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**SUBSTITUTE SENATE BILL 5605**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators Walsh and Billig; by request of Superintendent of Public Instruction)

READ FIRST TIME 02/16/17.

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) The cost of record checks must include: The fees established  
4 by the Washington state patrol and the federal bureau of  
5 investigation for the criminal history background checks; a fee paid  
6 to the superintendent of public instruction for the cost of  
7 administering this section and RCW 28A.195.080 and 28A.410.010; and  
8 other applicable fees for obtaining the fingerprints.

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

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

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

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

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

36 (1)(a) The Washington professional educator standards board shall  
37 establish, publish, and enforce rules determining eligibility for and  
38 certification of personnel employed in the common schools of this

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

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

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

36 (2) The superintendent of public instruction shall act as the  
37 administrator of any such rules and have the power to issue any  
38 certificates or permits and revoke the same in accordance with board  
39 rules.

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

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

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

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

1 (a) The parent or other person has already filed a written  
2 complaint with the educational service district superintendent  
3 concerning that employee;

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

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

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

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

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

36 (c) Mandatory permanent revocation upon a guilty plea or  
37 conviction of felony crimes specified under RCW 28A.400.322(2) shall  
38 apply to such convictions or guilty pleas that occur on or after July  
39 26, 2009.

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

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

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

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

36 (7)(a) In determining whether an individual lacks good moral  
37 character or personal fitness under this chapter, the superintendent  
38 of public instruction may consider founded reports of child abuse or  
39 neglect made by the department of social and health services pursuant  
40 to RCW 26.44.030.

1       (b) The department of social and health services shall furnish  
2 the superintendent with reports of founded findings of child abuse or  
3 neglect in a timely fashion, but shall not disclose to the  
4 superintendent screened-out, inconclusive, or unfounded reports as  
5 defined in RCW 26.44.020.

6       (c) If the department of social and health services inadvertently  
7 furnishes the superintendent with a screened-out, inconclusive, or  
8 unfounded report in violation of this section, the superintendent  
9 shall:

10       (i) Not consider the information contained in the reports for any  
11 purpose;

12       (ii) Notify the department of social and health services of the  
13 violation of this section;

14       (iii) Notify the subject of the reports at his or her last known  
15 address of the department of social and health service's violation;  
16 and

17       (iv) Destroy the improperly disclosed reports.

18       NEW SECTION. Sec. 5. A new section is added to chapter 28A.400  
19 RCW to read as follows:

20       The K-12 criminal background check account is created in the  
21 custody of the state treasurer. All fees collected by the office of  
22 the superintendent of public instruction pursuant to RCW 28A.400.303  
23 must be deposited in the account. Expenditures from the account may  
24 be made only for the purpose of administering the office of the  
25 superintendent of public instruction's duties under RCW 28A.400.303  
26 and 28A.410.010. Only the superintendent of public instruction or the  
27 superintendent's designee may authorize expenditures from the  
28 account. The account is subject to allotment procedures under chapter  
29 43.88 RCW, but an appropriation is not required for expenditures.

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

32       (1) In determining whether an individual is of appropriate  
33 character, suitability, and competence to provide child care and  
34 early learning services to children, the department may consider the  
35 history of past involvement of child protective services or law  
36 enforcement agencies with the individual for the purpose of  
37 establishing a pattern of conduct, behavior, or inaction with regard  
38 to the health, safety, or welfare of a child. No report of child



1 abuse or neglect that has been destroyed or expunged under RCW  
2 26.44.031 may be used for such purposes. No unfounded or inconclusive  
3 allegation of child abuse or neglect as defined in RCW 26.44.020 may  
4 be disclosed to a provider licensed under this chapter.

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

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

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

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

30 (c) The director shall use the fingerprint criminal history  
31 record check information solely for the purpose of determining  
32 eligibility for a license and for determining the character,  
33 suitability, and competence of those persons or agencies, excluding  
34 parents, not required to be licensed who are authorized to care for  
35 children.

36 (d) Criminal justice agencies shall provide the director such  
37 information as they may have and that the director may require for  
38 such purpose.

39 (e) No later than July 1, 2013, all agency licensees holding  
40 licenses prior to July 1, 2012, persons who were employees before

1 July 1, 2012, and persons who have been qualified by the department  
2 before July 1, 2012, to have unsupervised access to children in care,  
3 must submit a new background application to the department. The  
4 department must require persons submitting a new background  
5 application pursuant to this subsection (2)(e) to pay a fee to the  
6 department for the cost of administering the individual-based/  
7 portable background check clearance registry. This fee must be paid  
8 into the individual-based/portable background check clearance account  
9 established in RCW 43.215.218. The licensee may, but need not, pay  
10 these costs on behalf of a prospective employee or reimburse the  
11 prospective employee for these costs. The licensee and the  
12 prospective employee may share these costs.

13 (f) The department shall issue a background check clearance card  
14 or certificate to the applicant if after the completion of a  
15 background check the department concludes the applicant is qualified  
16 for unsupervised access to children in care. The background check  
17 clearance card or certificate is valid for three years from the date  
18 of issuance. A valid card or certificate must be accepted by a  
19 potential employer as proof that the applicant has successfully  
20 completed a background check as required under this chapter.

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

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

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

33 (j) The department shall investigate and conduct a  
34 redetermination of an applicant's or licensee's background clearance  
35 if the department receives a complaint or information from  
36 individuals, a law enforcement agency, or other federal, state, or  
37 local government agency. Subject to the requirements contained in RCW  
38 43.215.300 and 43.215.305 and based on a determination that an  
39 individual lacks the appropriate character, suitability, or  
40 competence to provide child care or early learning services to

1 children, the department may: (i) Invalidate the background card or  
2 certificate; or (ii) suspend, modify, or revoke any license  
3 authorized by this chapter.

4 (3) To satisfy the shared background check requirements of the  
5 department of early learning, the office of the superintendent of  
6 public instruction, and the department of social and health services,  
7 each department shall share federal fingerprint-based background  
8 check results as permitted under the law. The purpose of this  
9 provision is to allow ~~((both))~~ these departments to fulfill their  
10 joint background check responsibility of checking any individual who  
11 may have unsupervised access to vulnerable adults, children, or  
12 juveniles. ~~((Neither))~~ These departments may not share the federal  
13 background check results with any other state agency or person.

14 (4) Individuals who have completed a fingerprint background check  
15 as required by the office of the superintendent of public  
16 instruction, consistent with RCW 28A.400.303, and have been  
17 continuously employed by the same school district or educational  
18 service district, can meet the requirements in subsection (2) of this  
19 section by providing a true and accurate copy of their Washington  
20 state patrol and federal bureau of investigation background check  
21 report results to the department or if the school district or the  
22 educational service district provides an affidavit to the department  
23 that the individual has been authorized to work by the school  
24 district or educational service district after completing a record  
25 check consistent with RCW 28A.400.303. The department may require  
26 that additional background checks be completed that do not require  
27 additional fingerprinting and may charge a fee for these additional  
28 background checks.

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