

HOUSE BILL 1008

F1, E4

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By: **Delegate Wilson**

Introduced and read first time: February 5, 2020

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Child Abuse and Sexual Misconduct Prevention – Hiring Emergent**
3 **Employees**

4 FOR the purpose of authorizing the hiring of a certain emergent employee by a county
5 board of education or nonpublic school for a certain period of time under certain
6 conditions; authorizing a county board or nonpublic school to take certain actions
7 within a certain period of time regarding an emergent employee under certain
8 circumstances; authorizing a certain appeal following a certain decision by a county
9 board; prohibiting a certain decision by a county board from being subject to a certain
10 collective bargaining process; authorizing a county board to share a certain
11 employment history review with other county boards; authorizing a county board to
12 use a certain employment history review under certain circumstances; requiring
13 certain applicants to provide certain information regarding certain employers over a
14 certain period of time; defining a certain term; altering a certain definition; and
15 generally relating to child abuse and sexual misconduct prevention and the hiring of
16 school employees.

17 BY repealing and reenacting, with amendments,
18 Article – Education
19 Section 6–113.2
20 Annotated Code of Maryland
21 (2018 Replacement Volume and 2019 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Education**

25 6–113.2.

26 (a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2) “Child sexual abuse” has the meaning stated in § 6–113.1 of this subtitle.

(3) “Contracting agency” means an entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school.

(4) “Direct contact with minors” means the [possibility of] care, supervision, guidance, or control of [a minor], or routine interaction with, a minor.

(5) **“EMERGENT EMPLOYEE” MEANS AN EMPLOYEE HIRED BY A COUNTY BOARD OR NONPUBLIC SCHOOL WITHOUT COMPLETING THE EMPLOYMENT HISTORY REVIEW REQUIRED UNDER THIS SECTION.**

(6) “School” means a public or nonpublic school.

[(6)] (7) “Sexual misconduct” has the meaning stated in § 6–113.1 of this subtitle.

(b) A county board, nonpublic school, or contracting agency shall require an applicant for a position involving direct contact with minors to submit:

(1) The contact information of the following employers:

(i) The current employer;

(ii) All former school employers; and

(iii) All former employers of the applicant in which the applicant was employed in a position involving direct contact with minors **WITHIN THE PREVIOUS 10 YEARS**;

(2) A written consent form, signed by the applicant, authorizing an employer listed under item (1) of this subsection to release all records relating to child sexual abuse or sexual misconduct; and

(3) A written statement of whether the applicant:

(i) Has been the subject of a child sexual abuse or sexual misconduct investigation by any employer, arbitrator, county board, State licensing agency, law enforcement agency, or child protective services agency, unless the investigation resulted in a finding by:

1. The employer that allegations that the applicant engaged in sexual misconduct lacked sufficient evidence according to the policies of the county board or nonpublic school;

1 2. An arbitrator or a county board to reject any disciplinary
2 action in response to allegations that the applicant engaged in sexual misconduct;

3 3. A State licensing agency that allegations that the
4 applicant engaged in sexual misconduct lacked sufficient evidence according to:

5 A. State law; or

6 B. The policies of the county board or nonpublic school;

7 4. A law enforcement agency that allegations that the
8 applicant engaged in child sexual abuse were unfounded; or

9 5. A child protective services agency that allegations that the
10 applicant engaged in child sexual abuse were ruled out;

11 (ii) Has ever been disciplined, discharged, nonrenewed, or asked to
12 resign from employment, or has ever resigned from or otherwise separated from any
13 employment while allegations of child sexual abuse or sexual misconduct were pending or
14 were under investigation, or due to an adjudication or findings of child sexual abuse or
15 sexual misconduct; or

16 (iii) Has ever had a license, professional license, or certificate
17 suspended, surrendered, or revoked while allegations of child sexual abuse or sexual
18 misconduct were pending or under investigation, or due to an adjudication or findings of
19 child sexual abuse or sexual misconduct.

20 (c) Before hiring an applicant for a position involving direct contact with minors,
21 the county board, nonpublic school, or contracting agency shall:

22 (1) Review an applicant's employment history by contacting the employers
23 listed by the applicant under subsection (b)(1) of this section and requesting the following
24 information:

25 (i) The dates of employment of the applicant; and

26 (ii) Answers to the questions regarding child sexual abuse or sexual
27 misconduct required under subsection (b)(3) of this section; and

28 (2) Request a report from the Department regarding the applicant's
29 eligibility for employment or certification status to determine whether the applicant:

30 (i) Holds a valid and active certification appropriate for the position
31 and is otherwise eligible for employment; and

(ii) Has been the subject of professional discipline related to child sexual abuse or sexual misconduct.

(d) (1) Not later than 20 days after receiving a request for information under subsection (c) of this section, an employer shall send to the county board, nonpublic school, or contracting agency the information requested on the form prescribed by the Department.

(2) If the information from an employer includes an affirmative response to the child sexual abuse or sexual misconduct questions under subsection (b)(3) of this section, and the county board, nonpublic school, or contracting agency makes a determination to further consider the applicant for employment, the county board, nonpublic school, or contracting agency shall request that the former employer provide additional information about the information provided, including all records related to child sexual abuse or sexual misconduct.

(3) An employer that receives a request for additional information under paragraph (1) of this subsection shall provide the additional information within 60 days of the date of the prospective employer's request to:

(i) The requesting county board, nonpublic school, or contracting agency; and

(ii) The applicant who is under consideration for employment.

(E) (1) A COUNTY BOARD OR NONPUBLIC SCHOOL MAY HIRE AN APPLICANT AS AN EMERGENT EMPLOYEE FOR A PERIOD NOT TO EXCEED 60 DAYS PENDING THE REVIEW OF INFORMATION AND RECORDS REQUIRED UNDER THIS SECTION ONLY IF:

(I) THE APPLICANT HAS PROVIDED ALL THE INFORMATION AND SUPPORTING DOCUMENTATION REQUIRED UNDER THIS SECTION;

(II) AN EMPLOYER HAS NO KNOWLEDGE OF INFORMATION REGARDING THE APPLICANT THAT WOULD DISQUALIFY THE APPLICANT FROM EMPLOYMENT;

(III) THE APPLICANT SWEARS OR AFFIRMS THAT THE APPLICANT IS NOT DISQUALIFIED FROM EMPLOYMENT; AND

(IV) THE APPLICANT IS NOT AUTHORIZED TO WORK ALONE WITH MINORS AND WORKS IN THE IMMEDIATE VICINITY OF A PERMANENT EMPLOYEE.

(2) BASED ON THE EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS SECTION, AT ANY TIME WITHIN 60 DAYS AFTER HIRING AN

1 APPLICANT AS AN EMERGENT EMPLOYEE, THE COUNTY BOARD OR NONPUBLIC
2 SCHOOL MAY:

3 (I) RESCIND THE OFFER OF EMPLOYMENT;

4 (II) DISMISS THE EMERGENT EMPLOYEE; OR

5 (III) COMPLETE THE EMERGENT EMPLOYEE'S HIRING PROCESS,
6 IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE.

7 (3) WITHIN 60 DAYS AFTER HIRING AN APPLICANT AS AN EMERGENT
8 EMPLOYEE, A COUNTY BOARD'S DECISION TO DISMISS THE EMERGENT EMPLOYEE
9 BASED ON THE EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C)
10 OF THIS SECTION:

11 (I) MAY BE APPEALED IN ACCORDANCE WITH § 4-205 OF THIS
12 ARTICLE; AND

13 (II) MAY NOT BE A SUBJECT OF COLLECTIVE BARGAINING FOR
14 CERTIFICATED EMPLOYEES UNDER SUBTITLE 4 OF THIS TITLE.

15 (F) A COUNTY BOARD IS AUTHORIZED TO SHARE AN EMPLOYMENT HISTORY
16 REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS SECTION WITH OTHER COUNTY
17 BOARDS.

18 (G) A COUNTY BOARD MAY USE AN EMPLOYMENT HISTORY REVIEW
19 REQUIRED UNDER SUBSECTION (C) OF THIS SECTION COMPLETED BY A CURRENT OR
20 FORMER EMPLOYER IF THE EMPLOYER IS A COUNTY BOARD AND THE APPLICANT:

21 (1) SWEARS OR AFFIRMS THAT THE COMPLETED EMPLOYMENT
22 HISTORY REVIEW INCLUDES ALL PRIOR EMPLOYMENT REQUIRED TO BE REPORTED
23 UNDER THIS SECTION; AND

24 (2) PROVIDES INFORMATION ABOUT ANY EMPLOYMENT SUBSEQUENT
25 TO THE PREVIOUS EMPLOYMENT HISTORY REVIEW BY THE CURRENT OR FORMER
26 COUNTY BOARD.

27 [(e)] (H) (1) (i) A county board, nonpublic school, or contracting agency
28 shall conduct an employment history review of an applicant for a substitute position
29 involving direct contact with minors as required under subsection (c) of this section before
30 the initial hiring of the substitute employee or placement on the approved substitute
31 employee list of the county board, nonpublic school, or contracting agency.

(ii) An employment history review of a substitute employee shall remain valid as long as the substitute employee continues to be employed by the same county board or remains on the approved substitute employee list of the nonpublic school or contracting agency.

(2) If a substitute employee is seeking to be added to the substitute employee list of another county board, nonpublic school, or contracting agency, a new employment history review in accordance with subsection (c) of this section is required.

(3) The appearance of a substitute employee on the substitute employee list of one county board, nonpublic school, or contracting agency does not relieve another county board, nonpublic school, or contracting agency of the duty of compliance with this section.

(4) An employment history review conducted on the initial hiring of a substitute employee by a contracting agency, an intermediate unit, or any other entity that provides substitute staffing services to a county board or a nonpublic school shall satisfy the requirements of this section for all school entities using the services of that contracting agency, intermediate unit, or other entity.

(5) A contracting agency, an intermediate unit, or any other entity providing substitute staffing services to a school entity shall comply with the provisions of this section.

[(f)] (I) (1) (i) A contracting agency shall conduct an employment history review of an applicant for employment with the contracting agency as required under subsection (c) of this section:

1. At the time of the initial hiring of the employee; or
2. Before the employee is assigned to work for a school entity in a position involving direct contact with minors.

(ii) The employment history review under subparagraph (i) of this paragraph shall remain valid as long as the employee continues to be employed by the hiring contracting agency.

(iii) A contracting agency shall:

1. Maintain a record of each employee's employment history review required under this subsection; and
2. On request of the school entity to which an employee is assigned, provide access to the contracting agency's records of that employee.

(2) (i) Before assigning an employee to perform work for a school entity in a position involving direct contact with minors, a contracting agency shall provide notice

1 to the school entity of any affirmative responses to the child sexual abuse or sexual
2 misconduct questions required under subsection (b)(3) of this section.

3 (ii) A contracting agency may not assign an employee to perform
4 work for a school entity in a position involving direct contact with minors if the school entity
5 objects to the assignment after receiving the notice required under subparagraph (i) of this
6 paragraph.

7 **[(g)] (J)** (1) Information and records about an applicant received by a county
8 board, nonpublic school, or contracting agency under this section are not a public record for
9 the purposes of the Maryland Public Information Act.

10 (2) A county board, nonpublic school, or contracting agency that receives
11 information and records from an employer about an applicant under this section may:

12 (i) Use the information and records for the purpose of evaluating the
13 applicant's fitness to be hired or for continued employment; and

14 (ii) Report the information to the Department, a State licensing
15 agency, a law enforcement agency, a child protective services agency, another school entity,
16 or any other prospective employer, as appropriate.

17 **[(h)] (K)** (1) A county board, nonpublic school, or contracting agency may not
18 enter into a collective bargaining agreement, an employment contract, an agreement for
19 resignation or termination, a severance agreement, or any other contract or agreement
20 that:

21 (i) Has the effect of suppressing information relating to an
22 investigation or disciplinary action in response to a report of suspected child sexual abuse
23 or sexual misconduct by a current or former employee;

24 (ii) Affects the ability of the county board, nonpublic school, or
25 contracting agency to report suspected child sexual abuse or sexual misconduct to the
26 appropriate authorities; or

27 (iii) Requires the county board, nonpublic school, or contracting
28 agency to expunge information about allegations or findings of suspected child sexual abuse
29 or sexual misconduct from any document maintained by the employer unless the
30 investigation resulted in a finding by:

31 1. The employer that allegations that the applicant engaged
32 in sexual misconduct lacked sufficient evidence according to the policies of the county board
33 or nonpublic school;

34 2. An arbitrator or a county board to reject any disciplinary
35 action in response to allegations that the applicant engaged in sexual misconduct;

3. A State licensing agency that allegations that the applicant engaged in sexual misconduct lacked sufficient evidence according to:

A. State law; or

B. The policies of the county board or nonpublic school;

4. A law enforcement agency that allegations that the applicant engaged in child sexual abuse were unfounded; or

5. A child protective services agency that allegations that the applicant engaged in child sexual abuse were ruled out.

(2) A provision of an employment contract, an agreement for resignation or termination, or a severance agreement that is executed, amended, or entered into on or after July 1, 2019, and that is contrary to this section is void and unenforceable.

[(i)] (L) If there is a lapse in the operation of or the Department suspends the use of a system or database that the Department uses to check an applicant's eligibility for employment or certification status, the Department shall notify the county boards, nonpublic schools, and any contracting agencies within 48 hours of the lapse or the suspension of the use of the system or database.

[(j)] (M) (1) A person acting in good faith may not be held liable for disclosing any information or records related to child sexual abuse or sexual misconduct about a current or former employee's professional conduct or reason for termination of employment to a county board, a nonpublic school, a contracting agency, the Department, or any other potential employer in accordance with this section unless the person:

(i) Acted with actual malice toward the employee or former employee; or

(ii) Intentionally or recklessly disclosed false information about the employee or former employee.

(2) The immunity from liability under paragraph (1) of this subsection shall be in addition to, and not a limitation of, any other immunity provided by law or any absolute or conditional privilege applicable to the disclosure of information or records or the applicant's consent to the disclosure.

[(k)] (N) (1) An applicant who provides false information or willfully fails to disclose material information required under this section shall be subject to professional discipline, including termination or denial of employment, and may be subject to professional discipline in accordance with the regulations of the Department.

(2) (i) Subject to subparagraph (ii) of this paragraph, the willful failure of an employer or former employer to respond to or provide the information and records

requested by a county board, nonpublic school, or contracting agency under this section may result in civil penalties or professional discipline, if appropriate.

(ii) An employer or a former employer may not be held liable for failure to respond to a request for information about an applicant under this section if:

1. The laws of the state in which the employer or former employer is located prohibit the release of the information or records requested; or

2. The disclosure of the information and records requested is restricted by the terms of a contract entered into on or before June 30, 2019.

(3) (i) Notwithstanding any other provision of law, the Department may initiate disciplinary action before a hearing officer in accordance with the Department's regulations against an applicant, an employee, a contracting agency, or a school administrator for willful violations of this section.

(ii) The Department may adopt regulations establishing procedures for disciplinary proceedings and the assessment of penalties in accordance with this section.

[(l)] (o) Nothing in this section shall be construed:

(1) To prevent a county board, nonpublic school, or contracting agency from:

(i) Conducting further investigations of prospective employees;

(ii) Requesting applicants to provide additional background information or authorizations beyond the information or authorizations required under this section; or

(iii) Requesting that an employer or a former employer provide more information than is required under this section;

(2) To relieve a county board, a nonpublic school, a contracting agency, or any other mandated reporter of the legal responsibility to report suspected incidents of child sexual abuse or sexual misconduct in accordance with State law or the reporting requirements of the Department; or

(3) To prohibit the right of an exclusive representative under a collective bargaining agreement to grieve and arbitrate the validity of an employee's termination or discipline for just cause or for the causes set forth in this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020.