

HOUSE BILL 1571

F1, E4

8lr1662

By: **Delegates Wilson and Angel**

Introduced and read first time: February 9, 2018

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Child Sexual Abuse Prevention – Employment Process**

3 FOR the purpose of requiring a county board of education and a certain contracting agency
4 to require an applicant for a position involving direct contact with minors to provide
5 certain information; requiring the county board or contracting agency to conduct a
6 certain review of the employment history of a certain applicant; requiring the county
7 board or contracting agency to check certain eligibility of a certain applicant;
8 providing that a certain applicant shall be subject to certain discipline under certain
9 circumstances; authorizing the county board or contracting agency to hire an
10 applicant on a certain provisional basis under certain circumstances; prohibiting the
11 county board or contracting agency from entering into a certain agreement under
12 certain circumstances; providing that a certain agreement is void and unenforceable
13 under certain circumstances; providing for the hiring of certain substitute
14 employees; requiring a certain contracting agency to perform a certain review before
15 making a certain assignment; requiring a certain contracting agency to maintain
16 certain records; requiring a certain contracting agency to inform the county board of
17 certain information; prohibiting a certain contracting agency from assigning a
18 certain employee to perform certain work under certain circumstances; providing for
19 a certain immunity from criminal and civil liability; providing for the construction of
20 this Act; authorizing the State Department of Education to initiate certain
21 disciplinary action under certain circumstances and to adopt certain rules and
22 regulations; defining certain terms; and generally relating to hiring school
23 employees.

24 BY adding to

25 Article – Education

26 Section 6–113.1

27 Annotated Code of Maryland

28 (2014 Replacement Volume and 2017 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Education**

3 **6–113.1.**

4 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
5 **INDICATED.**

6 **(2) “CHILD SEXUAL ABUSE” MEANS AN ACT INVOLVING A MINOR OR**
7 **STUDENT BY AN ADULT THAT CONSTITUTES A SEXUAL OFFENSE UNDER THE LAWS**
8 **OF THE STATE OR ANY SEXUAL CONTACT BETWEEN AN ADULT AND A MINOR.**

9 **(3) “CONTRACTING AGENCY” MEANS AN ENTITY THAT CONTRACTS**
10 **WITH A COUNTY BOARD TO PROVIDE A SERVICE TO A SCHOOL OR THE STUDENTS OF**
11 **A SCHOOL.**

12 **(4) “DIRECT CONTACT WITH MINORS” MEANS THE POSSIBILITY OF**
13 **CARE, SUPERVISION, GUIDANCE, OR CONTROL OF A MINOR OR ROUTINE**
14 **INTERACTION WITH A MINOR.**

15 **(5) “JOB PERFORMANCE” INCLUDES ABILITIES, ATTENDANCE,**
16 **ATTITUDE, AWARDS, DEMOTIONS, DISCIPLINARY ACTIONS, DUTIES, EFFORT,**
17 **KNOWLEDGE, PROMOTIONS, SKILLS, AND, IN THE CASE OF A FORMER SCHOOL**
18 **EMPLOYEE, THE REASONS FOR SEPARATION.**

19 **(6) “SCHOOL” MEANS A PUBLIC SCHOOL, A PUBLIC SCHOOL**
20 **DISTRICT, A COLLABORATIVE SCHOOL, A CHARTER SCHOOL, A VIRTUAL SCHOOL, AN**
21 **INNOVATION SCHOOL, A PRIVATE DAY SCHOOL, A PRIVATE RESIDENTIAL SCHOOL,**
22 **AN INDEPENDENT SCHOOL, A PAROCHIAL SCHOOL, OR ANY OTHER NONPUBLIC**
23 **SCHOOL.**

24 **(7) “SEXUAL MISCONDUCT” MEANS AN ACT, INCLUDING AN ORAL, A**
25 **NONVERBAL, A WRITTEN, OR AN ELECTRONIC COMMUNICATION, OR A PHYSICAL**
26 **ACTIVITY DIRECTED TOWARD OR WITH A MINOR THAT IS DESIGNED TO PROMOTE A**
27 **ROMANTIC OR SEXUAL RELATIONSHIP WITH THE MINOR, INCLUDING:**

28 **(I) SEXUAL OR ROMANTIC INVITATION;**

29 **(II) DATING OR SOLICITING DATES;**

30 **(III) ENGAGING IN SEXUALIZED OR ROMANTIC DIALOGUE;**

31 **(IV) MAKING SEXUALLY SUGGESTIVE COMMENTS;**

1 (V) SELF-DISCLOSURE OR PHYSICAL EXPOSURE OF A SEXUAL,
2 ROMANTIC, OR EROTIC NATURE; AND

3 (VI) A SEXUAL, INDECENT, ROMANTIC, OR EROTIC CONTACT
4 WITH THE MINOR.

5 (B) A COUNTY BOARD AND A CONTRACTING AGENCY SHALL REQUIRE AN
6 APPLICANT FOR A POSITION INVOLVING DIRECT CONTACT WITH MINORS TO
7 PROVIDE:

8 (1) A LIST, INCLUDING NAME, ADDRESS, TELEPHONE NUMBER, AND
9 OTHER RELEVANT CONTACT INFORMATION OF THE APPLICANT, INCLUDING:

10 (I) CURRENT EMPLOYER;

11 (II) ALL FORMER SCHOOL EMPLOYERS THROUGH THE
12 PREVIOUS 5 YEARS; AND

13 (III) ALL FORMER EMPLOYERS OF THE APPLICANT IN WHICH
14 THE APPLICANT WAS EMPLOYED IN A POSITION THAT INVOLVED CONTACT WITH
15 MINORS THROUGH THE PREVIOUS 5 YEARS;

16 (2) A WRITTEN AUTHORIZATION THAT CONSENTS TO AND
17 AUTHORIZES THE RELEASE BY EACH OF THE APPLICANT'S CURRENT AND FORMER
18 EMPLOYERS OF ALL RECORDS RELATED TO THE APPLICANT'S JOB PERFORMANCE;
19 AND

20 (3) A WRITTEN STATEMENT OF WHETHER THE APPLICANT:

21 (I) HAS BEEN THE SUBJECT OF A CHILD SEXUAL ABUSE OR
22 SEXUAL MISCONDUCT INVESTIGATION BY ANY EMPLOYER, STATE LICENSING
23 AGENCY, LAW ENFORCEMENT AGENCY, OR CHILD PROTECTIVE SERVICES AGENCY,
24 UNLESS THE INVESTIGATION RESULTED IN A FINDING THAT THE ALLEGATIONS
25 WERE FALSE;

26 (II) HAS EVER BEEN DISCIPLINED, DISCHARGED,
27 NONRENEWED, OR ASKED TO RESIGN FROM EMPLOYMENT, OR HAS EVER RESIGNED
28 FROM OR OTHERWISE SEPARATED FROM ANY EMPLOYMENT WHILE ALLEGATIONS
29 OF CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT WERE PENDING OR WERE UNDER
30 INVESTIGATION, OR DUE TO AN ADJUDICATION OR FINDINGS OF CHILD SEXUAL
31 ABUSE OR SEXUAL MISCONDUCT; OR

1 **(III) HAS EVER HAD A LICENSE, PROFESSIONAL LICENSE, OR**
2 **CERTIFICATE SUSPENDED, SURRENDERED, OR REVOKED WHILE ALLEGATIONS OF**
3 **CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT WERE PENDING OR UNDER**
4 **INVESTIGATION, OR DUE TO AN ADJUDICATION OR FINDINGS OF CHILD SEXUAL**
5 **ABUSE OR SEXUAL MISCONDUCT.**

6 **(C) BEFORE HIRING AN APPLICANT, THE COUNTY BOARD OR CONTRACTING**
7 **AGENCY SHALL CONDUCT A REVIEW OF THE EMPLOYMENT HISTORY OF THE**
8 **APPLICANT BY CONTACTING THE EMPLOYERS LISTED BY THE APPLICANT AND**
9 **REQUESTING THE FOLLOWING INFORMATION:**

10 **(1) THE DATES OF EMPLOYMENT OF THE APPLICANT; AND**

11 **(2) A STATEMENT AS TO WHETHER THE APPLICANT:**

12 **(I) WAS THE SUBJECT OF ANY CHILD SEXUAL ABUSE OR**
13 **SEXUAL MISCONDUCT INVESTIGATION BY ANY EMPLOYER, STATE LICENSING**
14 **AGENCY, LAW ENFORCEMENT AGENCY, OR CHILD PROTECTIVE SERVICES AGENCY,**
15 **UNLESS THE INVESTIGATION RESULTED IN A FINDING THAT THE ALLEGATIONS**
16 **WERE FALSE;**

17 **(II) WAS DISCIPLINED, DISCHARGED, NONRENEWED, ASKED TO**
18 **RESIGN FROM EMPLOYMENT, OR RESIGNED FROM OR OTHERWISE SEPARATED**
19 **FROM ANY EMPLOYMENT WHILE ALLEGATIONS OF CHILD SEXUAL ABUSE OR SEXUAL**
20 **MISCONDUCT WERE PENDING OR UNDER INVESTIGATION, OR DUE TO AN**
21 **ADJUDICATION OR FINDINGS OF CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT; OR**

22 **(III) HAS EVER HAD A LICENSE, PROFESSIONAL LICENSE, OR**
23 **CERTIFICATE SUSPENDED, SURRENDERED, OR REVOKED WHILE ALLEGATIONS OF**
24 **CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT WERE PENDING OR WERE UNDER**
25 **INVESTIGATION, OR DUE TO AN ADJUDICATION OR FINDINGS OF CHILD SEXUAL**
26 **ABUSE OR SEXUAL MISCONDUCT.**

27 **(D) BEFORE HIRING AN APPLICANT, A COUNTY BOARD OR CONTRACTING**
28 **AGENCY SHALL CHECK THE ELIGIBILITY FOR EMPLOYMENT OR CERTIFICATION**
29 **STATUS OF THE APPLICANT TO DETERMINE WHETHER THE APPLICANT:**

30 **(1) HOLDS A VALID AND ACTIVE CERTIFICATION APPROPRIATE FOR**
31 **THE POSITION AND IS OTHERWISE ELIGIBLE FOR EMPLOYMENT; AND**

32 **(2) HAS BEEN THE SUBJECT OF PROFESSIONAL DISCIPLINE.**

33 **(E) AN APPLICANT WHO PROVIDES FALSE INFORMATION OR WILLFULLY**

1 FAILS TO DISCLOSE MATERIAL INFORMATION REQUIRED UNDER THIS SECTION
2 SHALL BE SUBJECT TO DISCIPLINE UP TO, AND INCLUDING, TERMINATION OR
3 DENIAL OF EMPLOYMENT AND MAY BE SUBJECT TO PROFESSIONAL DISCIPLINE IN
4 ACCORDANCE WITH THE REGULATIONS OF THE DEPARTMENT.

5 (F) A COUNTY BOARD OR CONTRACTING AGENCY MAY HIRE AN APPLICANT
6 ON A PROVISIONAL BASIS FOR A PERIOD NOT TO EXCEED 90 DAYS PENDING THE
7 REVIEW OF INFORMATION AND RECORDS RECEIVED UNDER THIS SECTION,
8 PROVIDED THAT ALL OF THE FOLLOWING ARE SATISFIED:

9 (1) THE APPLICANT HAS PROVIDED ALL OF THE INFORMATION AND
10 SUPPORTING DOCUMENTATION REQUIRED;

11 (2) THE SCHOOL ADMINISTRATOR HAS NO KNOWLEDGE OF
12 INFORMATION PERTAINING TO THE APPLICANT THAT WOULD DISQUALIFY THE
13 APPLICANT FROM EMPLOYMENT;

14 (3) THE APPLICANT SWEARS OR AFFIRMS THAT THE APPLICANT IS
15 NOT DISQUALIFIED FROM EMPLOYMENT; AND

16 (4) THE APPLICANT IS NOT PERMITTED TO WORK ALONE WITH
17 MINORS AND WORKS IN THE IMMEDIATE VICINITY OF A PERMANENT EMPLOYEE.

18 (G) (1) A COUNTY BOARD OR CONTRACTING AGENCY MAY NOT ENTER
19 INTO A COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYMENT CONTRACT, AN
20 AGREEMENT FOR RESIGNATION OR TERMINATION, A SEVERANCE AGREEMENT, OR
21 ANY OTHER CONTRACT OR AGREEMENT THAT:

22 (I) HAS THE EFFECT OF SUPPRESSING INFORMATION
23 RELATING TO AN INVESTIGATION OF A REPORT OF SUSPECTED CHILD SEXUAL
24 ABUSE OR SEXUAL MISCONDUCT BY A CURRENT OR FORMER EMPLOYEE;

25 (II) AFFECTS THE ABILITY OF THE SCHOOL OR CONTRACTING
26 AGENCY TO REPORT SUSPECTED CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT TO
27 THE APPROPRIATE AUTHORITIES; OR

28 (III) REQUIRES THE SCHOOL OR CONTRACTING AGENCY TO
29 EXPUNGE INFORMATION ABOUT ALLEGATIONS OR FINDINGS OF SUSPECTED CHILD
30 SEXUAL ABUSE OR SEXUAL MISCONDUCT FROM ANY DOCUMENTS MAINTAINED BY
31 THE SCHOOL OR CONTRACTING AGENCY, UNLESS AFTER INVESTIGATION THE
32 ALLEGATIONS ARE FOUND TO BE FALSE.

33 (2) A PROVISION OF AN EMPLOYMENT CONTRACT, AN AGREEMENT

1 FOR RESIGNATION OR TERMINATION, OR A SEVERANCE AGREEMENT THAT IS
2 EXECUTED, AMENDED, OR ENTERED INTO ON OR AFTER OCTOBER 1, 2018, AND
3 THAT IS CONTRARY TO THIS SECTION IS VOID AND UNENFORCEABLE.

4 (H) (1) FOR PURPOSES OF THIS SUBSECTION, "SUBSTITUTE EMPLOYEE"
5 DOES NOT INCLUDE SCHOOL BUS DRIVERS EMPLOYED BY A CONTRACTING AGENCY.

6 (2) FOR SUBSTITUTE EMPLOYEES, THE EMPLOYMENT HISTORY
7 REVIEW REQUIRED BY THIS SECTION SHALL BE REQUIRED ONLY BEFORE THE
8 INITIAL HIRING OF A SUBSTITUTE EMPLOYEE OR PLACEMENT ON THE SCHOOL'S
9 APPROVED SUBSTITUTE EMPLOYEE LIST AND SHALL REMAIN VALID AS LONG AS THE
10 SUBSTITUTE EMPLOYEE CONTINUES TO BE EMPLOYED BY THE SAME SCHOOL OR
11 REMAINS ON THE SCHOOL'S APPROVED SUBSTITUTE EMPLOYEE LIST.

12 (3) A SUBSTITUTE EMPLOYEE SEEKING TO BE ADDED TO ANOTHER
13 SCHOOL ENTITY'S SUBSTITUTE EMPLOYEE LIST SHALL UNDERGO A NEW
14 EMPLOYMENT HISTORY REVIEW.

15 (4) THE APPEARANCE OF A SUBSTITUTE EMPLOYEE ON ONE
16 SCHOOL'S SUBSTITUTE EMPLOYEE LIST DOES NOT RELIEVE ANOTHER SCHOOL
17 FROM COMPLIANCE WITH THIS SECTION.

18 (5) AN EMPLOYMENT HISTORY REVIEW CONDUCTED ON INITIAL
19 HIRING OF A SUBSTITUTE EMPLOYEE BY A CONTRACTING AGENCY, AN
20 INTERMEDIATE UNIT, OR ANY OTHER ENTITY THAT FURNISHES SUBSTITUTE
21 STAFFING SERVICES TO SCHOOL ENTITIES SHALL SATISFY THE REQUIREMENTS OF
22 THIS SECTION FOR ALL SCHOOL ENTITIES USING THE SERVICES OF THAT
23 CONTRACTING AGENCY, INTERMEDIATE UNIT, OR OTHER ENTITY.

24 (6) A CONTRACTING AGENCY, AN INTERMEDIATE UNIT, OR ANY
25 OTHER ENTITY FURNISHING SUBSTITUTE STAFFING SERVICES TO SCHOOLS SHALL
26 COMPLY WITH THE PROVISIONS OF THIS SECTION.

27 (I) (1) FOR AN EMPLOYEE OF A CONTRACTING AGENCY, THE
28 EMPLOYMENT HISTORY REVIEW REQUIRED BY THIS SECTION SHALL BE
29 PERFORMED, EITHER AT THE TIME OF THE INITIAL HIRING OF THE EMPLOYEE OR
30 BEFORE THE ASSIGNMENT OF THE EMPLOYEE TO PERFORM WORK FOR A SCHOOL IN
31 A POSITION INVOLVING DIRECT CONTACT WITH MINORS.

32 (2) THE REVIEW SHALL REMAIN VALID AS LONG AS THE EMPLOYEE
33 REMAINS EMPLOYED BY THE SAME CONTRACTING AGENCY, EVEN THOUGH
34 ASSIGNED TO PERFORM WORK FOR OTHER SCHOOL ENTITIES.

1 **(J) A CONTRACTING AGENCY SHALL MAINTAIN RECORDS DOCUMENTING**
2 **EMPLOYMENT HISTORY REVIEWS FOR ALL EMPLOYEES AS REQUIRED BY THIS**
3 **SECTION AND, ON REQUEST, SHALL PROVIDE A SCHOOL ENTITY TO WHICH AN**
4 **EMPLOYEE IS ASSIGNED ACCESS TO THE RECORDS PERTAINING TO THAT EMPLOYEE.**

5 **(K) (1) BEFORE ASSIGNING AN EMPLOYEE TO PERFORM WORK FOR A**
6 **SCHOOL IN A POSITION INVOLVING DIRECT CONTACT WITH MINORS, A**
7 **CONTRACTING AGENCY SHALL INFORM THE SCHOOL OF ANY INSTANCE KNOWN TO**
8 **THE CONTRACTING AGENCY IN WHICH THE EMPLOYEE:**

9 **(I) WAS THE SUBJECT OF A CHILD SEXUAL ABUSE OR SEXUAL**
10 **MISCONDUCT INVESTIGATION BY AN EMPLOYER, A STATE LICENSING AGENCY, A**
11 **LAW ENFORCEMENT AUTHORITY, OR A CHILD PROTECTIVE SERVICES AGENCY,**
12 **UNLESS THE INVESTIGATION RESULTED IN A FINDING THAT THE ALLEGATIONS**
13 **WERE FALSE;**

14 **(II) HAS EVER BEEN DISCIPLINED, DISCHARGED,**
15 **NONRENEWED, REMOVED FROM A SUBSTITUTE LIST, OR ASKED TO RESIGN FROM**
16 **EMPLOYMENT, OR HAS EVER RESIGNED FROM OR OTHERWISE SEPARATED FROM**
17 **ANY EMPLOYMENT WHILE ALLEGATIONS OF CHILD SEXUAL ABUSE OR SEXUAL**
18 **MISCONDUCT WERE PENDING OR UNDER INVESTIGATION, OR DUE TO AN**
19 **ADJUDICATION OR FINDINGS OF CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT; OR**

20 **(III) HAS EVER HAD A LICENSE, PROFESSIONAL LICENSE, OR**
21 **CERTIFICATE SUSPENDED, SURRENDERED, OR REVOKED WHILE ALLEGATIONS OF**
22 **CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT WERE PENDING OR UNDER**
23 **INVESTIGATION, OR DUE TO AN ADJUDICATION OR FINDINGS OF CHILD SEXUAL**
24 **ABUSE OR SEXUAL MISCONDUCT.**

25 **(2) THE CONTRACTING AGENCY MAY NOT ASSIGN THE EMPLOYEE TO**
26 **PERFORM WORK FOR THE SCHOOL IN A POSITION INVOLVING DIRECT CONTACT**
27 **WITH MINORS WHERE THE SCHOOL OBJECTS TO THE ASSIGNMENT AFTER BEING**
28 **INFORMED OF AN INSTANCE OF CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT.**

29 **(L) (1) A PERSON WHO IN GOOD FAITH PROVIDES INFORMATION OR**
30 **RECORDS, INCLUDING PERSONNEL RECORDS ABOUT A CURRENT OR FORMER**
31 **EMPLOYEE'S JOB PERFORMANCE AND PROFESSIONAL CONDUCT TO A PROSPECTIVE**
32 **SCHOOL EMPLOYER OR TO THE DEPARTMENT, SHALL BE IMMUNE FROM CRIMINAL**
33 **AND CIVIL LIABILITY FOR THE DISCLOSURE OR ANY CONSEQUENCES OF THE**
34 **DISCLOSURE, UNLESS THE INFORMATION OR RECORDS WERE PROVIDED WITH THE**
35 **KNOWLEDGE THAT THEY WERE FALSE.**

36 **(2) THE IMMUNITY DESCRIBED IN THIS SUBSECTION SHALL BE IN**

1 ADDITION TO AND NOT IN LIMITATION OF ANY OTHER IMMUNITY PROVIDED BY LAW
2 OR ANY ABSOLUTE OR CONDITIONAL PRIVILEGE APPLICABLE TO THE DISCLOSURE
3 BY VIRTUE OF THE CIRCUMSTANCES OR THE APPLICANT'S CONSENT TO THE
4 DISCLOSURE.

5 (M) NOTHING IN THIS SECTION SHALL BE CONSTRUED:

6 (1) TO PREVENT A PROSPECTIVE EMPLOYER FROM CONDUCTING
7 FURTHER INVESTIGATIONS OF PROSPECTIVE EMPLOYEES OR FROM REQUIRING
8 APPLICANTS TO PROVIDE ADDITIONAL BACKGROUND INFORMATION OR
9 AUTHORIZATIONS BEYOND WHAT IS REQUIRED UNDER THIS SECTION, OR TO
10 PREVENT A FORMER EMPLOYER FROM DISCLOSING MORE INFORMATION THAN IS
11 REQUIRED UNDER THIS SECTION;

12 (2) TO RELIEVE A SCHOOL, SCHOOL ADMINISTRATOR, OR
13 CONTRACTING AGENCY OF ITS LEGAL RESPONSIBILITY TO REPORT SUSPECTED
14 INCIDENTS OF CHILD SEXUAL ABUSE OR MISCONDUCT IN ACCORDANCE WITH THE
15 PROVISIONS OF STATE LAW OR THE REPORTING REQUIREMENTS OF THE
16 DEPARTMENT; OR

17 (3) TO PROHIBIT THE RIGHT OF THE EXCLUSIVE REPRESENTATIVE
18 UNDER A COLLECTIVE BARGAINING AGREEMENT TO GRIEVE AND ARBITRATE THE
19 VALIDITY OF AN EMPLOYEE'S TERMINATION OR DISCIPLINE FOR JUST CAUSE OR
20 FOR THE CAUSES SET FORTH IN THIS SECTION.

21 (N) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
22 DEPARTMENT MAY INITIATE DISCIPLINARY ACTION BEFORE A HEARING OFFICER IN
23 ACCORDANCE WITH THE DEPARTMENT'S REGULATIONS AGAINST AN APPLICANT, AN
24 EMPLOYEE, A CONTRACTING AGENCY, OR A SCHOOL ADMINISTRATOR FOR WILLFUL
25 VIOLATIONS OF THIS SECTION.

26 (2) THE DEPARTMENT MAY ADOPT REGULATIONS ESTABLISHING
27 PROCEDURES RELATING TO DISCIPLINARY PROCEEDINGS AND THE ASSESSMENT OF
28 PENALTIES IN ACCORDANCE WITH THIS SECTION.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2018.