

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1381 Session of 2012

INTRODUCED BY WILLIAMS, PICCOLA, DINNIMAN, WASHINGTON, FARNESE,  
FONTANA, RAFFERTY, COSTA, WAUGH, BROWNE AND BOSCOLA,  
JANUARY 13, 2012

REFERRED TO EDUCATION, JANUARY 13, 2012

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
2 act relating to the public school system, including certain  
3 provisions applicable as well to private and parochial  
4 schools; amending, revising, consolidating and changing the  
5 laws relating thereto," providing for employment history  
6 review.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known  
10 as the Public School Code of 1949, is amended by adding a  
11 section to read:

12 Section 111.1. Employment History Review.--(a) (1) This  
13 section shall apply to all prospective employees of public and  
14 private schools, nonpublic schools, intermediate units and area  
15 vocational-technical schools, including, but not limited to,  
16 teachers, substitutes, janitors, cafeteria workers, independent  
17 contractors and their employees, except those employees and  
18 independent contractors and their employees who have no direct  
19 contact with children.

1     (2) This section shall apply to bus drivers offered  
2 employment by a school district, private school, nonpublic  
3 school, intermediate unit or area vocational-technical school or  
4 by an independent contractor.

5     (b) In addition to fulfilling the requirements of section  
6 111, before a school entity may offer employment to an applicant  
7 for a position with the school entity, the school entity shall:

8         (1) Require the applicant to provide:

9             (i) A list of the applicant's current and former employers.

10            (ii) A written authorization that authorizes the applicant's  
11 current and former employers to disclose the information  
12 requested under subsection (c).

13            (iii) A written statement of whether the applicant:

14                 (A) has been the subject of an abuse or sexual misconduct  
15 investigation by any employer or child protective services  
16 agency;

17                 (B) has ever been the subject of any misconduct  
18 investigation not related to abuse or sexual misconduct by any  
19 employer;

20                 (C) has ever resigned from or otherwise separated from any  
21 employment while allegations of any abuse or misconduct as  
22 described in paragraph (A) or (B) were pending or under  
23 investigation;

24                 (D) has ever been disciplined, discharged, non-renewed or  
25 asked to resigned from employment; or

26                 (E) has ever had a license, professional license or  
27 certificate suspended or revoked.

28     (2) Conduct a review of the employment history of the  
29 applicant by contacting the current and all past employers of  
30 the applicant and requesting the following information, as well

1 as any records relating to the information requested under  
2 subclause (ii):

3 (i) the dates of employment of the applicant;

4 (ii) whether the applicant:

5 (A) was the subject of any abuse or sexual misconduct  
6 investigation by any employer or child protective services  
7 agency;

8 (B) was the subject of any misconduct investigation not  
9 related to child abuse or sexual misconduct;

10 (C) resigned from or otherwise separated from any employment  
11 while allegations of misconduct were pending or under  
12 investigation;

13 (D) has ever been disciplined, discharged, non-renewed or  
14 asked to resign from employment; or

15 (E) has ever had a license, professional license or  
16 certificate suspended or revoked.

17 (3) Check the certification status of any professional  
18 employee to determine that the applicant holds valid and active  
19 certification and whether the applicant has been the subject of  
20 public professional discipline.

21 (c) An applicant who wilfully fails to disclose the  
22 information required in subsection (b) shall be subject to  
23 discipline up to, and including, termination or denial of  
24 employment and may be subject to criminal prosecution under 18  
25 Pa.C.S. § 4904 (relating to unsworn falsification to  
26 authorities), and in the case of an employee, the employee shall  
27 be subject to discipline under the act of December 12, 1973  
28 (P.L.397, No.141), known as the "Professional Educator  
29 Discipline Act."

30 (d) The current or former employer of the applicant shall

provide information and all records in the possession of the employer related to subsection (b)(2) as requested under this section in accordance with the provisions of subsection (e).

(e) (1) No later than twenty (20) days after receiving a request under subsection (d), an employer that has or had an employment relationship with the applicant shall disclose the information and records requested.

(2) An employer shall disclose the information on a standardized form, developed by the Department of Education, and shall provide any supporting records with the standardized form.

(3) Information received under this section is not a public record for the purposes of the act of February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know Law," except where the information satisfies an exception to the "Right-to-Know Law." A school entity receiving the information under subsection (d) may use the information only for the purpose of evaluating an applicant's fitness to be hired or for continued employment.

(4) An employer that provides information or records as required under this section about a current or former employee to a prospective employer shall be immune from civil liability for the disclosure of the information unless the information or records provided were knowingly false.

(5) Except where the laws of other states prevent the release of the information or records requested, the failure of the school entity or employer in which the applicant had contact with children to provide the information and records as requested may result in a penalty not to exceed ten thousand dollars (\$10,000). In the case of a school entity, failure to respond may also subject the school administrator to discipline in accordance with the "Professional Educator Discipline Act."

1     (f) (1) A school entity may not hire an applicant who does  
2 not provide the information required under subsection (b).

3     (2) A school entity may hire an applicant on a conditional  
4 basis for a period not to exceed ninety (90) days pending the  
5 school entity's review of information and records received under  
6 this section on the condition that the applicant has no direct  
7 contact with children.

8     (3) A school entity may not deny an applicant employment  
9 solely because a current or former employer of an applicant  
10 fails or refuses to comply with the requirements of subsection  
11 (e) or the applicant has or had an out-of-State employer and the  
12 laws or rules of that state prevent the release of information  
13 or records requested under subsection (e).

14     (g) A school entity may not enter into a collective  
15 bargaining agreement, an employment contract, an agreement for  
16 resignation or termination, a severance agreement or any other  
17 contract or agreement or take any action that:

18     (1) has the effect of suppressing information relating to an  
19 investigation related to a report of suspect abuse, sexual  
20 misconduct or other misconduct by a current or former employee;

21     (2) affects the duties of the school entity to report  
22 suspected abuse, sexual misconduct or other misconduct to the  
23 appropriate authorities;

24     (3) impairs the responsibility or ability of the school  
25 entity to discipline an employee for abuse, sexual misconduct or  
26 other misconduct; or

27     (4) requires the school entity to expunge information about  
28 allegations or findings of abuse, sexual misconduct or other  
29 misconduct from any documents maintained by a school entity.

30     (h) Any provision of an employment contract or agreement

1 that is contrary to this section is void and unenforceable.

2 (i) Nothing in this section shall be construed to prevent a  
3 school entity from entering into a collective bargaining  
4 agreement that includes standards for investigation of a report  
5 of abuse, sexual misconduct or other misconduct.

6 (j) Nothing in this section shall be construed to relieve a  
7 school entity of its legal responsibility to report suspected  
8 incidents of abuse in accordance with the provisions of 23  
9 Pa.C.S. Ch. 63 Subch. B (relating to provisions and  
10 responsibilities for reporting suspected child abuse).

11 (k) As used in this section, the following words and phrases  
12 shall have the meanings given to them in this subsection:

13 "Abuse" shall mean conduct that falls under the purview and  
14 reporting requirements of 23 Pa.C.S. Ch. 63 (relating to child  
15 protective services).

16 "School entity" shall mean any public school, including a  
17 charter school or cyber charter school, private school,  
18 nonpublic school, intermediate unit or area vocational-technical  
19 school operating within this Commonwealth.

20 "Sexual misconduct" shall mean any act, including, but not  
21 limited to, any verbal, non-verbal, written or electronic  
22 communication or physical activity, directed toward or with a  
23 child or a student regardless of the age of the child or student  
24 that is designed to establish a romantic or sexual relationship  
25 with the child or student. Such prohibited acts include, but are  
26 not limited to:

27 (1) sexual or romantic involvement;

28 (2) dating or soliciting dates;

29 (3) engaging in sexualized or romantic dialog;

30 (4) making sexually suggestive comments;

1     (5) self-disclosure or physical exposure of a sexual,  
2     romantic or erotic nature; or  
3     (6) any sexual, indecent, romantic or erotic contact with  
4     the child or student.

5     Section 2. This act shall take effect in 60 days.