

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

SESSION LAW 1997-517
SENATE BILL 1055

AN ACT ESTABLISHING THE PUBLIC HOSPITAL PERSONNEL ACT AND
AMENDING THE LAW GOVERNING DISPOSAL OF FETAL REMAINS.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "Public Hospital Personnel Act of 1997".

Section 2. Chapter 131E of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15A.

"Public Hospital Personnel Act.

"§ 131E-257. Title; purpose; applicability of other laws; 'public hospital' defined.

(a) This Article shall be known and may be cited as the 'Public Hospital Personnel Act'.

(b) The purpose of this Article is to protect the privacy of the personnel records of public hospital employees and to authorize public hospitals to determine employee compensation and personnel policies and to establish employee benefit plans.

(c) Unless otherwise provided, none of the provisions of Part 4, Article 5, Chapter 153A and Part 4, Article 7, Chapter 160A shall apply to public hospitals.

(d) If any provision of this Article is inconsistent with any provision of any other law, the provision of this Article shall be controlling.

(e) As used in this Article, unless the context clearly indicates otherwise, the term 'public hospital' has the same meaning as in G.S. 159-39.

"§ 131E-257.1. Compensation; personnel policies; employee benefits plans.

(a) A public hospital shall determine the pay, expense allowances, and other compensation of its officers and employees, and may establish position classification and pay plans and incentive compensation plans.

(b) A public hospital may:

(1) Adopt personnel policies and procedures regarding, without limitation, vacations, personal leave, service award programs, other personnel policies and procedures, and any other measures that enhance the ability of a public hospital to hire and retain employees.

(2) Determine the work hours, workdays, and holidays applicable to its employees.

- (3) Establish and pay all or part of the cost of benefit plans for its employees and former employees, including without limitation, life, health and disability plans, pension, profit sharing, deferred compensation and other retirement plans, and other fringe benefit plans.
- (4) Pay severance payments and provide other employee severance benefits to its employees and former employees pursuant to a severance plan established in connection with a reduction in the size of the workforce of a public hospital or, with respect to an individual employee, pursuant to an employment agreement entered into prior to the date the employee receives notice of termination of employment.

(c) The provisions of G.S. 159-30 and G.S. 159-31 are not applicable to public hospitals with respect to the investment of escrowed or trustee retirement and deferred compensation funds. Public hospitals may invest such escrowed and trustee funds in property or securities in which trustees, guardians, personal representatives, and others acting in a fiduciary capacity may legally invest funds under their control.

"§ 131E-257.2. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees and applicants for employment maintained by a public hospital are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the public hospital with respect to an employee and, by way of illustration but not limitation, relating to the employee's application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, 'employee' includes both current and former employees of a public hospital.

(b) The following information with respect to each public hospital employee is a matter of public record:

- (1) Name.
- (2) Age.
- (3) Date of original employment.
- (4) Current position title, current salary, and the date and amount of the most recent increase or decrease in salary.
- (5) Date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification.
- (6) The office to which the employee is currently assigned.

In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

The governing board of a public hospital shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the governing board of the public hospital may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a public hospital employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

- (1) The employee or the employee's duly authorized agent may examine all portions of the employee's personnel file, except letters of reference solicited prior to employment.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) A public hospital employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when the inspection is deemed by the person having custody of the file to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the public hospital's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

- (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- (3) Information that might identify an undercover law enforcement officer or a law enforcement informer.
- (4) Notes, preliminary drafts, and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(e) The governing board of a public hospital may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he or she will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the public hospital as long as each personnel file so examined is retained.

(f) The governing board of a public hospital that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his or her file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) A public hospital director, trustee, officer, or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor; however, conviction under this subsection shall be punishable only by a fine not to exceed five hundred dollars (\$500.00).

(h) Any person not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, or remove, or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor; however, conviction under this subsection shall be punishable, in the discretion of the court, by a fine not to exceed five hundred dollars (\$500.00)."

Section 3. G.S. 131E-97.1(b) is repealed.

Section 4. G.S. 130A-131.10 reads as rewritten:

"§ 130A-131.10. Manner of disposition of remains of ~~terminated~~ pregnancies.

(a) The Commission for Health Services shall adopt rules to ensure that all facilities authorized to terminate pregnancies, and all medical or research laboratories or facilities to which the remains of terminated pregnancies are sent by facilities authorized to terminate pregnancies, shall dispose of the remains in a manner limited to burial, cremation, ~~or~~ or, except as prohibited by subsection (b) of this section, approved hospital type of incineration. ~~Rules adopted pursuant to this section shall provide that the obligation to dispose of the remains of terminated pregnancies by a facility~~

~~authorized to terminate pregnancies ceases as to any remains of terminated pregnancies that the facility has sent to a medical or research laboratory or facility.~~

(b) A hospital or other medical facility or a medical or research laboratory or facility shall dispose of the remains of a recognizable fetus only by burial or cremation. The Commission shall adopt rules to implement this subsection.

(c) A hospital or other medical facility is relieved from the obligation to dispose of the remains in accordance with subsections (a) and (b) of this section if it sends the remains to a medical or research laboratory or facility.

(d) This section does not impose liability on a permitted medical waste treatment facility for a hospital's or other medical facility's violation of this section nor does it impose any additional duty on the treatment facility to inspect waste received from the hospital or medical facility to determine compliance with this section."

Section 5. Section 4 of this act becomes effective October 1, 1997. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:37 a.m. this 17th day of September, 1997