



John Rau

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 79**

126th General Assembly  
(As Introduced)

**Reps. Raga, Latta, Setzer, C. Evans, Hagan, DeWine, McGregor,  
Willamowski, Gilb, Flowers**

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### **BILL SUMMARY**

- Requires the State Board of Education to request a criminal records check of an applicant prior to renewing an educator license.
- Permits the State Board of Education to waive the requirement for a criminal records check if a license applicant provides proof of having been the subject of a check in the previous year.
- Requires each school district, educational service center, community school, county board of mental retardation and developmental disabilities, and chartered nonpublic school to submit to the Superintendent of Public Instruction information about allegations of professional misconduct by any of their employees who are licensed by the State Board of Education.
- Requires each public children services agency to submit to the Superintendent of Public Instruction information about child abuse or neglect committed by a person licensed by the State Board of Education.

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### **CONTENT AND OPERATION**

#### **Background on authority of State Board of Education to investigate licensees**

In exercising its power to license educators, the State Board of Education may refuse to issue a license to an applicant, may limit a license it issues to an applicant, or may suspend, revoke, or limit a license it has previously issued for any of several statutorily specified reasons. Specifically, the State Board may take one of these actions if it determines the applicant or license holder has done any of the following:

(1) Engaged in an immoral act, incompetence, negligence, or conduct unbecoming to the person's position; or

(2) Pled guilty to, been found guilty by a jury or court of, or been convicted of any of the following:

(a) A felony;

(b) Unlawful sexual conduct with a minor, sexual imposition, or sexual importuning;

(c) An offense of violence;

(d) Any of several prescribed theft offenses;

(e) A drug abuse offense that is not a minor misdemeanor; or

(f) A violation of a municipal ordinance substantively comparable to an offense listed in (a) through (e) above.<sup>1</sup>

The State Board, or the Superintendent of Public Instruction on its behalf, may investigate any information that reasonably appears to be a basis for refusing to issue, suspending, revoking, or limiting a license. The Superintendent must review the results of each investigation to determine whether the results warrant initiating an action against the applicant or licensee. All information obtained during an investigation is confidential and is not a public record. If no action is taken against the person within two years of the completion of the investigation, all records of the investigation must be expunged. If, however, the Superintendent recommends action, the State Board must provide written notice of the charges and an opportunity for a hearing conducted in accordance with the Administrative Procedure Act.<sup>2</sup>

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<sup>1</sup> R.C. 3319.31, not in the bill.

<sup>2</sup> R.C. 3319.311. Under the Administrative Procedure Act, the State Board's decision to refuse to issue a license or to limit, suspend, or revoke a license may be appealed to the appropriate county court of common pleas (R.C. 119.12, not in the bill).

## *Criminal records checks for renewals of licenses*

(R.C. 3319.291)

### *Current law*

Under current law not changed by the bill, when a person initially applies for an educator license, the person must submit two sets of fingerprints and written permission for the Superintendent of Public Instruction to forward the fingerprints to the Bureau of Criminal Identification and Investigation (BCII) and the Federal Bureau of Investigation (FBI). The State Board, or the Superintendent on the Board's behalf, then must request BCII or the FBI, or both, to conduct a criminal records check of a first-time applicant prior to issuing a license. If an applicant for a license cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that time, the State Board or Superintendent must request an FBI check of the applicant.<sup>3</sup> Information revealed by a criminal records check could be grounds for refusing to issue, suspending, revoking, or limiting a license.

### *The bill*

The bill requires the State Board or the Superintendent to request a criminal records check for all license renewals. This requirement applies to all positions for which the State Board issues licenses, including teachers, administrators, counselors, school nurses, school psychologists, educational aides and paraprofessionals, superintendents, and school district treasurers and business managers. As in the case of a first-time applicant under current law, if an applicant for a license renewal cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that time, the State Board or Superintendent must also request an FBI check of the applicant. (See **COMMENT.**)

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<sup>3</sup> A BCII criminal records check will show Ohio convictions for felonies and certain misdemeanors that are considered escalating misdemeanors (typically, crimes that are a misdemeanor on the first offense and a felony on subsequent offenses or when committed in certain contexts). An FBI check will report all convictions, both felony and misdemeanor, in all states.

**Waiver of criminal records check for certain applicants**

(R.C. 3319.291(C))

The bill permits the State Board to waive the criminal records check requirement for both a first-time and renewal applicant, if the applicant has undergone a check in the past year as a condition of employment or if the applicant presents a certified copy of the results of a check issued by BCII within the past year. It is possible for an applicant for a license to have undergone a check prior to applying for the license. This is because under current law, not changed by the bill, school districts, educational service centers, community schools, and chartered nonpublic schools must request a criminal records check of all applicants under final consideration for employment in any position responsible for the care, custody, or control of a child. If the check uncovers any of a list of statutorily designated offenses, the applicant cannot be hired for a position involving the care, custody, or control of a child.<sup>4</sup> This requirement applies to all persons who at anytime could be left alone with children, teachers and nonteaching employees alike.<sup>5</sup>

**Reports by schools of licensee professional misconduct**

(R.C. 3314.03(A)(11)(d), 3319.311, 3319.313, and 5126.253)

The bill requires that public and nonpublic schools report to the Superintendent of Public Instruction information in their custody about allegations of professional misconduct by employees who are licensed by the State Board of Education, including misconduct for which any employee was terminated or asked to resign. Under the bill, "professional misconduct" is any conduct or misconduct for which the State Board may refuse to issue, limit, suspend, or revoke a license (see "**Background on authority of State Board of Education to investigate licensees**" above). This reporting requirement applies to all of the following: (1) the board of education of each school district, (2) the governing board of each educational service center, (3) each county board of mental retardation and developmental disabilities, (4) the governing authority of each community school, and (5) the chief administrator of each chartered nonpublic school.<sup>6</sup>

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<sup>4</sup> R.C. 3319.39, not in the bill.

<sup>5</sup> It has been held that even an applicant for employment as a part-time custodian, whose work hours include after-school hours, is subject to the criminal records check requirement (Prete v. Akron City School Dist Bd. of Edn. (1995), 106 Ohio App.3d 761).

<sup>6</sup> Although silent on the issue, the bill by its operation appears to restrict a school's ability to enter into a termination settlement agreement that contains a stipulation

## **Reports by public children services agencies of child abuse or neglect**

(R.C. 3319.311 and 5153.176)

The bill requires a public children services agency (PCSA) to promptly submit to the Superintendent of Public Instruction any written documentation regarding the agency's investigation of a report of child abuse or neglect involving a person who holds a license issued by the State Board of Education where the agency has determined that evidence of child abuse or neglect exists. Generally, a PCSA is required to keep information about an on-going investigation confidential. The bill relieves those confidentiality provisions to facilitate reporting information to the Superintendent, but the bill also prohibits PCSAs from disclosing the name and address of the persons who made allegations of child abuse or neglect against a licensee.

### **Background**

A PCSA is a (1) county children services board, (2) a county department of job and family services, or (3) a private or government entity chosen by a board of county commissioners to provide protective, foster, adoption, and other similar services to children in a county.<sup>7</sup> Under current law not changed by the bill, when a PCSA receives a report of child abuse or neglect, it must investigate the report within 24 hours to determine the circumstances surrounding the alleged incident and the persons responsible. If the child abuse or neglect allegedly occurred in or involved an "out-of-home care entity," the agency must provide written notification of the allegations and the name of the alleged perpetrator, by the end of the day following the day the agency receives the report, to the administrator, director, or other chief administrative officer of the entity (unless that person is the alleged perpetrator, in which case the agency must notify the owner or governing board of the out-of-home care entity). An "out-of-home care entity" includes a public school, a chartered nonpublic school, or, if the alleged perpetrator of the

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*prohibiting the school from revealing the reason that a former employee resigned or was terminated.*

*Current law, not changed by the bill, also provides a qualified immunity against civil liability for damages for public employers, including school districts and community schools, in disclosing information about the performance of former employees (R.C. 4113.71, not in the bill).*

<sup>7</sup> R.C. 5153.01 and 5153.02, neither section in the bill.



abuse or neglect is an individual licensed by the State Board of Education, a nonchartered nonpublic school.<sup>8</sup>

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## COMMENT

Under the State Board's current licensing rules for teachers, a provisional license is valid for two years and may be renewed or upgraded to a professional license upon its expiration. Professional licenses must be renewed every five years. Therefore, the bill generally would require a criminal records check at the following stages of a teacher's career: (1) upon initial application for a provisional educator license, (2) upon transition from a provisional license to a professional educator license, and (3) at five-year intervals thereafter. Licenses for nonteaching positions may be renewable on other cycles.

A different timeline would apply to persons who were issued a teacher's "certificate" on or before September 1, 1998, when the current teacher licensing standards took effect. Many of those persons must transition to the five-year professional educator license when their current four- or eight-year certificate expires and would be subject to a criminal records check under the bill when they do so. However, a person who was issued a *permanent* teacher's certificate by the State Board on or before September 1, 1998, or who upgraded to a permanent teacher's certificate under the old standards on or before September 1, 2003, may work under that certificate for the remainder of the person's career without ever having to renew it. Therefore, it appears that holders of permanent teachers' certificates would not be subject to a criminal records check under the bill's provisions. Nevertheless, they would be subject to a criminal records check if they subsequently seek employment in a different school district, educational service center, community school, or chartered nonpublic school.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-05	p. 232

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<sup>8</sup> R.C. 2151.011(B)(27) and 2151.421, neither section in the bill.