



John Rau

Bill Analysis
Legislative Service Commission

Sub. H.B. 79

126th General Assembly
(As Reported by H. Education)

**Reps. Raga, Latta, Setzer, C. Evans, Hagan, DeWine, McGregor,
Willamowski, Gilb, Flowers, Seaver, Reidelbach, Schlichter, Reinhard**

BILL SUMMARY

- Requires the State Board of Education to request a criminal records check of an applicant prior to renewing an educator license.
- Requires the State Board to request a criminal records check every five years for a person teaching under an eight-year professional teaching certificate or a permanent teaching certificate issued under former law.
- Permits the State Board to waive the requirement for a criminal records check if the applicant or licensee provides proof of having been the subject of a check in the previous year.
- Requires each school district, educational service center, community school, county MR/DD board, and chartered nonpublic school to submit to the Superintendent of Public Instruction certain information about specified misconduct by employees who are licensed by the State Board.
- Requires school districts, educational service centers, community schools, county MR/DD boards, and chartered nonpublic schools to keep reports of investigations of employee misconduct in the employee's personnel file.
- Requires each public children services agency to provide to the Superintendent of Public Instruction relevant information about child abuse or neglect committed by a person licensed by the State Board that is directly related to the licensee's duties and responsibilities.

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.¹

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

¹ *R.C. 3319.31, not in the bill.*

and an opportunity for a hearing conducted in accordance with the Administrative Procedure Act.²

Criminal records checks for licensees

(R.C. 3319.291)

Background

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.³ Information revealed by a criminal records check could be grounds for refusing to issue, suspending, revoking, or limiting a license.

Criminal records checks for license renewals

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

² 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).*

³ *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.*

applicant has been the subject of an FBI criminal records check during that time, the State Board or Superintendent also must request an FBI check of the applicant.

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.

Periodic criminal records checks to holders of teaching certificates issued under former law

Prior to September 1, 1998, state law provided for the issuance of provisional (four-year), professional (eight-year), and permanent (lifetime) teaching "certificates." Many individuals currently teach under these certificates, which remain valid.⁴ On the other hand, a number of them 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 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.

The bill requires the State Board or the Superintendent of Public Instruction to request a criminal records check for any person who is teaching under a professional teaching certificate issued under former law upon a date prescribed by the State Board that is not later than five years from the date that the license was issued or renewed. In addition, under the bill, the State Board or Superintendent must request a criminal records check for any person who is teaching under a permanent teaching certificate upon a date prescribed by the State Board and every five years thereafter. Thus, persons teaching under longer running and permanent certificates issued under former law must undergo a criminal records check at least every five years in the same manner as educators licensed under current law. Again, as in the case of a first-time applicant under current law, and renewals under the bill, if the holder of one of these eight-year or permanent certificates 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

⁴ R.C. 3319.222, not in the bill.

the subject of an FBI criminal records check during that time, the State Board or Superintendent also must request an FBI check of the applicant.

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, if the applicant or licensee has undergone a check in the past year as a condition of employment or if the applicant or licensee 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.⁵ This requirement applies to all persons who at anytime could be left alone with children, teachers and nonteaching employees alike.⁶

Reports by schools of licensee 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 specified information regarding acts of misconduct by their employees who are licensed by the State Board. Under the bill, a school district or educational service center board, county MR/DD board, community school (charter school) governing authority, and the chief administrator of a chartered nonpublic school must submit the name and social security number of an employee and a factual statement of the employee's misconduct if:

(1) The board, authority, or administrator *knows* that the employee has pleaded guilty to, has been found guilty by a jury or court of, or has been convicted of an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control

⁵ R.C. 3319.39, not in the bill.

⁶ 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.

of a child.⁷ (Current law, not changed by the bill, requires the prosecutor in a case involving a State Board licensee to report to the State Board and licensee's employer if the licensee pleads guilty to, is found guilty of, or is convicted of an offense for which the State Board may sanction the licensee.⁸)

(2) The board, authority, or administrator has initiated termination or nonrenewal proceedings against, has terminated, or has not renewed the contract of the employee because the board, authority, or administrator has reasonably determined that the employee has committed an act that is "unbecoming to the teaching profession" or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child;

(3) The employee has resigned under threat of termination or nonrenewal as described in (2) above; or

(4) The employee has resigned because of or in the course of an investigation by the board, authority, or administrator regarding whether the employee has committed an act that is "unbecoming to the teaching profession" or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child. (See **COMMENT.**)

The bill specifies that conduct "unbecoming to the teaching profession" is as described in rules adopted by the State Board.

The bill also provides that a determination made by a board, authority, or administrator under (2) above; or a termination, nonrenewal, resignation, or other separation from employment does not create a presumption of the employee's commission or noncommission of an act that is unbecoming to the teaching profession or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child.

Investigation reports included in a licensee's personnel file

(R.C. 3314.03(A)(11)(d), 3319.314, and 5126.254)

The bill requires a school district or educational service center board, county MR/DD board, community school (charter school) governing authority,

⁷ See "**Background on authority of State Board to investigate licensees**" above.

⁸ R.C. 3319.20 and 3319.52, neither section in the bill.

and the chief administrator of a chartered nonpublic school to require that the report of any investigation of an employee, regarding whether the employee has committed an act or offense for which it is required to make a report of misconduct to the Superintendent of Public Instruction (under the bill's provisions described above), be kept in the employee's personnel file. However, the board, authority, or administrator may permit the report to be moved from the employee's personnel file to a separate public file if, after an investigation, the Superintendent of Public Instruction determines that the results of that investigation do not warrant initiating action against the licensee.

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 provide to the Superintendent of Public Instruction information the PCSA determines to be relevant 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. The bill also limits the information provided by a PCSA to information that is directly related to that licensee's duties and responsibilities. It specifies that the information provided by the PCSA include, but is not limited to, the following:

(1) A summary of the chronology of abuse and neglect reports made to the PCSA about the licensee and the final disposition of the investigations conducted in response to those reports, or if an investigation is not complete, the status of that investigation; and

(2) Any underlying documentation concerning the reports described in (1) above.

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.⁹ 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 abuse or neglect is an individual licensed by the State Board of Education, a nonchartered nonpublic school.¹⁰

COMMENT

Although silent on the issue, the bill by its operation appears to restrict a school's ability to enter into a termination agreement that contains a stipulation 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.¹¹

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-05	p. 232
Reported, H. Education	06-09-05	pp. 943-944

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⁹ R.C. 5153.01 and 5153.02, neither section in the bill.

¹⁰ R.C. 2151.011(B)(27) and 2151.421, neither section in the bill.

¹¹ R.C. 4113.71, not in the bill.

