

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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HOUSE BILL 1077

Short Title: Ban the Box for COVID-19 State of Emergency. (Public)

Sponsors: Representatives Alston, Morey, and Hawkins (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Regulatory Reform, if favorable, Judiciary, if favorable, Appropriations, if favorable, Rules, Calendar, and Operations of the House

May 14, 2020

A BILL TO BE ENTITLED
AN ACT TO BAN THE BOX FOR EMPLOYMENT AND PROHIBIT HOUSING
DISCRIMINATION BASED UPON A PERSON'S CRIMINAL HISTORY DURING THE
COVID-19 EMERGENCY AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

**PART I. BAN THE BOX FOR PUBLIC AND PRIVATE EMPLOYMENT DURING THE
COVID-19 EMERGENCY**

SECTION 1.(a) Definitions. – For the purposes of this section, the following definitions apply:

- (1) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness for employment. The term does not include a record of arrest not resulting in conviction.
- (2) Employer. – The State, its agencies or political subdivisions, and any person in the State employing four or more individuals, any person acting in the interest of an employer directly or indirectly, or any person undertaking for compensation to procure employees or opportunities for employment.
- (3) Hiring authority. – The person, board, commission, or department of the State responsible by law for the hiring of persons for public employment.
- (4) Public employment. – Any job, work for pay, or employment, including temporary or seasonal work, where the employer is the State of North Carolina or any political subdivision of the State.

SECTION 1.(b) Consideration of Applicant Criminal History. –

- (1) An employer or hiring authority may not inquire into or consider or require the disclosure of the criminal history of an applicant for employment, or include any such inquiry on any initial employment application form, until the employer or hiring authority has made a conditional offer of employment to the applicant.
- (2) This section is not applicable to positions for which an employer or hiring authority is otherwise required by law to consider an applicant's criminal history; however, nothing in this section shall be construed to preclude any employer or hiring authority in its discretion from adopting the provisions of this section.



1 **SECTION 1.(c)** Criteria for Disqualification. – Except as otherwise required by law,
2 no person shall be disqualified from employment solely or in part because of a prior conviction,
3 unless the conviction is determined to be substantially related to the qualifications, functions, or
4 duties of the position after consideration of each of the following:

- 5 (1) The level and seriousness of the crime.
- 6 (2) The date of the crime.
- 7 (3) The age of the person at the time of the crime.
- 8 (4) The circumstances surrounding the commission of the crime, if known.
- 9 (5) The nexus between the criminal conduct and the duties of the position.
- 10 (6) The prison, jail, probation, parole, rehabilitation, and employment records of
11 the person since the date the crime was committed.
- 12 (7) The subsequent commission of a crime by the person.

13 **SECTION 1.(d)** Certain Criminal Records Shall Not Be Used. – The following
14 criminal records shall not be the basis for disqualification from employment:

- 15 (1) Arrests not followed by conviction.
- 16 (2) Convictions that have been sealed, dismissed, or expunged.
- 17 (3) Infractions or misdemeanors for which no jail sentence can be imposed.

18 **SECTION 1.(e)** Opportunity to Provide Evidence of Inaccuracy or Mitigation and
19 Rehabilitation. – If an employer or hiring authority intends to deny an applicant a position of
20 employment solely or in part because of the applicant's prior conviction of a crime, the employer
21 or hiring authority shall provide the applicant an opportunity to demonstrate any of the following:

- 22 (1) That the applicant was not correctly identified by the criminal history report.
- 23 (2) That the criminal history report is otherwise inaccurate.
- 24 (3) Evidence of mitigation or rehabilitation related to the prior conviction or
25 convictions.

26 **SECTION 1.(f)** Employer or Hiring Authority to Provide Certain Materials to
27 Applicant in Writing. – Pursuant to subsection (e) of this section, the employer or hiring authority
28 shall provide the applicant with each of the following in writing prior to a final hiring decision:

- 29 (1) The conviction or convictions that are the basis for the potential denial.
- 30 (2) A copy of the applicant's criminal history, if any.
- 31 (3) Examples of mitigation or rehabilitation evidence that the applicant may
32 voluntarily provide.

33 **SECTION 1.(g)** Applicant Opportunity to Respond. – Upon receipt of the
34 information required by subsection (f) of this section, the applicant shall have five business days
35 to respond. The employer or hiring authority shall not make a final hiring decision until after the
36 applicant has either failed to timely respond or the employer or hiring authority has reviewed all
37 information provided by the applicant pursuant to this section.

38 **SECTION 1.(h)** Notification of Denial of Employment. – If an employer or hiring
39 authority denies an applicant a position of employment solely or in part because of the applicant's
40 prior conviction of a crime, the employer or hiring authority shall notify the applicant in writing
41 of the following:

- 42 (1) The fact of the denial.
- 43 (2) The grounds for the denial.
- 44 (3) Any complaint or grievance procedure available based upon the denial.

45 **SECTION 1.(i)** Violations and Remedies. – Complaints of alleged violations of the
46 provisions of this section shall be received, investigated, and responded to by the Attorney
47 General's Office. The Attorney General's Office may apply to the superior court for an injunction
48 to prevent any violation or threatened violation of this section, and the superior courts have
49 jurisdiction to grant the requested relief, irrespective of whether criminal prosecution has been
50 instituted or administrative sanctions imposed because of the violation. The venue for an action
51 brought under this subsection shall be in any county selected by the Attorney General. The

1 Attorney General may delegate, in writing, all or part of the authority provided under this
2 subsection.

3 **SECTION 1.(j)** Contractors. – The State and its political subdivisions shall only do
4 business with contractors that follow hiring practices which comply with this section, although
5 nothing in this subsection shall be construed to require the State or its political subdivisions to
6 breach any existing contract.

7 **SECTION 1.(k)** Exceptions. – This section shall not apply to hiring practices for the
8 following positions:

- 9 (1) Law enforcement officer.
- 10 (2) Any position the primary function of which is to provide security services.
- 11 (3) Any position within the courts of the State.
- 12 (4) Any position within a prison, jail, or detention center within the State.
- 13 (5) Any position within a hospital, medical, or mental health facility within the
14 State.
- 15 (6) Any position the primary function of which is to maintain or distribute
16 controlled substances.
- 17 (7) Any position the primary function of which is to provide direct supervision to
18 minors, including but not limited to, positions within a preschool, an
19 elementary school, a secondary school, and any child care facility.
- 20 (8) Any position that provides direct support to the other positions referenced in
21 this subsection.

22 **SECTION 1.(l)** Clarification of Exceptions. – Nothing in subsection (k) of this
23 section shall be construed to prohibit an employer or hiring authority from voluntarily adopting
24 hiring policies in accordance with this section.

25 **SECTION 1.(m)** Data Collection; Confidentiality. – The employer or hiring
26 authority shall retain all records required by this section for at least two years. These records shall
27 be made available to the Attorney General's Office, or its designee, upon written request. Records
28 retained under this section are confidential and are not public records under G.S. 132-1.

29 **SECTION 1.(n)** Superseding Clause. – The provisions of this section shall prevail
30 over any other laws and rules which purport to govern the initiation, suspension, or termination
31 of public employment on the grounds of conviction of a crime or crimes. Nothing in this section
32 shall be construed to otherwise effect valid proceedings involving the initiation, suspension, or
33 termination of public employment.

34 **SECTION 1.(o)** Effective Date. – This section is effective when it becomes law and
35 expires on the earlier of the date the Governor signs an executive order rescinding Executive
36 Order No. 116, Declaration of a State of Emergency to Coordinate Response and Protective
37 Actions to Prevent the Spread of COVID-19, or March 1, 2021.

38 39 **PART II. EXPANSION OF NORTH CAROLINA HOUSING DISCRIMINATION 40 PROTECTIONS DURING THE COVID-19 EMERGENCY**

41 **SECTION 2.(a)** Subsections (a) through (g) of G.S. 41A-4 shall also include the
42 prohibition of discrimination against an individual based upon the individual's criminal history.

43 **SECTION 2.(b)** For the purposes of this section, "criminal history" is defined as
44 information transmitted orally or in writing or by any other means, and obtained from any source,
45 including, but not limited to, the person to whom the information pertains, a government agency,
46 or a background check report regarding one or more convictions or arrests, a conviction that has
47 been sealed, dismissed, vacated, expunged, voided, invalidated, or otherwise rendered
48 inoperative by judicial action or by statute; a determination or adjudication in the juvenile justice
49 system; a matter considered in or processed through the juvenile justice system; or participation
50 in or completion of a diversion or a deferral of judgment program.

1 **SECTION 2.(c)** This section shall not apply when State or federal law otherwise
2 requires a person to consider an individual's criminal history in the context of the circumstances
3 referenced under subsections (a) through (g) of G.S. 41A-4.

4 **SECTION 2.(d)** This section is effective when it becomes law and expires on the
5 earlier of the date the Governor signs an executive order rescinding Executive Order No. 116,
6 Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent
7 the Spread of COVID-19, or March 1, 2021.

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9 **PART III. FUNDS TO DEPARTMENT OF JUSTICE FOR ATTORNEY POSITION**

10 **SECTION 3.(a)** There is appropriated from the General Fund to the Department of
11 Justice, Fund Code 1200 (Legal Services), the sum of one hundred thirty thousand nine hundred
12 fifty-two dollars (\$130,952) in recurring funds for the 2020-2021 fiscal year to be used for one
13 attorney position to receive, investigate, and respond to complaints pursuant to subsection (i) of
14 Section 1 of this act.

15 **SECTION 3.(b)** This section becomes effective July 1, 2020.

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17 **PART IV. EFFECTIVE DATE**

18 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
19 law.