

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2248
(Senators Christmann, Andrist, Lindaas)
(Representatives Haas, L. Meier, Skarphol)

AN ACT to amend and reenact subsection 1 of section 4-41-02, sections 12-60-16.6, 12-60-16.9, 12-60-24, and 15.1-13-14, subsection 1 of section 15.1-13-20, section 15.1-13-23, subsection 4 of section 43-17-07.1, and sections 43-30-06, 50-11.1-06.2, and 54-59-20 of the North Dakota Century Code, relating to criminal history record checks; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person desiring to grow industrial hemp for commercial purposes shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used ~~for the production of~~ to produce industrial hemp. Except for employees of the agricultural experiment station or the North Dakota state university extension service involved in research and extension related activities, the commissioner shall require each applicant for initial licensure to ~~file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete~~ submit to a statewide and nationwide criminal history check ~~with the bureau of criminal investigation for state processing and with the federal bureau of investigation for federal processing.~~ The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing industrial hemp for commercial purposes.

SECTION 2. AMENDMENT. Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5. Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within one year preceding the request.
3. The request is written and contains:
 - a. The name of the requester.

- b. The name of the record subject.
- c. At least two items of information used by the bureau to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.
- 4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete.

SECTION 3. AMENDMENT. Section 12-60-16.9 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check. The bureau shall impose a fee of ~~thirty~~ fifteen dollars for each state record check. The bureau shall ~~waive the fee for any criminal justice agency or court, and shall~~ impose a fee of ~~three~~ five dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors. The bureau shall impose a fee of five dollars for each record check conducted on a volunteer providing services for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of vulnerable elderly adults. The bureau shall impose a fee of fifteen dollars for processing fingerprints necessary for each nationwide criminal history record check. The bureau shall waive the fees for any criminal justice agency or court.

SECTION 4. AMENDMENT. Section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

~~**12-60-24. City or county fingerprinting-- Criminal history record checks.** The governing body of a city by ordinance or a county by ordinance or resolution may require each applicant for a specified occupation with the city or county to provide two sets of fingerprints.~~

- 1. a. The agencies and entities named in subsection 2 shall require each applicant, employee, or petitioner for adoption to consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, employment, or adoption.
- b. Each applicant, employee, or petitioner for adoption subject to a criminal history check shall provide to the requesting agency or entity written consent to conduct the check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
- c. The ~~city or county may~~ agency or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. ~~Federal~~ Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by a city or county

an agency or entity is confidential. For a request for nationwide criminal history record information made by the city or county under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. The Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.

2. The bureau of criminal investigation shall provide to each agency or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
 - a. The governing body of a city or a county, by ordinance or resolution, for each applicant for a specified occupation with the city or county.
 - b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.
 - c. The education standards and practices board for initial and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
 - d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
 - e. The private investigative and security board for licenses or registrations under section 43-30-06.
 - f. The human services department for foster care licenses under section 50-11-06.8, appointments of legal guardians under section 50-11.3-01, and petitions for adoptions under section 50-12-03.2, except that the criminal history record investigation must be conducted in accordance with those sections.
 - g. The human services department for carecheck registrations under section 50-11.1-06.2.
 - h. The chief information officer of the information technology department for certain employees under section 54-59-20.
 - i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
 - j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
 - k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.

- l. The Bank of North Dakota for each applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for each applicant for a specified occupation with job service as designated by the executive director.
- n. The department of health for employees assigned duties related to bioterrorism and homeland security issues as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the department of health who holds a license, certificate, or registration in a health-related field.

SECTION 5. AMENDMENT. Section 15.1-13-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-14. Initial licensure of teachers - ~~Background~~ Criminal history record check. The board shall check, or cause to be checked, the ~~background~~ criminal history record of each applicant for initial licensure as a teacher in accordance with section 12-60-24. ~~The board shall require each applicant for licensure to file a complete set of the applicant's fingerprints, taken by a law enforcement officer or a properly trained designee of a law enforcement officer, and all other information necessary to complete a statewide and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing.~~ All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

SECTION 6. AMENDMENT. Subsection 1 of section 15.1-13-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall grant an interim reciprocal teaching license in accordance with sections 15.1-18-02 and 15.1-18-03 to an individual who holds a regular teaching license or certificate from another state, provided:
 - a. The individual's licensure or certification is based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements in elementary education, middle-level education, or a content area taught at a public high school;
 - b. The individual's licensure or certification is based upon the completion of a professional education sequence from a state-approved teacher education program and includes supervised student teaching;
 - c. The individual submits to a ~~background~~ criminal history record check as required of initial applicants by this chapter;
 - d. The ~~background~~ criminal history record check reveals nothing for which a North Dakota applicant would be denied initial licensure; and
 - e. The individual submits a plan for meeting all requirements necessary to become a licensed teacher in this state.

SECTION 7. AMENDMENT. Section 15.1-13-23 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-23. School guidance and counseling services - Providers. Notwithstanding any other law, guidance and counseling services at the elementary and secondary school level may be provided by a person holding a graduate degree in counseling from a state-approved school counseling program, with coursework and an internship in school counseling, as required for all counselors by the superintendent of public instruction, provided the person has a North Dakota teaching license or will

obtain one within seven years from the date of first employment under this section. The board shall ~~adopt rules relating to the background check of a~~ conduct a criminal history record check in accordance with section 12-60-24 on each person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The board shall monitor a person hired under this section to ensure that the person annually completes at least one-seventh of the total credits required for that person to obtain a teaching license, as determined at the time of employment under this section.

SECTION 8. AMENDMENT. Subsection 4 of section 43-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to ~~file a complete set of the applicant's or licensee's fingerprints taken by a law enforcement officer or a properly trained designee of a law enforcement officer and all other information necessary to complete~~ submit to a statewide and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with the background criminal history record check ~~and with obtaining and processing the fingerprints~~ are the responsibility of the licensee or applicant.

SECTION 9. AMENDMENT. Section 43-30-06 of the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License and registration applications. Every person who desires to obtain a license or registration shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license or registration, the board shall require each applicant to ~~file with the board a complete set of the applicant's fingerprints and all other information necessary to complete~~ submit to a state and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background criminal history record check ~~and with obtaining and processing the fingerprints~~ are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. A criminal history record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal history check performed by the federal bureau of investigation at the request of another state and if the nationwide criminal history check was performed within the sixty days immediately preceding the date of the application. A state criminal history check is not required under this section if an applicant for registration provides to the board the results of a state background criminal history record check performed by the state in which the applicant currently resides and if the state background criminal history record check was performed within the sixty days immediately preceding the date of the application.

SECTION 10. AMENDMENT. Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees. Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed early childhood services provider shall obtain two sets of that person's own fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department. If the division has no record of a determination of services required for child abuse or neglect, the division shall submit ~~one set of the fingerprints to the federal bureau of investigation and one set to the bureau of criminal investigation~~ to determine if there is any criminal history record information regarding the applicant for carecheck in accordance with section 12-60-24. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of services required for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify the person. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

SECTION 11. AMENDMENT. Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

54-59-20. Employees of the department - Security background information. The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security sensitive areas of the department designated by the chief information officer ~~be fingerprinted. The chief information officer shall ensure that the fingerprints are submitted to the bureau of criminal investigation and the federal bureau of investigation for verification of the identity of the individuals and to obtain records of criminal arrests and convictions~~ submit to a criminal history record check in accordance with section 12-60-24.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2248 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 84 Nays 1 Absent 9

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at ___ o'clock _____ M.

Secretary of State