid or volunteer position with a fire
8 department if the applicant's verified criminal history record check reveals a conviction of arson
9 or another felony conviction involving burning or setting fire under Article 14, Article 22, or any
10 other Article of Chapter 15 of the General Statutes. A local Homeland Security director, local
11 fire chief, county fire marshal, or local law enforcement agency, as applicable, shall request, and
12 an applicant shall disclose, any pending felony charges involving burning or setting fire under
13 Article 14, Article 22, or any other Article of Chapter 15 of the General Statutes. Upon becoming
14 aware of pending felony charges, through the required disclosure or by other means, a local
15 Homeland Security director, local fire chief, county fire marshal, or local law enforcement
16 agency shall not offer the applicant a paid or volunteer position, except as provided in subsection
17 (f) of this section.

18 (e) ~~The local fire department or emergency medical services may deny the an applicant~~
19 ~~or current member the position or dismiss an applicant or a current member who refuses to~~
20 ~~consent to a criminal history record check or use of fingerprints or other identifying information~~
21 ~~required by the State or National Repositories of Criminal Histories. This refusal constitutes just~~
22 ~~cause for the denial of the position or the dismissal from a current position. The emergency~~
23 ~~medical services may extend a conditional offer of the position pending the results of a criminal~~
24 ~~history record check required by this section.~~

25 (f) The local fire department shall deny an applicant the position and may dismiss a
26 current member who refuses to consent to a criminal history record check or use of fingerprints
27 or other identifying information required by the State or National Repositories of Criminal
28 Histories. This refusal constitutes just cause for the denial of the position or the dismissal from a
29 current position. The local fire department or emergency medical services may extend a
30 conditional offer of the position pending the (i) results of a criminal history record check
31 authorized required by this section; section or (ii) final disposition of felony charges disclosed as
32 required by this section or otherwise discovered.

33 (g) For purposes of this section, "local fire chief" shall include the fire chief of any bona
34 fide fire department certified to the Commissioner of Insurance with at least a Class 9S rating for
35 insurance grading purposes; "county fire marshal" shall include only fire marshals who are paid
36 employees of a county; and "emergency services director" shall include only emergency services
37 directors who are paid employees of a city or county."

38 **SECTION 2.** G.S. 153A-233 reads as rewritten:

39 **"§ 153A-233. Fire-fighting and prevention services.**

40 A county may establish, organize, equip, support, and maintain a fire department; may
41 prescribe the duties of the fire department; may provide financial assistance to incorporated
42 volunteer fire departments; may contract for fire-fighting or prevention services with one or more
43 counties, ~~cities, or cities or other units of local government~~ government, incorporated volunteer
44 fire departments, or with an agency of the State government, or with one or more incorporated
45 volunteer fire departments; government; and may for these purposes appropriate funds not
46 otherwise limited as to use by law. A county shall ensure that any county, city or other unit of
47 local government, or incorporated volunteer fire department with whom the county contracts for
48 fire-fighting or prevention services shall obtain a criminal history record check of any person
49 who applies for a paid or volunteer position providing fire-fighting or prevention services. The
50 criminal history record check shall be conducted and evaluated as provided in G.S. 143B-943.

1 The county may also designate fire districts or parts of existing districts and prescribe the
2 boundaries thereof for insurance grading purposes."

3 **SECTION 3.** G.S. 153A-234 reads as rewritten:

4 "**§ 153A-234. Fire marshal.**

5 (a) A county may appoint a fire marshal and employ persons as his assistants. A county
6 may also impose any duty that might be imposed on a fire marshal on any other officer or
7 employee of the county. The board of commissioners shall set the duties of the fire marshal,
8 which may include but are not limited to:

9 (1) Advising the board on improvements in the fire-fighting or fire prevention
10 activities under the county's supervision or control.

11 (2) Coordinating fire-fighting and training activities under the county's
12 supervision or control.

13 (3) Coordinating fire prevention activities under the county's supervision or
14 control.

15 (4) Assisting incorporated volunteer fire departments in developing and
16 improving their fire-fighting or fire prevention capabilities.

17 (5) Making fire prevention inspections, including the periodic inspections and
18 reports of school buildings required by Chapter 115 and the inspections of
19 child care facilities required by Chapter 110. A fire marshal shall not make
20 electrical inspections unless he is qualified to do so under G.S. 153A-351.

21 (b) The fire marshal shall obtain a criminal history record check of any person who
22 applies for a paid or volunteer position with the fire department. The criminal history record
23 check shall be conducted and evaluated as provided in G.S. 143B-943."

24 **SECTION 4.** G.S. 160A-292 reads as rewritten:

25 "**§ 160A-292. Duties of fire chief.**

26 (a) Where not otherwise prescribed, the duties of the fire chief shall be to preserve and
27 care for fire apparatus, have charge of fighting and extinguishing fires and training the fire
28 department, seek out and have corrected all places and conditions dangerous to the safety of the
29 city and its citizens from fire, and make annual reports to the council concerning these duties. If
30 these duties include State Building Code enforcement, they shall follow the provisions as defined
31 in G.S. 143-151.13.

32 (b) The fire chief shall obtain a criminal history record check of any person who applies
33 for a paid or volunteer position with the fire department. The criminal history record check shall
34 be conducted and evaluated as provided in G.S. 143B-943."

35 **SECTION 5.** This act is effective when it becomes law and applies to applications
36 submitted on or after that date.