

HOUSE BILL 373

F1, E4
HB 1008/20 – W&M

(PRE-FILED)

1lr1280

By: **Delegate Wilson**

Requested: October 29, 2020

Introduced and read first time: January 13, 2021

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Child Abuse and Sexual Misconduct Prevention – Hiring Emergent**
3 **Employees**

4 FOR the purpose of authorizing the hiring of a certain emergent employee by a county
5 board of education or nonpublic school for a certain period of time under certain
6 conditions; authorizing a county board or nonpublic school to take certain actions
7 within a certain period of time regarding an emergent employee under certain
8 circumstances; authorizing a certain appeal following a certain decision by a county
9 board; authorizing a county board or nonpublic school to share a certain employment
10 history review with other county boards and nonpublic schools; authorizing a county
11 board or nonpublic school to use a certain employment history review under certain
12 circumstances; requiring certain applicants to provide certain information regarding
13 certain employers over a certain period of time; defining a certain term; altering a
14 certain definition; and generally relating to child abuse and sexual misconduct
15 prevention and the hiring of school employees.

16 BY repealing and reenacting, with amendments,
17 Article – Education
18 Section 6–113.2
19 Annotated Code of Maryland
20 (2018 Replacement Volume and 2020 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Education**

24 6–113.2.

25 (a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Child sexual abuse” has the meaning stated in § 6–113.1 of this
2 subtitle.

3 (3) “Contracting agency” means an entity that contracts with a county
4 board or nonpublic school to provide a service to a school or the students of a school.

5 (4) “Direct contact with minors” means the [possibility of] care,
6 supervision, guidance, or control of [a minor], or routine interaction with, a minor.

7 (5) **“EMERGENT EMPLOYEE” MEANS AN EMPLOYEE HIRED BY A
8 COUNTY BOARD OR NONPUBLIC SCHOOL WITHOUT COMPLETING THE EMPLOYMENT
9 HISTORY REVIEW REQUIRED UNDER THIS SECTION.**

10 (6) “School” means a public or nonpublic school.

11 ~~[(6)]~~ (7) “Sexual misconduct” has the meaning stated in § 6–113.1 of this
12 subtitle.

13 (b) A county board, nonpublic school, or contracting agency shall require an
14 applicant for a position involving direct contact with minors to submit:

15 (1) The contact information of the following employers:

16 (i) The current employer;

17 (ii) All former school employers, **INCLUDING EMPLOYERS FOR
18 WHICH THE APPLICANT WAS AN EMERGENT EMPLOYEE**; and

19 (iii) All former employers of the applicant in which the applicant was
20 employed in a position involving direct contact with minors **WITHIN THE PREVIOUS 10
21 YEARS**;

22 (2) A written consent form, signed by the applicant, authorizing an
23 employer listed under item (1) of this subsection to release all records relating to child
24 sexual abuse or sexual misconduct; and

25 (3) A written statement of whether the applicant:

26 (i) Has been the subject of a child sexual abuse or sexual misconduct
27 investigation by any employer, arbitrator, county board, State licensing agency, law
28 enforcement agency, or child protective services agency, unless the investigation resulted
29 in a finding by:

30 1. The employer that allegations that the applicant engaged
31 in sexual misconduct lacked sufficient evidence according to the policies of the county board

1 or nonpublic school;

2 2. An arbitrator or a county board to reject any disciplinary
3 action in response to allegations that the applicant engaged in sexual misconduct;

4 3. A State licensing agency that allegations that the
5 applicant engaged in sexual misconduct lacked sufficient evidence according to:

6 A. State law; or

7 B. The policies of the county board or nonpublic school;

8 4. A law enforcement agency that allegations that the
9 applicant engaged in child sexual abuse were unfounded; or

10 5. A child protective services agency that allegations that the
11 applicant engaged in child sexual abuse were ruled out;

12 (ii) Has ever been disciplined, discharged, nonrenewed, or asked to
13 resign from employment, or has ever resigned from or otherwise separated from any
14 employment while allegations of child sexual abuse or sexual misconduct were pending or
15 were under investigation, or due to an adjudication or findings of child sexual abuse or
16 sexual misconduct; or

17 (iii) Has ever had a license, professional license, or certificate
18 suspended, surrendered, or revoked while allegations of child sexual abuse or sexual
19 misconduct were pending or under investigation, or due to an adjudication or findings of
20 child sexual abuse or sexual misconduct.

21 (c) Before hiring an applicant for a position involving direct contact with minors,
22 the county board, nonpublic school, or contracting agency shall:

23 (1) Review an applicant's employment history by contacting the employers
24 listed by the applicant under subsection (b)(1) of this section and requesting the following
25 information:

26 (i) The dates of employment of the applicant; and

27 (ii) Answers to the questions regarding child sexual abuse or sexual
28 misconduct required under subsection (b)(3) of this section; and

29 (2) Request a report from the Department regarding the applicant's
30 eligibility for employment or certification status to determine whether the applicant:

31 (i) Holds a valid and active certification appropriate for the position
32 and is otherwise eligible for employment; and

1 (ii) Has been the subject of professional discipline related to child
2 sexual abuse or sexual misconduct.

3 (d) (1) Not later than 20 days after receiving a request for information under
4 subsection (c) of this section, an employer shall send to the county board, nonpublic school,
5 or contracting agency the information requested on the form prescribed by the Department.

6 (2) If the information from an employer includes an affirmative response
7 to the child sexual abuse or sexual misconduct questions under subsection (b)(3) of this
8 section, and the county board, nonpublic school, or contracting agency makes a
9 determination to further consider the applicant for employment, the county board,
10 nonpublic school, or contracting agency shall request that the former employer provide
11 additional information about the information provided, including all records related to child
12 sexual abuse or sexual misconduct.

13 (3) An employer that receives a request for additional information under
14 paragraph (1) of this subsection shall provide the additional information within 60 days of
15 the date of the prospective employer's request to:

16 (i) The requesting county board, nonpublic school, or contracting
17 agency; and

18 (ii) The applicant who is under consideration for employment.

19 **(E) (1) A COUNTY BOARD OR NONPUBLIC SCHOOL MAY HIRE AN**
20 **APPLICANT AS AN EMERGENT EMPLOYEE FOR A PERIOD NOT TO EXCEED 60 DAYS**
21 **PENDING THE REVIEW OF INFORMATION AND RECORDS REQUIRED UNDER THIS**
22 **SECTION ONLY IF:**

23 **(I) THE APPLICANT HAS PROVIDED ALL THE INFORMATION**
24 **AND SUPPORTING DOCUMENTATION REQUIRED UNDER THIS SECTION;**

25 **(II) AN EMPLOYER HAS NO KNOWLEDGE OF INFORMATION**
26 **REGARDING THE APPLICANT THAT WOULD DISQUALIFY THE APPLICANT FROM**
27 **EMPLOYMENT;**

28 **(III) THE APPLICANT SWEARS OR AFFIRMS THAT THE APPLICANT**
29 **IS NOT DISQUALIFIED FROM EMPLOYMENT; AND**

30 **(IV) THE APPLICANT IS NOT AUTHORIZED TO WORK ALONE WITH**
31 **MINORS UNLESS THE APPLICANT:**

32 **1. WORKS IN THE IMMEDIATE VICINITY OF A**
33 **PERMANENT EMPLOYEE; OR**

34 **2. IF THE APPLICANT IS A SCHOOL VEHICLE DRIVER, IS**

1 SUBJECT TO AUDIO AND VIDEO MONITORING AND RECORDING, WHICH IS PROMPTLY
2 REVIEWED BY SCHOOL ADMINISTRATORS.

3 (2) BASED ON THE EMPLOYMENT HISTORY REVIEW REQUIRED UNDER
4 SUBSECTION (C) OF THIS SECTION, AT ANY TIME WITHIN 60 DAYS AFTER HIRING AN
5 APPLICANT AS AN EMERGENT EMPLOYEE, THE COUNTY BOARD OR NONPUBLIC
6 SCHOOL MAY:

7 (I) RESCIND THE OFFER OF EMPLOYMENT; OR

8 (II) COMPLETE THE EMERGENT EMPLOYEE'S HIRING PROCESS,
9 IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE, WITH ANY EXECUTED
10 CONTRACT REFLECTING THE FIRST DAY WORKED AS AN EMERGENT EMPLOYEE.

11 (3) WITHIN 60 DAYS AFTER HIRING AN APPLICANT AS AN EMERGENT
12 EMPLOYEE, A COUNTY BOARD'S DECISION TO DISMISS THE EMERGENT EMPLOYEE,
13 FOR ANY REASON OTHER THAN CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT, MAY
14 BE APPEALED:

15 (I) IN ACCORDANCE WITH § 4-205 OF THIS ARTICLE;

16 (II) IN ACCORDANCE WITH THE COLLECTIVE BARGAINING
17 AGREEMENT APPLICABLE TO THE EMERGENT EMPLOYEE; OR

18 (III) IF APPLICABLE, IN ACCORDANCE WITH § 6-202 OF THIS
19 TITLE.

20 (F) A COUNTY BOARD OR NONPUBLIC SCHOOL IS AUTHORIZED TO SHARE AN
21 EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS
22 SECTION WITH OTHER COUNTY BOARDS AND NONPUBLIC SCHOOLS.

23 (G) A COUNTY BOARD OR NONPUBLIC SCHOOL MAY USE AN EMPLOYMENT
24 HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS SECTION COMPLETED
25 BY A CURRENT OR FORMER EMPLOYER IF THE EMPLOYER IS A COUNTY BOARD OR
26 NONPUBLIC SCHOOL AND THE APPLICANT:

27 (1) SWEARS OR AFFIRMS THAT THE COMPLETED EMPLOYMENT
28 HISTORY REVIEW INCLUDES ALL PRIOR EMPLOYMENT REQUIRED TO BE REPORTED
29 UNDER THIS SECTION; AND

30 (2) PROVIDES INFORMATION ABOUT ANY EMPLOYMENT SUBSEQUENT
31 TO THE PREVIOUS EMPLOYMENT HISTORY REVIEW BY THE CURRENT OR FORMER
32 COUNTY BOARD.

1 **[(e)] (H)** (1) (i) A county board, nonpublic school, or contracting agency
2 shall conduct an employment history review of an applicant for a substitute position
3 involving direct contact with minors as required under subsection (c) of this section before
4 the initial hiring of the substitute employee or placement on the approved substitute
5 employee list of the county board, nonpublic school, or contracting agency.

6 (ii) An employment history review of a substitute employee shall
7 remain valid as long as the substitute employee continues to be employed by the same
8 county board or remains on the approved substitute employee list of the nonpublic school
9 or contracting agency.

10 (2) If a substitute employee is seeking to be added to the substitute
11 employee list of another county board, nonpublic school, or contracting agency, a new
12 employment history review in accordance with subsection (c) of this section is required.

13 (3) The appearance of a substitute employee on the substitute employee
14 list of one county board, nonpublic school, or contracting agency does not relieve another
15 county board, nonpublic school, or contracting agency of the duty of compliance with this
16 section.

17 (4) An employment history review conducted on the initial hiring of a
18 substitute employee by a contracting agency, an intermediate unit, or any other entity that
19 provides substitute staffing services to a county board or a nonpublic school shall satisfy
20 the requirements of this section for all school entities using the services of that contracting
21 agency, intermediate unit, or other entity.

22 (5) A contracting agency, an intermediate unit, or any other entity
23 providing substitute staffing services to a school entity shall comply with the provisions of
24 this section.

25 **[(f)] (I)** (1) (i) A contracting agency shall conduct an employment history
26 review of an applicant for employment with the contracting agency as required under
27 subsection (c) of this section:

28 1. At the time of the initial hiring of the employee; or

29 2. Before the employee is assigned to work for a school entity
30 in a position involving direct contact with minors.

31 (ii) The employment history review under subparagraph (i) of this
32 paragraph shall remain valid as long as the employee continues to be employed by the
33 hiring contracting agency.

34 (iii) A contracting agency shall:

35 1. Maintain a record of each employee's employment history
36 review required under this subsection; and

1 in sexual misconduct lacked sufficient evidence according to the policies of the county board
2 or nonpublic school;

3 2. An arbitrator or a county board to reject any disciplinary
4 action in response to allegations that the applicant engaged in sexual misconduct;

5 3. A State licensing agency that allegations that the
6 applicant engaged in sexual misconduct lacked sufficient evidence according to:

7 A. State law; or

8 B. The policies of the county board or nonpublic school;

9 4. A law enforcement agency that allegations that the
10 applicant engaged in child sexual abuse were unfounded; or

11 5. A child protective services agency that allegations that the
12 applicant engaged in child sexual abuse were ruled out.

13 (2) A provision of an employment contract, an agreement for resignation or
14 termination, or a severance agreement that is executed, amended, or entered into on or
15 after July 1, 2019, and that is contrary to this section is void and unenforceable.

16 [(i)] (L) If there is a lapse in the operation of or the Department suspends the
17 use of a system or database that the Department uses to check an applicant's eligibility for
18 employment or certification status, the Department shall notify the county boards,
19 nonpublic schools, and any contracting agencies within 48 hours of the lapse or the
20 suspension of the use of the system or database.

21 [(j)] (M) (1) A person acting in good faith may not be held liable for disclosing
22 any information or records related to child sexual abuse or sexual misconduct about a
23 current or former employee's professional conduct or reason for termination of employment
24 to a county board, a nonpublic school, a contracting agency, the Department, or any other
25 potential employer in accordance with this section unless the person:

26 (i) Acted with actual malice toward the employee or former
27 employee; or

28 (ii) Intentionally or recklessly disclosed false information about the
29 employee or former employee.

30 (2) The immunity from liability under paragraph (1) of this subsection
31 shall be in addition to, and not a limitation of, any other immunity provided by law or any
32 absolute or conditional privilege applicable to the disclosure of information or records or
33 the applicant's consent to the disclosure.

34 [(k)] (N) (1) An applicant who provides false information or willfully fails to

1 disclose material information required under this section shall be subject to professional
2 discipline, including termination or denial of employment, and may be subject to
3 professional discipline in accordance with the regulations of the Department.

4 (2) (i) Subject to subparagraph (ii) of this paragraph, the willful failure
5 of an employer or former employer to respond to or provide the information and records
6 requested by a county board, nonpublic school, or contracting agency under this section
7 may result in civil penalties or professional discipline, if appropriate.

8 (ii) An employer or a former employer may not be held liable for
9 failure to respond to a request for information about an applicant under this section if:

10 1. The laws of the state in which the employer or former
11 employer is located prohibit the release of the information or records requested; or

12 2. The disclosure of the information and records requested is
13 restricted by the terms of a contract entered into on or before June 30, 2019.

14 (3) (i) Notwithstanding any other provision of law, the Department
15 may initiate disciplinary action before a hearing officer in accordance with the
16 Department's regulations against an applicant, an employee, a contracting agency, or a
17 school administrator for willful violations of this section.

18 (ii) The Department may adopt regulations establishing procedures
19 for disciplinary proceedings and the assessment of penalties in accordance with this section.

20 ~~(1)~~ (O) Nothing in this section shall be construed:

21 (1) To prevent a county board, nonpublic school, or contracting agency
22 from:

23 (i) Conducting further investigations of prospective employees;

24 (ii) Requesting applicants to provide additional background
25 information or authorizations beyond the information or authorizations required under this
26 section; or

27 (iii) Requesting that an employer or a former employer provide more
28 information than is required under this section;

29 (2) To relieve a county board, a nonpublic school, a contracting agency, or
30 any other mandated reporter of the legal responsibility to report suspected incidents of
31 child sexual abuse or sexual misconduct in accordance with State law or the reporting
32 requirements of the Department; or

33 (3) To prohibit the right of an exclusive representative under a collective
34 bargaining agreement to grieve and arbitrate the validity of an employee's termination or

1 discipline for just cause or for the causes set forth in this section.

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
3 1, 2021.