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Bill Analysis
Legislative Service Commission

S.B. 185
123rd General Assembly
(As Introduced)

Sen. Hottinger

BILL SUMMARY

- Requires the State Board of Education to establish a program to conduct independent background checks, in addition to the existing BCII background checks, for applicants for teacher and certain administrator licenses and permits.
- Contingent upon a future appropriation, requires the State Board of Education to establish a Nonteaching School Employees Registry and to conduct independent background checks for certain applicants for nonteaching school employment, as a supplement to the existing provision requiring school hiring authorities to request Bureau of Criminal Identification and Investigation criminal records checks for such applicants.
- Requires the hiring authority of a school district, an educational service center, or a chartered nonpublic school to request a copy of the report from a background check for any applicant for a teacher or administrator license or permit or for any applicant subject to the Nonteaching School Employees Registry.
- Requires the State Board of Education, upon request, to provide to the hiring authority of a school district, an educational service center, or a chartered nonpublic school a copy of the report from a background check for any applicant.

CONTENT AND OPERATION

Background checks for applicants for teaching and administrator licenses and permits

(R.C. 3313.219 and 3319.313)

Existing law, expressly not changed by the bill, provides that the State Board of Education must require that any applicant for a license or permit to be a teacher, an educational aide or paraprofessional, or a school district business manager or treasurer submit to the State Board two sets of fingerprint impressions and permission to forward those fingerprint impressions to the Bureau of Criminal Identification and Investigation (BCII). Continuing law further requires that any covered applicant also grant permission to BCII to forward the fingerprint impressions to the Federal Bureau of Investigation (FBI). Continuing law also permits but does not require the State Board or the Superintendent of Public Instruction to request BCII to conduct a criminal records check on any covered applicant or to request that BCII obtain any criminal records that the FBI may have regarding the applicant.¹

It should be noted, however, that continuing law requires school district boards, governing boards of educational service centers, community schools, and chartered nonpublic schools to request from BCII a criminal records check for *any* applicant for employment who if hired would be "responsible for the care, custody, or control of a child." This requirement applies to teachers and nonteachers who have even occasional contact with children.² Thus, even if the State Board has not requested a recent BCII check or FBI check of an applicant for licensing purposes, the hiring authority of the school with whom the applicant

¹ R.C. 3319.291. *Continuing law permits the State Board or the Superintendent of Public Instruction to investigate any information about a person who is an applicant for or who currently holds a license or permit to be a teacher, an educational aide or paraprofessional, or a school district business manager or treasurer (R.C. 3319.311, not in the bill). In addition, the State Board may deny, limit, suspend, or revoke any such license, permit, or certificate to any person who has engaged in an immoral act, incompetence, negligence, or conduct unbecoming the person's position or who has committed any felony, an offense of violence, a theft offense, or a drug abuse offense that is not a minor misdemeanor (R.C. 3319.31, not in the bill).*

² R.C. 109.572 (not in the bill), 3314.03(A)(11)(d) (not in the bill), and 3319.39(A). See also *Prete v. Akron City School District Bd. of Edn.* (1995) 106 Ohio App.3d 761,765 (application of the BCII check requirement to a part-time custodian).

seeks employment must request such a check. (See below under "*Nonteaching School Employees Registry.*")

As an addition to the existing law, the bill requires that the State Board establish a program to conduct "complete background checks" for any *new* applicants for a license or permit to be a teacher, an educational aide or paraprofessional, or a school district business manager or treasurer.³ These background checks must be conducted by an independent entity, which whom the State Board must contract according to the bill's specifications (see below under "*Background check report content and contractor qualifications*"). Each applicant may be assessed an additional licensing fee to cover the cost of the background checks. That fee may not exceed the greater of the actual cost to the State Board for the background check or \$100.⁴

The State Board may use the information contained in the background check reports in deciding whether to issue a license or permit to any new applicant who is subject to the bill's provisions.⁵ School hiring authorities are also required to request copies of these reports to use in making hiring decisions about applicants (see below under "*School hiring authorities must request copies of background check reports*").

Nonteaching School Employees Registry

(R.C. 3319.39 and 3319.314; Section 3)

Under existing law, expressly not changed by the bill, school district boards and governing boards of educational service centers, community schools, and chartered nonpublic schools are required to request from BCII a criminal records check for any applicant for employment who if hired would be "responsible for the care, custody, or control of a child." If the applicant cannot prove Ohio residency for the five-year period immediately preceding the application for employment, the board must request that BCII obtain criminal records information regarding the applicant from the FBI. The applicant must provide to the board fingerprint impressions to be forwarded to BCII and the FBI.⁶

³ *The bill's provisions do not apply to any applicant for renewal of a license, permit, or certificate.*

⁴ *R.C. 3313.313(A) to (B).*

⁵ *R.C. 3319.313(D).*

⁶ *R.C. 109.572 (not in the bill), 3314.03(A)(11)(d) (not in the bill), and 3319.39(A). Except in limited circumstances, as prescribed by the State Board of Education, school*

As an addition to these requirements, the bill requires that the State Board establish the Nonteaching School Employees Registry. Any applicant for employment with a school district, educational service center, or chartered nonpublic school who seeks a position involving the care, custody, or control of a child must apply for inclusion in the Registry.⁷ The bill does not affect applicants for nonlicensed, nonteaching employment at community schools. For each of the applicants to whom the requirement does apply, the State Board must conduct a "complete background check" to be performed by an independent entity (see below under "**Background check report content and contractor qualifications**"). For each covered applicant, the Registry must contain the following:

- (1) Name;
- (2) Previous names;
- (3) Current address;
- (4) Most recent previous address;
- (5) Current telephone number;
- (6) Date and place of birth;
- (7) Driver's license number;
- (8) Social security number; and
- (9) Background check report.⁸

The State Board may not assess any fee for the background checks required under the Registry program. Therefore, the Board is not required to establish the Registry until the General Assembly appropriates moneys specifically earmarked for the Registry program. The Board must begin implementing the required

district boards and governing boards of educational service centers, community schools, and chartered nonpublic schools are prohibited from hiring any person for a teaching or nonteaching position involving the care, custody, or control of a child if the criminal records check reveals that the person has been convicted of or pleaded guilty to certain specified criminal offenses. These offenses include various homicide, kidnapping, sex, violence, theft, and drug offenses. (R.C. 3319.39(B).)

⁷ R.C. 3319.314(B).

⁸ R.C. 3319.314(A).

Registry background checks no later than 180 days after the General Assembly appropriates such moneys.⁹

School hiring authorities must request copies of background check reports

(R.C. 3319.313, 3319.314, and 3319.315)

The bill expressly requires the hiring authority of a school district, an educational service center, or a chartered nonpublic school to request a copy of the background check report for any applicant who is subject to the bill's provisions.¹⁰ Furthermore, the State Board is required, upon request, to provide the hiring authority with a copy of the report. However, since the report from the background check is expressly not a public record, the hiring authority must first certify that the information will be used only to determine or verify the fitness and qualifications of the applicant for the position for which the applicant is being considered. The hiring authority also may not release any information contained in the report except as otherwise provided by privacy laws.¹¹

Background check report content and contractor qualifications

(R.C. 3319.316)

The background check required for each applicant subject to the bill must include the following:

- (1) Social security number verification;

⁹ Section 3 of the bill. This delay in establishing the Nonteaching School Employees Registry does not affect the State Board's duty to establish a program to conduct background checks for license or permit applicants, which takes effect upon the effective date of the bill. The board must adopt necessary rules and begin implementing that program no later than 180 days after the effective date of the bill.

¹⁰ R.C. 3318.315. The bill does not require the hiring authority of a community school (established under R.C. Chapter 3314.) to request the report from a background check conducted under either program established by the bill. Presumably, any newly licensed teacher or other professional who seeks employment at a community school would be covered by the background check requirement under R.C. 3319.313. However, there is no direction to the hiring authority of a community school to request the report from that background check nor is there any direction to the State Board to provide a copy of the report if one is requested by the community school.

¹¹ R.C. 3319.313(C) and 3319.314(C).

(2) Employment history verification through interviews with the applicant's previous supervisors or human resource personnel of the applicant's previous employers;

(3) Motor vehicle records check;

(4) Public records check including records of civil litigation; and

(5) "Criminal records check" searching specifically for felony and misdemeanor convictions for up to ten current and previous addresses in up to three counties in any state for a period of up to seven years prior to when the records check is requested.¹²

The specified purpose of the background checks is to aid the State Board and school hiring authorities in the discovery of false identities, false credentials, unreported periods of employment or unemployment, prior and current civil litigation, motor vehicle records, and unreported residence locations pertaining to any applicant.¹³

The independent entity with whom the State Board must contract for the conduct of the background checks must meet the following specifications:

(1) Valid insurance coverage of not less than \$1 million for any liability the entity might incur for errors or omissions;

(2) Ability to deliver reports in a secure electronic format;

(3) A telephone contact person available to the board to answer questions about any background report issued to the board;¹⁴

(4) Not less than two years experience in providing employment background screening;

¹² R.C. 3319.316(A).

¹³ R.C. 3319.317.

¹⁴ *The bill does not specifically limit the responsibilities of the telephone contact person to responses to the State Board of Education. This provision might be construed to mean that the telephone contact person must also respond to a representative of a school district board or of an educational service center or a chartered nonpublic school governing board who has questions about the background check report of a particular applicant.*

(5) Ability to legally search backgrounds in all states and territories of the United States;

(6) Ability to consistently provide requested information in a timely manner even in the event of a natural disaster or abnormally high volume of requests;

(7) A policy of checking the background of its own employees;

(8) A quality assurance program that includes quarterly audits of background check reports; and

(9) Demonstration of continuing compliance with all federal and state privacy and antidiscrimination laws.¹⁵

The State Board may impose other qualifications on the contracted entity in order to ensure reliability and timeliness of the background checks.¹⁶

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-09-99	p. 998

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¹⁵ R.C. 3319.316(B) and (D).

¹⁶ R.C. 3319.316(C).