

HOUSE BILL NO. 485

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on _____)

(Patron Prior to Substitute--Delegate Garrett)

A BILL to amend and reenact §§ 22.1-296.1, 22.1-296.2, and 22.1-296.4 of the Code of Virginia, relating to school boards; employee background checks and applications.

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-296.1, 22.1-296.2, and 22.1-296.4 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required; penalty.

A. As a condition of employment for all of its public school employees, whether ~~full-time~~ (i) the position is full time or ~~part-time~~, part time; permanent, or temporary; or in-person, remote, or some combination thereof or (ii) the employee is fully licensed, provisionally licensed, or unlicensed, every school board shall require on its application for employment certification of whether the applicant has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse, or rape of a child, or the solicitation of any such offense; or any crime of moral turpitude. Any individual making a materially false statement regarding any such offense is guilty of a Class 1 misdemeanor and, in the case of a teacher, upon conviction, the fact of such conviction is grounds for the Board to revoke his license to teach.

B. No school board shall employ any individual who has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 or any offense involving the sexual molestation ~~of~~, physical or sexual abuse, or rape of a child, or the solicitation of any such offense.

C. Any school board may employ any individual who has been convicted of any felony or crime of moral turpitude that is not set forth in the definition of barrier crime in subsection A of § 19.2-392.02

27 and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, or the solicitation
28 of any such offense, provided that in the case of a felony conviction, such individual has had his civil
29 rights restored by the Governor.

30 D. Every school board shall also require on its application for employment, as a condition of
31 employment requiring direct contact with students, whether ~~full-time~~ (i) the position is full time or part-
32 time, part time; permanent, or temporary; or in-person, remote, or some combination thereof or (ii) the
33 employee is fully licensed, provisionally licensed, or unlicensed, certification that the applicant has not
34 been the subject of a founded case of child abuse and neglect. Any person making a materially false
35 statement regarding a finding of child abuse and neglect is guilty of a Class 1 misdemeanor and upon
36 conviction, the fact of such conviction is grounds for the Board to revoke such person's license to teach.

37 E. As a condition of awarding a contract for the provision of services that require the contractor or
38 his employees to have direct contact with students through the provision of synchronous virtual instruction
39 or on school property during regular school hours or during school-sponsored activities, the school board
40 shall require the contractor to provide certification of whether any individual who will provide such
41 services has been convicted of any violent felony set forth in the definition of barrier crime in subsection
42 A of § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse, or rape of a
43 child, or the solicitation of any such offense; or any crime of moral turpitude.

44 Any individual making a materially false statement regarding any such offense is guilty of a Class
45 1 misdemeanor and, upon conviction, the fact of such conviction is grounds for the revocation of the
46 contract to provide such services and, when relevant, the revocation of any license required to provide
47 such services. School boards shall not be liable for materially false statements regarding the certifications
48 required by this subsection.

49 This subsection shall not apply to a contractor or his employees providing services to a school
50 division in an emergency or exceptional situation, such as when student health or safety is endangered or
51 when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it
52 is reasonably anticipated that the contractor or his employees will have no direct contact with students.

53 F. No school board shall award a contract for the provision of services that require the contractor
54 or his employees to have direct contact with students through the provision of synchronous virtual
55 instruction or on school property during regular school hours or during school-sponsored activities when
56 any individual who provides such services has been convicted of any violent felony set forth in the
57 definition of barrier crime in subsection A of § 19.2-392.02 or any offense involving the sexual
58 molestation, physical or sexual abuse, or rape of a child, or the solicitation of any such offense.

59 G. Any school board may award a contract for the provision of services that require the contractor
60 or his employees to have direct contact with students on school property during regular school hours or
61 during school-sponsored activities when any individual who provides such services has been convicted of
62 any felony or crime of moral turpitude that is not set forth in the definition of barrier crime in subsection
63 A of § 19.2-392.02 and does not involve the sexual molestation, physical or sexual abuse, or rape of a
64 child, or the solicitation of any such offense, provided that in the case of a felony conviction, such
65 individual has had his civil rights restored by the Governor.

66 H. For the purposes of this section, "school board" includes the Board of Visitors of the Virginia
67 School for the Deaf and the Blind, which, for the purpose of receiving criminal history record information
68 pertaining to an application for employment from the Central Criminal Records Exchange, shall be a
69 governmental entity.

70 **§ 22.1-296.2. Fingerprinting required; reciprocity permitted.**

71 A. As a condition of employment, the school boards of the Commonwealth shall require any
72 applicant who is offered or accepts employment, whether (i) the position is full time or part time-~~or~~;
73 permanent or temporary; or in-person, remote, or some combination thereof or (ii) the employee is fully
74 licensed, provisionally licensed, or unlicensed, to submit to fingerprinting and to provide personal
75 descriptive information to be forwarded along with the applicant's fingerprints through the Central
76 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal
77 history record information regarding such applicant. As a condition of the continued employment of any
78 such individual, each school board shall require each such individual to complete such fingerprinting and
79 criminal records check process on a periodic basis but not less frequently than once every five school

80 years. The school board may ~~(i)~~ (a) pay for all or a portion of the cost of the fingerprinting or criminal
 81 records check or ~~(ii)~~ (b) in its discretion, require the ~~applicant~~ individual to pay for all or a portion of the
 82 cost of such fingerprinting or criminal records check.

83 The Central Criminal Records Exchange, upon receipt of an ~~applicant's~~ individual's record or
 84 notification that no record exists, shall report to the school board, which shall be a governmental entity,
 85 whether or not the ~~applicant~~ individual has ever been convicted of a felony or a Class 1 misdemeanor or
 86 an equivalent offense in another state.

87 To conserve the costs of conducting criminal history record checks to ~~applicants~~ individuals and
 88 school boards, ~~upon:~~

89 1. The Department shall establish and maintain a searchable database whereby school boards may
 90 obtain criminal history record information for applicants for employment or current employees; and

91 2. Upon the written request and permission of ~~the~~ an applicant for employment, a school board
 92 shall inform another school board with which reciprocity has been established, and to which the applicant
 93 also has applied for employment, of the results of the criminal history record information conducted within
 94 the previous 90 days that it obtained concerning the applicant. Criminal history record information
 95 pertaining to an applicant for employment by a school board shall be exchanged only between school
 96 boards in the Commonwealth in which a current agreement of reciprocity for the exchange of such
 97 information has been established and is in effect. Reciprocity agreements between school boards shall
 98 provide for the apportionment of the costs of the fingerprinting or criminal records check between the
 99 applicant and the school board, as prescribed in this section. However, school boards that enter into
 100 reciprocity agreements shall not each levy the costs of the fingerprinting or criminal records check on the
 101 applicant.

102 B. The division superintendent shall inform the relevant school board of any notification of arrest
 103 of a school board employee received pursuant to § 19.2-83.1. The school board shall require such
 104 employee, whether (i) the position is full time or part time ~~or;~~ permanent or temporary; ~~or in-person,~~
 105 remote, or some combination thereof or (ii) the employee is fully licensed, provisionally licensed, or
 106 unlicensed, to submit to fingerprinting and to provide personal descriptive information to be forwarded

107 along with the employee's fingerprints through the Central Criminal Records Exchange to the Federal
108 Bureau of Investigation for the purpose of obtaining criminal history record information regarding such
109 employee. The school board may ~~(i)~~ (a) pay for all or a portion of the cost of the fingerprinting or criminal
110 records check or ~~(ii)~~ (b) in its discretion, require the ~~applicant~~ employee to pay for all or a portion of the
111 cost of such fingerprinting or criminal records check.

112 The Central Criminal Records Exchange, upon receipt of an employee's record or notification that
113 no record exists, shall report to the school board whether or not the employee has been convicted of any
114 of the offenses listed in subsection A. The contents of the employee's record shall be used by the school
115 board solely to implement the provisions of §§ 22.1-307 and 22.1-315.

116 C. The Central Criminal Records Exchange shall not disclose information to the school board
117 regarding charges or convictions of any crimes not specified in this section. If an applicant is denied
118 employment or a current employee is suspended or dismissed because of information appearing on his
119 criminal history record, the school board shall provide a copy of the information obtained from the Central
120 Criminal Records Exchange to the applicant or employee. The information provided to the school board
121 shall not be disseminated except as provided in this section.

122 D. For the purposes of this section, "school board" includes the Board of Visitors of the Virginia
123 School for the Deaf and the Blind, which, for the purpose of receiving criminal history record information
124 pertaining to an application for employment from the Central Criminal Records Exchange, shall be a
125 governmental entity.

126 E. The fingerprinting and criminal records check process established pursuant to subsections A
127 and B shall be administered by the Department.

128 F. No employee subject to a criminal history records check as set forth in subsections A and B
129 shall be employed by any school board unless the employee has undergone a criminal history records
130 check as set forth in subsections A and B within the previous five school years.

131 **§ 22.1-296.4. Child abuse and neglect data required.**

132 A. Every school board and every governing board or administrator of a private school accredited
133 pursuant to § 22.1-19 shall require, as a condition of employment, that any applicant who is offered or

134 accepts employment requiring direct contact with students, whether ~~full-time~~ (i) the position is full time
135 ~~or part-time, part time; permanent or temporary; or in-person, remote, or some combination thereof~~ or (ii)
136 the employee is fully licensed, provisionally licensed, or unlicensed, provide written consent and the
137 necessary personal information for the school board, governing board, or administrator to obtain a search
138 of the registry of founded complaints of child abuse and neglect maintained by the Department of Social
139 Services pursuant to § 63.2-1515. The school board, governing board, or administrator shall ensure that
140 all such searches are requested in conformance with the regulations of the Board of Social Services. In
141 addition, where the applicant has resided in another state within the last five years, the school board,
142 governing board, or administrator shall require as a condition of employment that such applicant provide
143 written consent and the necessary personal information for the school board, governing board, or
144 administrator to obtain information from each relevant state as to whether the applicant was the subject of
145 a founded complaint of child abuse and neglect in such state. The school board, governing board or
146 administrator shall take reasonable steps to determine whether the applicant was the subject of a founded
147 complaint of child abuse and neglect in the relevant state. The Department of Social Services shall
148 maintain a database of central child abuse and neglect registries in other states that provide access to out-
149 of-state school boards, for use by local school boards, governing boards, and administrators. The applicant
150 may be required to pay the cost of any search conducted pursuant to this subsection at the discretion of
151 the school board, governing board, or administrator. From such funds as may be available for this purpose,
152 however, the school board or the governing board or administrator may pay for the search.

153 The Department of Social Services shall respond to such request by the school board, governing
154 board, or administrator in cases where there is no match within the central registry regarding applicants
155 for employment within 10 business days of receipt of such request. In cases where there is a match within
156 the central registry regarding applicants for employment, the Department of Social Services shall respond
157 to such request by the school board, governing board, or administrator within 30 business days of receipt
158 of such request. The request and response may be sent electronically or by first-class mail or facsimile
159 transmission.

160 B. If the response obtained pursuant to subsection A indicates that the applicant is the subject of a
161 founded case of child abuse and neglect, such applicant shall be denied employment or the employment
162 shall be rescinded.

163 C. If an applicant is denied employment because of information appearing on his record in the
164 registry, the school board, governing board, or administrator shall provide a copy of the information
165 obtained from the registry to the applicant. The information provided to the school board, governing board,
166 or administrator by the Department of Social Services shall be confidential and shall not be disseminated
167 by the school board, governing board, or administrator.

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