

## 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," in preliminary provisions, providing  
6 for employment history 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) This section  
13 shall apply to all positions for employment at school entities  
14 and independent contractors of school entities involving direct  
15 contact with children.

16 (b) In addition to fulfilling the requirements of section  
17 111 and 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background  
18 checks for employment in schools), before a school entity or  
19 independent contractor may offer employment to an applicant who

1 would be employed by or in a school entity in a position  
2 involving direct contact with children, the school entity or  
3 independent contractor shall:

4 (1) Require the applicant to provide:

5 (i) A list, including name, address, telephone number and  
6 other relevant contact information of the applicant's:

7 (A) Current employer.

8 (B) All former employers that were school entities.

9 (C) All former employers where the applicant was employed in  
10 positions that involved direct contact with children.

11 (ii) A written authorization that consents to and authorizes  
12 disclosure by the applicant's current and former employers in  
13 subparagraph (i) of the information requested under paragraph  
14 (2) and the release of related records and that releases those  
15 employers from liability that may arise from such disclosure or  
16 release of records pursuant to subsection (d) (5).

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

18 (A) has been the subject of an abuse or sexual misconduct  
19 investigation by any employer, State licensing agency, law  
20 enforcement agency or child protective services agency, unless  
21 the investigation resulted in a finding that the allegations  
22 were false;

23 (B) has ever been disciplined, discharged, nonrenewed, asked  
24 to resign from employment, resigned from or otherwise separated  
25 from any employment while allegations of abuse or sexual  
26 misconduct as described in clause (A) were pending or under  
27 investigation, or due to an adjudication or findings of abuse or  
28 sexual misconduct as described in clause (A); or

29 (C) has ever had a license, professional license or  
30 certificate suspended, surrendered or revoked while allegations

1 of abuse or sexual misconduct as described in clause (A) were  
2 pending or under investigation, or due to an adjudication or  
3 findings of abuse or sexual misconduct as described in clause  
4 (A).

5 (2) Conduct a review of the employment history of the  
6 applicant by contacting those employers listed by the applicant  
7 under the provisions of paragraph (1)(i) and requesting the  
8 following information:

9 (i) The dates of employment of the applicant.

10 (ii) A statement as to whether the applicant:

11 (A) was the subject of any abuse or sexual misconduct  
12 investigation by any employer, State licensing agency, law  
13 enforcement agency or child protective services agency, unless  
14 such investigation resulted in a finding that the allegations  
15 were false;

16 (B) was disciplined, discharged, nonrenewed, asked to resign  
17 from employment, resigned from or otherwise separated from any  
18 employment while allegations of abuse or sexual misconduct as  
19 described in clause (A) were pending or under investigation, or  
20 due to an adjudication or findings of abuse or sexual misconduct  
21 described in clause (A); or

22 (C) has ever had a license, professional license or  
23 certificate suspended, surrendered or revoked while allegations  
24 of abuse or sexual misconduct as described in clause (A) were  
25 pending or under investigation, or due to an adjudication or  
26 findings of abuse or sexual misconduct as described in clause  
27 (A).

28 (3) Check the eligibility for employment or certification  
29 status of any applicant for a position involving direct contact  
30 with children to determine whether the applicant holds valid and

1 active certification appropriate for the position and is  
2 otherwise eligible for employment and whether the applicant has  
3 been the subject of public professional discipline.

4 (c) An applicant who provides false information or wilfully  
5 fails to disclose information required in subsection (b) shall  
6 be subject to discipline up to, and including, termination or  
7 denial of employment and may be subject to criminal prosecution  
8 under 18 Pa.C.S. § 4904 (relating to unsworn falsification to  
9 authorities), and may be subject to civil penalties and  
10 professional discipline in accordance with subsection (1).

11 (d) (1) No later than twenty (20) days after receiving a  
12 request for information required under subsection (b) (2), an  
13 employer that has or had an employment relationship with the  
14 applicant shall disclose the information requested.

15 (2) The employer shall disclose the information on a  
16 standardized form developed by the Department of Education.

17 (3) (i) After reviewing the information initially disclosed  
18 under paragraph (1) and finding an affirmative response to  
19 subsection (b) (1) (iii) (A), (B) or (C), (2) (ii) (A), (B) or (C)  
20 where the prospective employing school entity or contractor  
21 makes a determination to further consider the applicant for  
22 employment, the school entity or contractor shall request that  
23 former employers provide additional information about the  
24 matters disclosed and all related records.

25 (ii) Former employers shall provide the additional  
26 information requested no later than sixty (60) days after the  
27 prospective employer's request under this paragraph.

28 (4) (i) Information received under this section shall not  
29 be deemed a public record for the purposes of the act of  
30 February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know

1 Law."

2 (ii) A school entity that receives the information under  
3 this subsection may use the information for the purpose of  
4 evaluating an applicant's fitness to be hired or for continued  
5 employment and may report the information as appropriate to the  
6 Department of Education, a State licensing agency, law  
7 enforcement agency, child protective services agency, another  
8 school entity or prospective employer.

9 (5) An employer, school entity, school administrator or  
10 independent contractor that provides information or records  
11 about a current or former employe or applicant shall be immune  
12 from criminal liability under 23 Pa.C.S. Ch. 63 (relating to  
13 child protective services) and the act of December 12, 1973  
14 (P.L.397, No.141), known as the "Educator Discipline Act," and  
15 civil liability for the disclosure of the information, unless  
16 the information or records provided were knowingly false. Such  
17 immunity shall be in addition to and not in limitation of any  
18 other immunity provided by law, or any absolute or conditional  
19 privileges applicable to such disclosures by virtue of the  
20 circumstances or the applicant's consent thereto.

21 (6) Except where the laws of other states prevent the  
22 release of the information or records requested, or disclosure  
23 is restricted by the terms of a contract entered into prior to  
24 the effective date of this section, the wilful failure of a  
25 former employer, school entity, school administrator or  
26 independent contractor to respond or provide the information and  
27 records as requested may result in civil penalties, and  
28 professional discipline where appropriate, in accordance with  
29 subsection (1).

30 (7) Notwithstanding any provision of law to the contrary, an

1 employer, school entity, school administrator, independent  
2 contractor or applicant shall report and disclose in accordance  
3 with this section all relevant information, records and  
4 documentation that may otherwise be confidential under 23  
5 Pa.C.S. Ch. 63 and the "Educator Discipline Act."

6 (e) (1) A school entity or independent contractor may not  
7 hire an applicant who does not provide the information required  
8 under subsection (b) for a position involving direct contact  
9 with children.

10 (2) A school entity or independent contractor may hire an  
11 applicant on a provisional basis for a period not to exceed  
12 ninety (90) days pending the school entity's or independent  
13 contractor's review of information and records received under  
14 this section, provided that all of the following are satisfied:

15 (i) The applicant has provided all of the information and  
16 supporting documentation required under subsection (b).

17 (ii) The school administrator has no knowledge of  
18 information pertaining to the applicant that would disqualify  
19 the applicant from employment.

20 (iii) The applicant swears or affirms that the applicant is  
21 not disqualified from employment.

22 (iv) The applicant is not permitted to work alone with  
23 children and works in the immediate vicinity of a permanent  
24 employee.

25 (f) On or after the effective date of this section, a school  
26 entity or independent contractor may not enter into a collective  
27 bargaining agreement, an employment contract, an agreement for  
28 resignation or termination, a severance agreement or any other  
29 contract or agreement or take any action that:

30 (1) has the effect of suppressing information relating to an

1 investigation related to a report of suspected abuse or sexual  
2 misconduct by a current or former employe;

3 (2) affects the ability of the school entity or independent  
4 contractor to report suspected abuse or sexual misconduct to the  
5 appropriate authorities; or

6 (3) requires the school entity or independent contractor to  
7 expunge information about allegations or findings of suspected  
8 abuse or sexual misconduct from any documents maintained by the  
9 school entity or independent contractor, unless after  
10 investigation the allegations are found to be false.

11 (g) Any provision of an employment contract or agreement for  
12 resignation or termination or a severance agreement that is  
13 executed, amended or entered into after the effective date of  
14 this section and that is contrary to this section shall be void  
15 and unenforceable.

16 (h) (1) For substitute employes, the employment history  
17 review required by this section shall be required only prior to  
18 the initial hiring of a substitute or placement on the school  
19 entity's approved substitute list and shall remain valid as long  
20 as the substitute continues to be employed by the same school  
21 entity or remains on the school entity's approved substitute  
22 list.

23 (2) A substitute seeking to be added to another school  
24 entity's substitute list shall undergo a new employment history  
25 review. Except as otherwise provided in paragraph (3), the  
26 appearance of a substitute on one school entity's substitute  
27 list does not relieve another school entity from compliance with  
28 this section.

29 (3) An employment history review conducted upon initial  
30 hiring of a substitute employe by an independent contractor,

1 intermediate unit or any other entity that furnishes substitute  
2 staffing services to school entities shall satisfy the  
3 requirements of this section for all school entities using the  
4 services of that independent contractor, intermediate unit or  
5 other entity.

6 (4) An independent contractor, intermediate unit or any  
7 other entity furnishing substitute staffing services to school  
8 entities shall comply with the provisions of subsection (i) (3)  
9 and (4).

10 (5) For purposes of this subsection, "substitute employe"  
11 shall not mean school bus drivers employed by an independent  
12 contractor.

13 (i) (1) For employes of independent contractors, the  
14 employment history review required by this section shall be  
15 performed, either at the time of the initial hiring of the  
16 employe or prior to the assignment of an existing employe to  
17 perform work for a school entity in a position involving direct  
18 contact with children. The review shall remain valid as long as  
19 the employe remains employed by that same independent  
20 contractor, even though assigned to perform work for other  
21 school entities.

22 (2) An independent contractor shall maintain records  
23 documenting employment history reviews for all employes as  
24 required by this section and, upon request, shall provide a  
25 school entity for whom an employe is assigned to perform work  
26 access to the records pertaining to that employe.

27 (3) Prior to assigning an employe to perform work for a  
28 school entity in a position involving direct contact with  
29 children, the independent contractor shall inform the school  
30 entity of any instance known to the independent contractor in



1 which the employe:

2 (i) was the subject of any abuse or sexual misconduct  
3 investigation by any employer, State licensing agency, law  
4 enforcement authority or child protective services agency,  
5 unless such investigation resulted in a finding that allegations  
6 are false;

7 (ii) has ever been disciplined, discharged, nonrenewed,  
8 removed from a substitute list, asked to resign from employment,  
9 resigned from or otherwise separated from any employment while  
10 allegations of abuse or sexual misconduct as described in  
11 subparagraph (i) were pending or under investigation, or due to  
12 an adjudication or findings of abuse or sexual misconduct as  
13 described in subparagraph (i); or

14 (iii) has ever had a license, professional license or  
15 certificate suspended, surrendered or revoked while allegations  
16 of abuse or sexual misconduct as described in subparagraph (i)  
17 were pending or under investigation, or due to an adjudication  
18 or findings of abuse or sexual misconduct as described in  
19 subparagraph (i).

20 (4) The independent contractor may not assign the employe to  
21 perform work for the school entity in a position involving  
22 direct contact with children where the school entity objects to  
23 the assignment after being informed of an instance listed in  
24 paragraph (3).

25 (j) An applicant who has once undergone the employment  
26 history review required under this section and seeks transfer to  
27 or to provide services to another school in the same district,  
28 diocese or religious judicatory or to another school established  
29 and supervised by the same organization shall not be required to  
30 obtain additional reports before making such transfer.

1 (k) Nothing in this section shall be construed:

2 (1) To prevent a prospective employer from conducting  
3 further investigations of prospective employes or from requiring  
4 applicants to provide additional background information or  
5 authorizations beyond what is required under this section, nor  
6 to prevent a former employer from disclosing more information  
7 than what is required under this section.

8 (2) To relieve a school entity, school administrator or  
9 independent contractor of its legal responsibility to report  
10 suspected incidents of abuse in accordance with the provisions  
11 of 23 Pa.C.S. Ch. 63.

12 (3) To relieve a school entity, school administrator or  
13 independent contractor of its legal responsibility to report  
14 suspected incidents of professional misconduct in accordance  
15 with the "Educator Discipline Act."

16 (4) To prohibit the right of the exclusive representative  
17 under a collective bargaining agreement to grieve and arbitrate  
18 the validity of an employe's termination or discipline for just  
19 cause or for the causes set forth in this act.

20 (1) (1) The Department of Education shall have jurisdiction  
21 to determine wilful violations of this section and may,  
22 following a hearing, assess a civil penalty not to exceed ten  
23 thousand dollars (\$10,000). School entities shall be barred from  
24 contracting with an independent contractor who is found to have  
25 wilfully violated the provisions of this section.

26 (2) Notwithstanding any provision of law to the contrary,  
27 the Department of Education may initiate disciplinary action  
28 before the Professional Standards and Practices Commission  
29 pursuant to the "Educator Discipline Act" against any applicant,  
30 employe, independent contractor or school administrator who is

1 subject to the "Educator Discipline Act" for wilful violations  
2 of this section.

3 (m) The Department of Education shall develop the forms for  
4 applicants and employers required under subsection (b)(1) and  
5 (2), as well as any other forms necessary to carry out the  
6 provisions of this section.

7 (n) As used in this section, the following words and phrases  
8 shall have the meanings given to them in this subsection:

9 "Abuse." Conduct that falls under the purview and reporting  
10 requirements of 23 Pa.C.S. Ch. 63 (relating to child protective  
11 services) and is directed toward or against a child or a  
12 student, regardless of the age of the child or student.

13 "Direct contact with children." The possibility of care,  
14 supervision, guidance or control of children or routine  
15 interaction with children.

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

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

26 (1) Sexual or romantic invitation.

27 (2) Dating or soliciting dates.

28 (3) Engaging in sexualized or romantic dialog.

29 (4) Making sexually suggestive comments.

30 (5) Self-disclosure or physical exposure of a sexual,

1 romantic or erotic nature.

2 (6) Any sexual, indecent, romantic or erotic contact with  
3 the child or student.

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