
SENATE BILL 5605

State of Washington

65th Legislature

2017 Regular Session

By Senators Walsh and Billig; by request of Superintendent of Public Instruction

1 AN ACT Relating to aligning the office of the superintendent of
2 public instruction's background check authority with that of the
3 department of early learning; amending RCW 28A.400.303, 28A.400.305,
4 28A.410.010, and 28A.410.090; reenacting and amending RCW 43.215.215;
5 and adding a new section to chapter 28A.400 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 28A.400.303 and 2014 c 50 s 1 are each amended to
8 read as follows:

9 (1) School districts, educational service districts, the
10 Washington state center for childhood deafness and hearing loss, the
11 state school for the blind, and their contractors hiring employees
12 who will have regularly scheduled unsupervised access to children or
13 developmentally disabled persons shall require a record check through
14 the Washington state patrol criminal identification system under RCW
15 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the
16 federal bureau of investigation before hiring an employee. The record
17 check shall include a fingerprint check using a complete Washington
18 state criminal identification fingerprint card. The requesting entity
19 (~~shall~~) may provide a copy of the record report to the applicant at
20 the applicant's request. When necessary, applicants may be employed
21 on a conditional basis pending completion of the investigation. If

1 the applicant has had a record check within the previous two years,
2 the district, the Washington state center for childhood deafness and
3 hearing loss, the state school for the blind, or contractor may waive
4 the requirement. Except as provided in subsection (2) of this
5 section, the district, pursuant to chapter 41.59 or 41.56 RCW, the
6 Washington state center for childhood deafness and hearing loss, the
7 state school for the blind, or contractor hiring the employee shall
8 determine who shall pay costs associated with the record check.

9 (2) Federal bureau of Indian affairs-funded schools may use the
10 process in subsection (1) of this section to perform record checks
11 for their employees and applicants for employment.

12 (3)(a) School districts, educational service districts, the
13 Washington state center for childhood deafness and hearing loss, the
14 state school for the blind, federal bureau of Indian affairs-funded
15 schools, charter schools established under chapter 28A.710 RCW,
16 schools that are the subject of a state-tribal education compact
17 under chapter 28A.715 RCW, and their contractors may use the process
18 in subsection (1) of this section to perform record checks for any
19 prospective volunteer who will have regularly scheduled unsupervised
20 access to children under eighteen years of age or developmentally
21 disabled persons, during the course of his or her involvement with
22 the school or organization under circumstances where access will or
23 may involve the following:

24 (i) Groups of five or fewer children under twelve years of age;

25 (ii) Groups of three or fewer children between twelve and
26 eighteen years of age; or

27 (iii) Developmentally disabled persons.

28 (b) For purposes of (a) of this subsection, "unsupervised" means
29 not in the presence of:

30 (i) Another employee or volunteer from the same school or
31 organization; or

32 (ii) Any relative or guardian of any of the children or
33 developmentally disabled persons to which the prospective employee or
34 volunteer has access during the course of his or her involvement with
35 the school or organization.

36 (4) Individuals who hold a valid portable background check
37 clearance card issued by the department of early learning consistent
38 with RCW 43.215.215 can meet the requirements in subsection (1) of
39 this section by providing a true and accurate copy of their
40 Washington state patrol and federal bureau of investigation

1 background report results to the office of the superintendent of
2 public instruction.

3 (5) Persons required to be fingerprinted and obtain a criminal
4 history record check pursuant to this section and RCW 28A.195.080 and
5 28A.410.010 must pay for the cost of record checks as follows: The
6 fee established by the Washington state patrol for the criminal
7 history background check, including the cost of obtaining the
8 fingerprints; and a fee paid to the superintendent of public
9 instruction for the cost of administering this section and RCW
10 28A.195.080 and 28A.410.010.

11 **Sec. 2.** RCW 28A.400.305 and 2010 c 100 s 1 are each amended to
12 read as follows:

13 The superintendent of public instruction shall adopt rules as
14 necessary under chapter 34.05 RCW (~~on record check information~~) to
15 implement RCW 28A.400.303. The rules shall include, but not be
16 limited to the following:

17 (1) Written procedures providing a school district, approved
18 private school, Washington state center for childhood deafness and
19 hearing loss, state school for the blind, (~~or~~) federal bureau of
20 Indian affairs-funded school employee, charter school established
21 under chapter 28A.710 RCW, school that is the subject of a state-
22 tribal education compact under chapter 28A.715 RCW, or applicant for
23 certification or employment access to and review of information
24 obtained based on the record check required under RCW 28A.400.303;
25 and

26 (2) Written procedures limiting access to the superintendent of
27 public instruction record check database to only those individuals
28 processing record check information at the office of the
29 superintendent of public instruction, the appropriate school district
30 or districts, approved private schools, the Washington state center
31 for childhood deafness and hearing loss, the state school for the
32 blind, the appropriate educational service district or districts,
33 (~~and~~) the appropriate federal bureau of Indian affairs-funded
34 schools, the appropriate charter schools, and the appropriate state-
35 tribal education compact schools.

36 **Sec. 3.** RCW 28A.410.010 and 2014 c 50 s 2 are each amended to
37 read as follows:

1 (1)(a) The Washington professional educator standards board shall
2 establish, publish, and enforce rules determining eligibility for and
3 certification of personnel employed in the common schools of this
4 state, including certification for emergency or temporary, substitute
5 or provisional duty and under such certificates or permits as the
6 board shall deem proper or as otherwise prescribed by law. The rules
7 shall require that the initial application for certification shall
8 require, at the applicant's expense, a criminal history record check
9 of the applicant through the Washington state patrol criminal
10 identification system under RCW 43.43.830 through 43.43.834,
11 10.97.030, and 10.97.050 and through the federal bureau of
12 investigation (~~at the applicant's expense~~). The record check shall
13 include a fingerprint check using a complete Washington state
14 criminal identification fingerprint card. An individual who holds a
15 valid portable background check clearance card issued by the
16 department of early learning consistent with RCW 43.215.215 is exempt
17 from the office of the superintendent of public instruction
18 fingerprint background check if the individual provides a true and
19 accurate copy of his or her Washington state patrol and federal
20 bureau of investigation background report results to the office of
21 the superintendent of public instruction. The superintendent of
22 public instruction may waive the record check for any applicant who
23 has had a record check within the two years before application. The
24 superintendent of public instruction shall use the fingerprint
25 criminal history record check information solely for the purpose of
26 determining eligibility for a certificate under this section. The
27 rules shall permit a holder of a lapsed certificate but not a revoked
28 or suspended certificate to be employed on a conditional basis by a
29 school district with the requirement that the holder must complete
30 any certificate renewal requirements established by the state board
31 of education within two years of initial reemployment.

32 (b) In establishing rules pertaining to the qualifications of
33 instructors of American sign language the board shall consult with
34 the national association of the deaf, "sign instructors guidance
35 network" (s.i.g.n.), and the Washington state association of the deaf
36 for evaluation and certification of sign language instructors.

37 (c) The board shall develop rules consistent with RCW 18.340.020
38 for the certification of spouses of military personnel.

39 (2) The superintendent of public instruction shall act as the
40 administrator of any such rules and have the power to issue any

1 certificates or permits and revoke the same in accordance with board
2 rules.

3 **Sec. 4.** RCW 28A.410.090 and 2013 c 163 s 1 are each amended to
4 read as follows:

5 (1)(a) Any certificate or permit authorized under the provisions
6 of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder
7 may be revoked or suspended by the authority authorized to grant the
8 same based upon a criminal records report authorized by law, or upon
9 the complaint of the professional educator standards board or any
10 school district superintendent, educational service district
11 superintendent, or private school administrator for (~~immorality~~)
12 lack of good moral character or personal fitness, violation of
13 written contract, unprofessional conduct, intemperance, or crime
14 against the law of the state. A reprimand may be issued as an
15 alternative to suspension or revocation of a certificate or permit.
16 School district superintendents, educational service district
17 superintendents, the professional educator standards board, or
18 private school administrators may file a complaint concerning any
19 certificated employee of a school district, educational service
20 district, or private school and this filing authority is not limited
21 to employees of the complaining superintendent or administrator. Such
22 written complaint shall state the grounds and summarize the factual
23 basis upon which a determination has been made that an investigation
24 by the superintendent of public instruction is warranted.

25 (b) If the superintendent of public instruction has reasonable
26 cause to believe that an alleged violation of this chapter or rules
27 adopted under it has occurred based on a written complaint alleging
28 physical abuse or sexual misconduct by a certificated school employee
29 filed by a parent or another person, but no complaint has been
30 forwarded to the superintendent by a school district superintendent,
31 educational service district superintendent, or private school
32 administrator, and that a school district superintendent, educational
33 service district superintendent, or private school administrator has
34 sufficient notice of the alleged violation and opportunity to file a
35 complaint, the superintendent of public instruction may cause an
36 investigation to be made of the alleged violation, together with such
37 other matters that may be disclosed in the course of the
38 investigation related to certificated personnel.

1 (2) A parent or another person may file a written complaint with
2 the superintendent of public instruction alleging physical abuse or
3 sexual misconduct by a certificated school employee if:

4 (a) The parent or other person has already filed a written
5 complaint with the educational service district superintendent
6 concerning that employee;

7 (b) The educational service district superintendent has not
8 caused an investigation of the allegations and has not forwarded the
9 complaint to the superintendent of public instruction for
10 investigation; and

11 (c) The written complaint states the grounds and factual basis
12 upon which the parent or other person believes an investigation
13 should be conducted.

14 (3) Any certificate or permit authorized under the provisions of
15 this chapter, chapter 28A.405 RCW, or rules adopted thereunder may be
16 revoked or suspended by the authority authorized to grant the same
17 upon complaint from the professional educator standards board
18 alleging unprofessional conduct in the form of a fraudulent
19 submission of a test for educators. A reprimand may be issued as an
20 alternative to suspension or revocation of a certificate or permit.
21 The professional educator standards board must issue to the
22 superintendent of public instruction a written complaint stating the
23 grounds and factual basis upon which the professional educator
24 standards board believes an investigation should be conducted
25 pursuant to this section. In all cases under this subsection, the
26 person whose certificate is in question shall be given an opportunity
27 to be heard and has the right to appeal as established in RCW
28 28A.410.100.

29 (4)(a) Any such certificate or permit authorized under this
30 chapter or chapter 28A.405 RCW shall be revoked by the authority
31 authorized to grant the certificate upon a guilty plea or the
32 conviction of any felony crime specified under RCW 28A.400.322, in
33 accordance with this section. The person whose certificate is in
34 question shall be given an opportunity to be heard.

35 (b) Mandatory permanent revocation upon a guilty plea or the
36 conviction of felony crimes specified under RCW 28A.400.322(1) shall
37 apply to such convictions or guilty pleas which occur after July 23,
38 1989, and before July 26, 2009.

39 (c) Mandatory permanent revocation upon a guilty plea or
40 conviction of felony crimes specified under RCW 28A.400.322(2) shall

1 apply to such convictions or guilty pleas that occur on or after July
2 26, 2009.

3 (d) Revocation of any certificate or permit authorized under this
4 chapter or chapter 28A.405 RCW for a guilty plea or criminal
5 conviction of a crime specified under RCW 28A.400.322 occurring prior
6 to July 23, 1989, shall be subject to the provisions of subsection
7 (1) of this section.

8 (5)(a) Any such certificate or permit authorized under this
9 chapter or chapter 28A.405 RCW shall be suspended or revoked,
10 according to the provisions of this subsection, by the authority
11 authorized to grant the certificate upon a finding that an employee
12 has engaged in an unauthorized use of school equipment to
13 intentionally access material depicting sexually explicit conduct or
14 has intentionally possessed on school grounds any material depicting
15 sexually explicit conduct; except for material used in conjunction
16 with established curriculum. A first time violation of this
17 subsection shall result in either suspension or revocation of the
18 employee's certificate or permit as determined by the office of the
19 superintendent of public instruction. A second violation shall result
20 in a mandatory revocation of the certificate or permit.

21 (b) In all cases under this subsection (5), the person whose
22 certificate is in question shall be given an opportunity to be heard
23 and has the right to appeal as established in RCW 28A.410.100.
24 Certificates or permits shall be suspended or revoked under this
25 subsection only if findings are made on or after July 24, 2005. For
26 the purposes of this subsection, "sexually explicit conduct" has the
27 same definition as provided in RCW 9.68A.011.

28 (6) Any such certificate or permit authorized under this chapter
29 or chapter 28A.405 RCW shall be revoked by the authority authorized
30 to grant the certificate upon a finding that the certificate holder
31 obtained the certificate through fraudulent means, including
32 fraudulent misrepresentation of required academic credentials or
33 prior criminal record. In all cases under this subsection, the person
34 whose certificate is in question shall be given an opportunity to be
35 heard and has the right to appeal as established in RCW 28A.410.100.
36 Certificates or permits shall be revoked under this subsection only
37 if findings are made on or after July 26, 2009.

38 (7) In determining whether an individual lacks good moral
39 character or personal fitness under this chapter, the superintendent
40 of public instruction may consider the history of past involvement of

1 child protective services or law enforcement agencies with the
2 individual for the purpose of establishing a pattern of conduct,
3 behavior, or inaction with regard to the health, safety, or welfare
4 of a child. No report of child abuse or neglect that has been
5 destroyed or expunged under RCW 26.44.031 may be used for such
6 purposes. The superintendent shall not disclose unfounded or
7 inconclusive allegations of child abuse or neglect as defined in RCW
8 26.44.020.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.400
10 RCW to read as follows:

11 The K-12 criminal background check account is created in the
12 custody of the state treasurer. All fees collected by the office of
13 the superintendent of public instruction pursuant to RCW 28A.400.303
14 must be deposited in the account. Expenditures from the account may
15 be made only for the purpose of administering the office of the
16 superintendent of public instruction's duties under RCW 28A.400.303
17 and 28A.410.010. Only the superintendent of public instruction or the
18 superintendent's designee may authorize expenditures from the
19 account. The account is subject to allotment procedures under chapter
20 43.88 RCW, but an appropriation is not required for expenditures.

21 **Sec. 6.** RCW 43.215.215 and 2011 c 295 s 2 and 2011 c 253 s 4 are
22 each reenacted and amended to read as follows:

23 (1) In determining whether an individual is of appropriate
24 character, suitability, and competence to provide child care and
25 early learning services to children, the department may consider the
26 history of past involvement of child protective services or law
27 enforcement agencies with the individual for the purpose of
28 establishing a pattern of conduct, behavior, or inaction with regard
29 to the health, safety, or welfare of a child. No report of child
30 abuse or neglect that has been destroyed or expunged under RCW
31 26.44.031 may be used for such purposes. No unfounded or inconclusive
32 allegation of child abuse or neglect as defined in RCW 26.44.020 may
33 be disclosed to a provider licensed under this chapter.

34 (2) In order to determine the suitability of individuals newly
35 applying for an agency license, new licensees, their new employees,
36 and other persons who newly have unsupervised access to children in
37 care, shall be fingerprinted.

1 (a) The fingerprints shall be forwarded to the Washington state
2 patrol and federal bureau of investigation for a criminal history
3 record check.

4 (b)(i) Effective July 1, 2012, all individuals applying for
5 first-time agency licenses, all new employees, and other persons who
6 have not been previously qualified by the department to have
7 unsupervised access to children in care must be fingerprinted and
8 obtain a criminal history record check pursuant to this section.

9 (ii) Persons required to be fingerprinted and obtain a criminal
10 (~~{history}~~) history record check pursuant to this section must pay
11 for the cost of this check as follows: The fee established by the
12 Washington state patrol for the criminal background history check,
13 including the cost of obtaining the fingerprints; and a fee paid to
14 the department for the cost of administering the individual-based/
15 portable background check clearance registry. The fee paid to the
16 department must be deposited into the individual-based/portable
17 background check clearance account established in RCW 43.215.218. The
18 licensee may, but need not, pay these costs on behalf of a
19 prospective employee or reimburse the prospective employee for these
20 costs. The licensee and the prospective employee may share these
21 costs.

22 (c) The director shall use the fingerprint criminal history
23 record check information solely for the purpose of determining
24 eligibility for a license and for determining the character,
25 suitability, and competence of those persons or agencies, excluding
26 parents, not required to be licensed who are authorized to care for
27 children.

28 (d) Criminal justice agencies shall provide the director such
29 information as they may have and that the director may require for
30 such purpose.

31 (e) No later than July 1, 2013, all agency licensees holding
32 licenses prior to July 1, 2012, persons who were employees before
33 July 1, 2012, and persons who have been qualified by the department
34 before July 1, 2012, to have unsupervised access to children in care,
35 must submit a new background application to the department. The
36 department must require persons submitting a new background
37 application pursuant to this subsection (2)(e) to pay a fee to the
38 department for the cost of administering the individual-based/
39 portable background check clearance registry. This fee must be paid
40 into the individual-based/portable background check clearance account

1 established in RCW 43.215.218. The licensee may, but need not, pay
2 these costs on behalf of a prospective employee or reimburse the
3 prospective employee for these costs. The licensee and the
4 prospective employee may share these costs.

5 (f) The department shall issue a background check clearance card
6 or certificate to the applicant if after the completion of a
7 background check the department concludes the applicant is qualified
8 for unsupervised access to children in care. The background check
9 clearance card or certificate is valid for three years from the date
10 of issuance. A valid card or certificate must be accepted by a
11 potential employer as proof that the applicant has successfully
12 completed a background check as required under this chapter.

13 (g) The original applicant for an agency license, licensees,
14 their employees, and other persons who have unsupervised access to
15 children in care shall submit a new background check application to
16 the department, on a form and by a date as determined by the
17 department.

18 (h) The applicant and agency shall maintain on-site for
19 inspection a copy of the background check clearance card or
20 certificate.

21 (i) Individuals who have been issued a background check clearance
22 card or certificate shall report nonconviction and conviction
23 information to the department within twenty-four hours of the event
24 constituting the nonconviction or conviction information.

25 (j) The department shall investigate and conduct a
26 redetermination of an applicant's or licensee's background clearance
27 if the department receives a complaint or information from
28 individuals, a law enforcement agency, or other federal, state, or
29 local government agency. Subject to the requirements contained in RCW
30 43.215.300 and 43.215.305 and based on a determination that an
31 individual lacks the appropriate character, suitability, or
32 competence to provide child care or early learning services to
33 children, the department may: (i) Invalidate the background card or
34 certificate; or (ii) suspend, modify, or revoke any license
35 authorized by this chapter.

36 (3) To satisfy the shared background check requirements of the
37 department of early learning, the office of the superintendent of
38 public instruction, and the department of social and health services,
39 each department shall share federal fingerprint-based background
40 check results as permitted under the law. The purpose of this

1 provision is to allow (~~both~~) these departments to fulfill their
2 joint background check responsibility of checking any individual who
3 may have unsupervised access to vulnerable adults, children, or
4 juveniles. (~~Neither~~) These departments may not share the federal
5 background check results with any other state agency or person.

6 (4) Individuals who have completed a fingerprint background check
7 as required by the office of the superintendent of public
8 instruction, consistent with RCW 28A.400.303, and have been
9 continuously employed by the same school district or educational
10 service district, can meet the requirements in subsection (2) of this
11 section by providing a true and accurate copy of their Washington
12 state patrol and federal bureau of investigation background check
13 report results to the department of early learning or if the school
14 district or the educational service district provides an affidavit to
15 the department of early learning that the individual has been
16 authorized to work by the school district or educational service
17 district after completing a record check consistent with RCW
18 28A.400.303.

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