

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1004 Session of
2005

INTRODUCED BY ORIE, WONDERLING, FONTANA, PILEGGI, RAFFERTY,
COSTA AND BROWNE, NOVEMBER 14, 2005

REFERRED TO EDUCATION, NOVEMBER 14, 2005

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," further providing for background
6 checks of prospective employees and conviction of certain
7 offenses.

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

10 Section 1. Section 111 of the act of March 10, 1949 (P.L.30,
11 No.14), known as the Public School Code of 1949, amended
12 December 19, 1990 (P.L.1362, No.211), December 23, 2003
13 (P.L.304, No.48) and July 4, 2004 (P.L.536, No,70), is amended
14 to read:

15 Section 111. Background Checks of Prospective and Current
16 Employees; Conviction of Employees of Certain Offenses.--(a) This
17 section shall apply to all prospective and current employees of
18 public and private schools, intermediate units and area
19 vocational-technical schools, including independent contractors
20 and their employees, except those employees and independent

1 contractors and their employees who have no direct contact with
2 children.

3 (b) Administrators of public and private schools,
4 intermediate units and area vocational-technical schools shall
5 require prospective and current employees to submit with their
6 employment application or annually, pursuant to 18 Pa.C.S. Ch.91
7 (relating to criminal history record information), a report of
8 criminal history record information from the Pennsylvania State
9 Police or a statement from the Pennsylvania State Police that
10 the State Police central repository contains no such information
11 relating to that person. Such criminal history record
12 information shall be limited to that which is disseminated
13 pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general
14 regulations) and shall be no more than one (1) year old. An
15 applicant may submit a copy of the required information with the
16 application for employment. Administrators shall maintain a copy
17 of the required information and shall require each [applicant]
18 person to produce the original document prior to or during the
19 course of employment. Administrators shall require contractors
20 to produce the original document for each prospective employee of
21 such contractor prior to employment.

22 (c) [Where the applicant has not been a resident of this
23 Commonwealth for at least two (2) years immediately preceding
24 the date of application for employment, administrators]
25 Administrators shall require the applicant to submit with the
26 application for employment or a current employee to submit
27 annually a set of fingerprints which [may] shall be submitted to
28 the Federal Bureau of Investigation for Federal criminal history
29 record information pursuant to the Federal Bureau of
30 Investigation appropriation of Title II of Public Law 92-544, 86

1 Stat. 1115 or a copy of such Federal criminal history record.
2 Administrators shall forward the set of fingerprints for the
3 Federal criminal history record to the Department of Education.
4 The Department of Education shall be the intermediary for the
5 purposes of this section. The Department of Education shall
6 return the Federal criminal history record to the applicant or
7 current employe. When the applicant or current employe provides
8 a copy of the Federal criminal history record, it shall be no
9 more than one (1) year old. Administrators shall maintain a copy
10 of the required information and shall require each applicant to
11 produce a Federal criminal history record that may not be more
12 than one (1) year old at the time of employment. Administrators
13 shall maintain a copy of the required information and shall
14 require each current employe to produce a Federal criminal
15 history record that may not be more than one (1) year old. The
16 original Federal criminal history record shall be returned [to
17 the applicant].

18 (d) The State Board of Education shall, in the manner
19 provided by law, promulgate the regulations necessary to carry
20 out this section. The regulations shall provide for the
21 confidentiality of criminal history record information obtained
22 pursuant to this act.

23 (e) No person subject to this act shall be employed in a
24 public or private school, intermediate unit or area vocational-
25 technical school where the report of criminal history record
26 information indicates the [applicant] person has been
27 convicted[, within five (5) years immediately preceding the date
28 of the report,] of any of the following offenses:

29 (1) An offense under one or more of the following provisions
30 of Title 18 of the Pennsylvania Consolidated Statutes:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Former section 2709(b) (relating to stalking).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

(2) An offense designated as a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(3) An out-of-State or Federal offense similar in nature to those crimes listed in clauses (1) and (2).

(f) The requirements of this section shall not apply to employees of public and private schools, intermediate units and area vocational-technical schools who meet all the following requirements:

(1) The employees are under twenty-one (21) years of age.

(2) They are employed for periods of ninety (90) days or less.

(3) They are a part of a job development and/or job training program funded in whole or in part by public or private sources.

Once employment of a person who meets these conditions extends beyond ninety (90) days, all requirements of this section shall take effect.

(g) An administrator, or other person responsible for employment decisions in a school or other institution under this section who wilfully fails to comply with the provisions of this section commits a violation of this act and shall be subject to civil penalty as provided in this section.

(1) The department shall have jurisdiction to determine violators of this section and may, following a hearing, assess a civil penalty not to exceed two thousand five hundred dollars (\$2,500).

(2) The civil penalty shall be payable to the Commonwealth.

(h) [No person employed in a public or private school on the effective date of this section shall be required to obtain the information required herein as a condition of continued employment. Any] Except to meet an annual requirement to submit information required under this section, a person who has once obtained the information required under this section may transfer to another school in the same district or established and supervised by the same organization and shall not be

1 required to obtain additional reports before making such
2 transfer.

3 (i) Notwithstanding subsections (b) and (c), administrators
4 may employ applicants on a provisional basis for a single period
5 not to exceed thirty (30) days or, for out-of-State applicants,
6 a period of ninety (90) days, except during a lawful strike
7 proceeding under the provisions of the act of July 23, 1970
8 (P.L.563, No.195), known as the "Public Employee Relations Act,"
9 provided that all of the following conditions are met:

10 (1) the applicant has applied for the information required
11 under subsection (b) and, where applicable, under subsection (c)
12 and the applicant provides a copy of the appropriate completed
13 request forms to the administrator;

14 (2) the administrator has no knowledge of information
15 pertaining to the applicant which would disqualify him from
16 employment pursuant to subsection (e);

17 (3) the applicant swears or affirms in writing that he is
18 not disqualified from employment pursuant to subsection (e);

19 (4) if the information obtained pursuant to subsection (b)
20 or (c) reveals that the applicant is disqualified from
21 employment pursuant to subsection (e), the applicant shall be
22 suspended and subject to termination proceedings as provided for
23 by law; and

24 (5) the administrator requires that the applicant not be
25 permitted to work alone with children and that the applicant
26 work in the immediate vicinity of a permanent employee.

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