A BILL TO BE ENTITLED
AN ACT PROVIDING THAT CRIMINAL HISTORY RECORD CHECKS MAY BE
CONDUCTED FOR FIREFIGHTER APPLICANTS WHO HAVE BEEN RESIDENTS OF
THE STATE FOR FIVE OR MORE YEARS CONDUCTED THROUGH THE
DEPARTMENT OF PUBLIC SAFETY, THE CLERK OF SUPERIOR COURT, OR A
THIRD-PARTY VENDOR, AND PROVIDING THAT THE FIREFIGHTER CRIMINAL
HISTORY RECORD CHECK REQUIREMENT SHALL NOT APPLY TO JUNIOR
MEMBER APPLICANTS UNDER EIGHTEEN.

The General Assembly of North Carolina enacts:

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

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

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

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

(2) 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, Legislative, and Court Officers; Article 6, Homicide; Article 7B,
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
22, Damages and Other Offenses to Land and Fixtures; 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, Civil Disorders, and Emergencies; 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.

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

(4) Requesting entity. – A designated local Homeland Security director, a local fire chief of a rated fire department, a fire chief of a nonprofit volunteer fire department, a county fire marshal, or an emergency services director, or, if there is no designated local Homeland Security director, local fire chief of a rated fire department, fire chief of a nonprofit volunteer fire department, county fire marshal, or emergency services director, a local law enforcement agency.

(5) State resident. – An individual who is an applicant or current member with a fire department who attests to the following:
   a. The individual has resided in the State for the prior five years.
   b. The individual has no charges or convictions.

(b) When requested by a designated local Homeland Security director, a local fire chief of a rated fire department, a county fire marshal, an emergency services director, or if there is no designated local Homeland Security director, local fire chief of a rated fire department, county fire marshal, or emergency services director, when requested by a local law enforcement agency, a requesting entity, the North Carolina Department of Public Safety may provide to the requesting director, chief, marshal, or agency requesting entity an applicant’s or current member’s criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security director, local fire chief, marshal, director, or local law enforcement agency requesting entity shall provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, any additional information required by the Department of Public Safety, and a form signed by the applicant to be checked consenting to the (i) check of the criminal record and (ii) 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, 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 Public Safety shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section. The requesting local Homeland Security director, local fire chief, county fire marshal, or local law enforcement agency may charge an applicant or current member the fee amount charged by the Department of Public Safety for the criminal history record check of the applicant or current member.

(b1) A statewide criminal history record check without fingerprints may be conducted as provided for in this subsection in lieu of the criminal history record check in subsection (b) of this section for a State resident. The requesting entity may request the statewide criminal history record check under this subsection through either of the following ways:

(1) A statewide criminal history record check without fingerprints may be conducted by the North Carolina Department of Public Safety. The requesting entity shall provide to the North Carolina Department of Public Safety any information required by the Department to conduct a name only search, and a form signed by the State resident to be checked consenting to the (i) check of
the criminal record and (ii) use of other identifying information required by
the State Repository. The name and other required information shall be
forwarded to the State Bureau of Investigation for a search of the State
criminal history record file.

(2) A statewide criminal history record check of the State resident’s name may be
conducted by a third-party vendor. The requesting entity and State resident
shall provide the third-party vendor’s required documentation to complete the
request.

(b2) Applicants for junior membership and current junior members of a fire department
under the age of 18 shall be exempt from the criminal history record check.

(c) All releases of criminal history information by the North Carolina Department of
Public Safety to the local Homeland Security director, local fire chief, county fire marshal,
emergency services director, or local law enforcement agency requesting entity shall be subject
to, and in compliance with, rules governing the dissemination of criminal history record checks
as adopted by the North Carolina Department of Public Safety. All of the information the local
Homeland Security director, local fire chief, county fire marshal, emergency services director, or
local law enforcement agency requesting entity receives through the checking of the criminal
history is privileged information and for the exclusive use of that director, chief, marshal, or
agency requesting entity. The requesting entity shall keep all information received pursuant to
this section confidential.

(d) If the applicant’s or current member’s verified criminal history record check reveals
one or more convictions of a crime listed in subsection (a) of this section, then the conviction
constitutes just cause for not selecting the applicant for the position or for dismissing the current
member from a current position with the local fire department or emergency medical services.
Except as provided in subsection (d1) of this section, the conviction does not automatically
prohibit volunteering or employment; however, the following factors shall be considered by the
local Homeland Security director, local fire chief, county fire marshal, emergency services
director, or local law enforcement agency requesting entity in determining whether the
applicant shall be denied or the current member dismissed from a current position:

(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.
(7) The subsequent commission by the person of a crime listed in subsection (a)
of this section.

(d1) An applicant is prohibited from serving in a paid or volunteer position with a fire
department if the applicant’s verified criminal history record check reveals a conviction of arson
or another felony conviction involving burning or setting fire under Article 15, Article 22, or any
other Article of Chapter 14 of the General Statutes. A local Homeland Security director, local
fire chief, county fire marshal, or local law enforcement agency, as applicable, requesting entity
shall request, and an applicant shall disclose, any pending felony charges involving burning or
setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes.
Upon becoming aware of pending felony charges, through the required disclosure or by other
means, a local Homeland Security director, local fire chief, county fire marshal, or local law
enforcement agency requesting entity shall not offer the applicant a paid or volunteer position,
except as provided in subsection (f) of this section. This subsection does not apply to an applicant
for a paid or volunteer position with an emergency medical service.
The local fire department shall deny an applicant the position and may dismiss a current member 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 or third-party vendors. This refusal constitutes just cause for the denial of the position or the dismissal from a current position. The local fire department may extend a conditional offer of the position pending the (i) results of a criminal history record check required by this section or (ii) final disposition of felony charges disclosed as required by this section or otherwise discovered.

Except as provided for in subsection (i) of this section, the Department of Public Safety shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section. If the requesting entity is charged a fee for obtaining a criminal history record check, the requesting entity may require the applicant or current member to reimburse the requesting entity the cost incurred.

The Department of Public Safety may charge the fire chief of a nonprofit volunteer fire department a fee to cover the cost associated with submission of fingerprints to the Federal Bureau of Investigation for a national criminal history record check provided in accordance with subsection (b) of this section. The Department of Public Safety shall not charge a fee for conducting a statewide criminal history record check for a fire chief of a nonprofit volunteer fire department provided in accordance with subsection (b) or (b1) of this section."

SECTION 2. This act is effective when it becomes law and applies to applications submitted and current members serving on or after that date.