

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 84
HOUSE BILL 569

AN ACT TO REGULATE PERSONNEL RECORDS OF COMMUNITY COLLEGE
SYSTEM EMPLOYEES AND RELATED MATTERS.

Whereas, in 1975, through enactment of Chapter 257 of the 1975 Session Laws, the General Assembly created legislation to give State employees the right and procedure to have material removed from their personnel files and, in the same session, through enactment of Chapter 667, this right and procedure was made applicable to employees of institutions within the Community College System; and

Whereas, in 1979, in Chapter 462 of the 1979 Session Laws, the General Assembly enacted G.S. 115D-5(a) which provided that employees of Community colleges shall be exempt from the provisions of the State Personnel Act; and

Whereas, since enactment of Chapter 462 of the 1979 Session Laws, the General Assembly has intended that all employees of institutions within the Community College System remain exempt from all of the provisions contained in the State Personnel Act; and

Whereas, in the interest of the Community College System and the employees of local institutions within the System, it is important that matters relating to the content and inspection of personnel records of Community College System employees be regulated and that the State Board and each board of trustees give equal opportunity for employment and compensation of personnel at community colleges without regard to race, religion, color, creed, national origin, sex, age or handicapping conditions; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-5(c1)(10) is repealed.

Sec. 2. G.S. 126-5(c2) reads as rewritten:

"(c2) The provisions of this Chapter shall not apply to:

- (1) Public school superintendents, principals, teachers, and other public school employees.
- (2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 41.
- (3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20."

Sec. 3. Chapter 115D of the General Statutes is amended by adding a new Article 2A as follows:

"ARTICLE 2A.

"Privacy of Employee Personnel Records.

"§ 115D-27. Personnel files not subject to inspection.

Personnel files of employees of boards of trustees, former employees of boards of trustees, or applicants for employment with boards of trustees shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the board of trustees which employs an individual, previously employed an individual, or considered an individual's application for employment, and which information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form.

"§ 115D-28. Certain records open to inspection.

Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

"§ 115D-29. Confidential information in personnel files; access to information.

All information contained in a personnel file, except as otherwise provided in this Article, is confidential and shall not be open for inspection and examination except to the following persons:

- (1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;
- (2) The president and other supervisory personnel;
- (3) Members of the board of trustees and the board's attorney;
- (4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and
- (5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information

shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record.

"§ 115D-30. Remedy of employee objecting to material in file.

An employee, former employee or applicant for employment who objects to material in his file may place in his file a statement relating to the materials he considers to be inaccurate or misleading. An employee, former employee or applicant for employment who objects to material in his file because he considers it inaccurate or misleading, and the material has not been placed there in connection with a grievance procedure established by the board of trustees, may seek the removal of such material from the file through grievance procedures to be established by each board of trustees."

Sec. 4. G.S. 115D-77 reads as rewritten:

"§ 115D-77. Nondiscrimination policy.

It is the policy of the State Board of Community Colleges and of local boards of trustees of the State of North Carolina not to discriminate among students on the basis of race, gender or national origin.

~~In the employment of professional and all other personnel for institutions operating pursuant to this Chapter, neither the State Board of Community Colleges nor local boards of trustees shall discriminate on the basis of race, gender or national origin.~~

The State Board and each board of trustees shall give equal opportunity for employment and compensation of personnel at community colleges, without regard to race, religion, color, creed, national origin, sex, age, or handicapping conditions, except where specific age, sex or physical or mental requirements constitute bona fide occupational qualifications."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives