

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 723  
Committee Substitute Favorable 5/26/05

Short Title: UNC/Criminal Record Checks/Fee.-AB

(Public)

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Sponsors:

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Referred to:

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March 17, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN  
2 CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE  
3 CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A  
4 CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE  
5 BASIS OF A CRIMINAL RECORD CHECK.  
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 114 of the General Statutes is amended by adding a  
9 new section to read:

10 **"§ 114-19.2A. Criminal record checks of university personnel.**

11 (a) The Department of Justice may provide a criminal record check to  
12 administrators of The University of North Carolina, or of any of its institutions or  
13 entities, concerning a person who has applied for employment or a promotion in The  
14 University of North Carolina System, or its institutions or entities, if the applicant  
15 consents to the record check. The Department may also provide a criminal record check  
16 to The University of North Carolina by fingerprint card from National Repositories of  
17 Criminal Histories, in accordance with G.S. 116-40.5A. The information shall be kept  
18 confidential as provided in G.S. 116-40.5A.

19 (b) University law enforcement personnel who are certified DCI operators may  
20 conduct the criminal record check, to the extent permitted by law. For a criminal record  
21 check performed by the Department of Justice, the Department shall charge a  
22 reasonable fee for conducting a criminal record check under this section. The fee shall  
23 not exceed the actual cost of locating, editing, researching, and retrieving the  
24 information.

25 (c) The Department of Justice shall adopt rules to implement this section."

26 **SECTION 2.** Chapter 116 of the General Statutes is amended by adding a  
27 new section to read:

28 **"§ 116-40.5A. University personnel criminal history checks.**

29 (a) As used in this section:

1           (1) "Criminal history" means a county, State, or federal criminal history of  
2 conviction of a crime, whether a misdemeanor or a felony, that  
3 indicates the applicant (i) poses a threat to the physical safety of  
4 students or personnel, or (ii) has demonstrated that he or she does not  
5 have the integrity or honesty to fulfill his or her duties for The  
6 University of North Carolina. Such crimes include the following  
7 crimes contained in any of the following Articles of Chapter 14 of the  
8 General Statutes: Article 4A, Prohibited Secret Societies and  
9 Activities; Article 5, Counterfeiting and Issuing Monetary Substitutes;  
10 Article 5A, Endangering Executive, Legislative, and Court Officers;  
11 Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article  
12 8, Assaults; Article 9, Hazing; Article 10, Kidnapping and Abduction;  
13 Article 11, Abortion and Kindred Offenses; Article 13, Malicious  
14 Injury or Damage by Use of Explosive or Incendiary Device or  
15 Material; Article 14, Burglary and Other Housebreakings; Article 15,  
16 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery;  
17 Article 18, Embezzlement; Article 19, False Pretenses and Cheats;  
18 Article 19A, Obtaining Property or Services by False or Fraudulent  
19 Use of Credit Device or Other Means; Article 19B, Financial  
20 Transaction Card Crime Act; Article 19C, Financial Identity Fraud;  
21 Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against  
22 Public Morality and Decency; Article 26A, Adult Establishments;  
23 Article 27, Prostitution; Article 27A, Sex Offender and Public  
24 Protection Registration Programs; Article 28, Perjury; Article 29,  
25 Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses  
26 Against the Public Peace; Article 36, Offenses Against the Public  
27 Safety; Article 36A, Riots and Civil Disorders; Article 36B, Nuclear,  
28 Biological, or Chemical Weapons of Mass Destruction; Article 39,  
29 Protection of Minors; Article 47, Cruelty to Animals; Article 51,  
30 Protection of Athletic Contests; Article 52, Miscellaneous Police  
31 Regulations; Article 58, Records, Tapes and Other Recorded Devices;  
32 and Article 60, Computer-Related Crime.

33           Such crimes also include possession or sale of drugs in violation of  
34 the North Carolina Controlled Substances Act, Article 5 of Chapter 90  
35 of the General Statutes, and alcohol-related offenses such as sale to  
36 underage persons in violation of G.S. 18B-302 or driving while  
37 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

38           In addition to the crimes listed in this subdivision, such crimes also  
39 include similar crimes under federal law or under the laws of other  
40 states.

41           (2) "University personnel" means any:

42           a. Applicant for employment or promotion with The University of  
43 North Carolina or any of its institutions or entities whether  
44 full-time or part-time, or

1           b. Independent contractor or employee of an independent  
2           contractor of The University of North Carolina, or any of its  
3           institutions or entities, if the independent contractor carries out  
4           duties customarily performed by university personnel, whether  
5           paid with federal, State, local, or other funds.

6           (3) "University" means The University of North Carolina, or any of its  
7           institutions or entities, including the University of North Carolina  
8           Health Care System.

9           (b) The Board of Governors of The University of North Carolina shall adopt a  
10          policy to be applied uniformly to all constituent institutions of the University and the  
11          General Administration on whether and under what circumstances an applicant for a  
12          position or promotion shall be required to be checked for a criminal history before the  
13          applicant is offered an unconditional job or promotion. The Board of Directors of the  
14          UNC Health Care System shall adopt such a policy for the Health Care System. Each  
15          constituent institution and other entities of the University shall apply its policy  
16          uniformly in requiring applicants for University positions or promotions to be checked  
17          for a criminal history. The University may employ an applicant conditionally while the  
18          University is checking the person's criminal history and making a decision based on the  
19          results of the check.

20          (c) The Department of Justice shall provide to the University the criminal history  
21          from the State and National Repositories of Criminal Histories of any applicant for a  
22          University position or promotion in the University, or any of its institutions or entities,  
23          which requires a criminal history check. The University shall require the person to be  
24          checked by the Department of Justice to (i) be fingerprinted and to provide any  
25          additional information required by the Department of Justice to a person designated by  
26          the University, or to the local sheriff or the municipal police, whichever is more  
27          convenient for the person, and (ii) sign a form consenting to the check of the criminal  
28          record and to the use of fingerprints and other identifying information required by the  
29          repositories. The University shall consider refusal to consent when making employment  
30          decisions and decisions with regard to independent contractors.

31          (d) The University shall review the criminal history it receives on a person. The  
32          University shall determine whether the results of the review indicate that the person (i)  
33          poses a threat to the physical safety of students or personnel, or (ii) has demonstrated  
34          that he or she does not have the integrity or honesty to fulfill his or her duties as a  
35          University employee and shall use the information when making employment decisions  
36          and decisions with regard to independent contractors. The University shall make written  
37          findings with regard to how it used the information when making employment decisions  
38          and decisions with regard to independent contractors. The University may delegate any  
39          of the duties in this section to one or more of its administrators.

40          (e) All the information received by the University through the checking of the  
41          criminal history in accordance with this section is privileged information and is not a  
42          public record but is for the exclusive use of the University. The University may destroy  
43          the information after it is used for the employment purposes authorized by this section  
44          after one calendar year.

1       (f)     There shall be no liability for negligence on the part of the University, or its  
2 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  
4 to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be  
5 actionable. The immunity established by this subsection shall be deemed to have been  
6 waived to the extent of indemnification under Article 31A of Chapter 143 of the  
7 General Statutes, and to the extent sovereign immunity is waived under the Tort Claims  
8 Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes.

9       (g)     Any applicant for employment or promotion who willfully furnishes,  
10 supplies, or otherwise gives false information on an employment application that is the  
11 basis for a criminal history record check under this section shall be guilty of a Class A1  
12 misdemeanor."

13           **SECTION 3.**     This act becomes effective December 1, 2005.  
14 G.S. 116-40.5A(g), as enacted by this act, applies to offenses committed on or after that  
15 date.