

# HOUSE BILL 1008

F1, E4

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By: **Delegate Wilson**

Introduced and read first time: February 5, 2020

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Education – Child Abuse and Sexual Misconduct Prevention – Hiring Emergent**  
3 **Employees**

4 FOR the purpose of authorizing the hiring of a certain emergent employee by a county  
5 board of education or nonpublic school for a certain period of time under certain  
6 conditions; authorizing a county board or nonpublic school to take certain actions  
7 within a certain period of time regarding an emergent employee under certain  
8 circumstances; authorizing a certain appeal following a certain decision by a county  
9 board; ~~prohibiting a certain decision by a county board from being subject to a certain~~  
10 ~~collective bargaining process~~; authorizing a county board or nonpublic school to share  
11 a certain employment history review with other county boards and nonpublic  
12 schools; authorizing a county board or nonpublic school to use a certain employment  
13 history review under certain circumstances; requiring certain applicants to provide  
14 certain information regarding certain employers over a certain period of time;  
15 defining a certain term; altering a certain definition; and generally relating to child  
16 abuse and sexual misconduct prevention and the hiring of school employees.

17 BY repealing and reenacting, with amendments,  
18 Article – Education  
19 Section 6–113.2  
20 Annotated Code of Maryland  
21 (2018 Replacement Volume and 2019 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
23 That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



## Article – Education

6–113.2.

(a) (1) In this section the following words have the meanings indicated.

(2) “Child sexual abuse” has the meaning stated in § 6–113.1 of this subtitle.

(3) “Contracting agency” means an entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school.

(4) “Direct contact with minors” means the [possibility of] care, supervision, guidance, or control of [a minor], or routine interaction with, a minor.

(5) **“EMERGENT EMPLOYEE” MEANS AN EMPLOYEE HIRED BY A COUNTY BOARD OR NONPUBLIC SCHOOL WITHOUT COMPLETING THE EMPLOYMENT HISTORY REVIEW REQUIRED UNDER THIS SECTION.**

(6) “School” means a public or nonpublic school.

~~[(6)]~~ (7) “Sexual misconduct” has the meaning stated in § 6–113.1 of this subtitle.

(b) A county board, nonpublic school, or contracting agency shall require an applicant for a position involving direct contact with minors to submit:

(1) The contact information of the following employers:

(i) The current employer;

(ii) All former school employers, **INCLUDING EMPLOYERS FOR WHICH THE APPLICANT WAS AN EMERGENT EMPLOYEE**; and

(iii) All former employers of the applicant in which the applicant was employed in a position involving direct contact with minors **WITHIN THE PREVIOUS 10 YEARS**;

(2) A written consent form, signed by the applicant, authorizing an employer listed under item (1) of this subsection to release all records relating to child sexual abuse or sexual misconduct; and

(3) A written statement of whether the applicant:

1 (i) Has been the subject of a child sexual abuse or sexual misconduct  
2 investigation by any employer, arbitrator, county board, State licensing agency, law  
3 enforcement agency, or child protective services agency, unless the investigation resulted  
4 in a finding by:

5 1. The employer that allegations that the applicant engaged  
6 in sexual misconduct lacked sufficient evidence according to the policies of the county board  
7 or nonpublic school;

8 2. An arbitrator or a county board to reject any disciplinary  
9 action in response to allegations that the applicant engaged in sexual misconduct;

10 3. A State licensing agency that allegations that the  
11 applicant engaged in sexual misconduct lacked sufficient evidence according to:

12 A. State law; or

13 B. The policies of the county board or nonpublic school;

14 4. A law enforcement agency that allegations that the  
15 applicant engaged in child sexual abuse were unfounded; or

16 5. A child protective services agency that allegations that the  
17 applicant engaged in child sexual abuse were ruled out;

18 (ii) Has ever been disciplined, discharged, nonrenewed, or asked to  
19 resign from employment, or has ever resigned from or otherwise separated from any  
20 employment while allegations of child sexual abuse or sexual misconduct were pending or  
21 were under investigation, or due to an adjudication or findings of child sexual abuse or  
22 sexual misconduct; or

23 (iii) Has ever had a license, professional license, or certificate  
24 suspended, surrendered, or revoked while allegations of child sexual abuse or sexual  
25 misconduct were pending or under investigation, or due to an adjudication or findings of  
26 child sexual abuse or sexual misconduct.

27 (c) Before hiring an applicant for a position involving direct contact with minors,  
28 the county board, nonpublic school, or contracting agency shall:

29 (1) Review an applicant's employment history by contacting the employers  
30 listed by the applicant under subsection (b)(1) of this section and requesting the following  
31 information:

32 (i) The dates of employment of the applicant; and

33 (ii) Answers to the questions regarding child sexual abuse or sexual  
34 misconduct required under subsection (b)(3) of this section; and

1           (2) Request a report from the Department regarding the applicant's  
2 eligibility for employment or certification status to determine whether the applicant:

3           (i) Holds a valid and active certification appropriate for the position  
4 and is otherwise eligible for employment; and

5           (ii) Has been the subject of professional discipline related to child  
6 sexual abuse or sexual misconduct.

7           (d) (1) Not later than 20 days after receiving a request for information under  
8 subsection (c) of this section, an employer shall send to the county board, nonpublic school,  
9 or contracting agency the information requested on the form prescribed by the Department.

10           (2) If the information from an employer includes an affirmative response  
11 to the child sexual abuse or sexual misconduct questions under subsection (b)(3) of this  
12 section, and the county board, nonpublic school, or contracting agency makes a  
13 determination to further consider the applicant for employment, the county board,  
14 nonpublic school, or contracting agency shall request that the former employer provide  
15 additional information about the information provided, including all records related to child  
16 sexual abuse or sexual misconduct.

17           (3) An employer that receives a request for additional information under  
18 paragraph (1) of this subsection shall provide the additional information within 60 days of  
19 the date of the prospective employer's request to:

20           (i) The requesting county board, nonpublic school, or contracting  
21 agency; and

22           (ii) The applicant who is under consideration for employment.

23           **(E) (1) A COUNTY BOARD OR NONPUBLIC SCHOOL MAY HIRE AN**  
24 **APPLICANT AS AN EMERGENT EMPLOYEE FOR A PERIOD NOT TO EXCEED 60 DAYS**  
25 **PENDING THE REVIEW OF INFORMATION AND RECORDS REQUIRED UNDER THIS**  
26 **SECTION ONLY IF:**

27           **(I) THE APPLICANT HAS PROVIDED ALL THE INFORMATION**  
28 **AND SUPPORTING DOCUMENTATION REQUIRED UNDER THIS SECTION;**

29           **(II) AN EMPLOYER HAS NO KNOWLEDGE OF INFORMATION**  
30 **REGARDING THE APPLICANT THAT WOULD DISQUALIFY THE APPLICANT FROM**  
31 **EMPLOYMENT;**

32           **(III) THE APPLICANT SWEARS OR AFFIRMS THAT THE APPLICANT**  
33 **IS NOT DISQUALIFIED FROM EMPLOYMENT; AND**

1 (IV) THE APPLICANT IS NOT AUTHORIZED TO WORK ALONE WITH  
 2 MINORS ~~AND WORKS~~ UNLESS THE APPLICANT:

3 1. WORKS IN THE IMMEDIATE VICINITY OF A  
 4 PERMANENT EMPLOYEE; OR

5 2. IF THE APPLICANT IS A SCHOOL VEHICLE DRIVER, IS  
 6 SUBJECT TO AUDIO AND VIDEO MONITORING AND RECORDING, WHICH IS PROMPTLY  
 7 REVIEWED BY SCHOOL ADMINISTRATORS.

8 (2) BASED ON THE EMPLOYMENT HISTORY REVIEW REQUIRED UNDER  
 9 SUBSECTION (C) OF THIS SECTION, AT ANY TIME WITHIN 60 DAYS AFTER HIRING AN  
 10 APPLICANT AS AN EMERGENT EMPLOYEE, THE COUNTY BOARD OR NONPUBLIC  
 11 SCHOOL MAY:

12 (I) RESCIND THE OFFER OF EMPLOYMENT; OR

13 (II) ~~DISMISS THE EMERGENT EMPLOYEE; OR~~

14 ~~(III)~~ COMPLETE THE EMERGENT EMPLOYEE'S HIRING PROCESS,  
 15 IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE, WITH ANY EXECUTED  
 16 CONTRACT REFLECTING THE FIRST DAY WORKED AS AN EMERGENT EMPLOYEE.

17 (3) WITHIN 60 DAYS AFTER HIRING AN APPLICANT AS AN EMERGENT  
 18 EMPLOYEE, A COUNTY BOARD'S DECISION TO DISMISS THE EMERGENT EMPLOYEE  
 19 ~~BASED ON THE EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C)~~  
 20 ~~OF THIS SECTION,~~ FOR ANY REASON OTHER THAN CHILD SEXUAL ABUSE OR SEXUAL  
 21 MISCONDUCT, MAY BE APPEALED:

22 (I) ~~MAY BE APPEALED IN~~ IN ACCORDANCE WITH § 4-205 OF  
 23 THIS ARTICLE; AND

24 (II) IN ACCORDANCE WITH THE COLLECTIVE BARGAINING  
 25 AGREEMENT APPLICABLE TO THE EMERGENT EMPLOYEE; OR

26 (III) IF APPLICABLE, IN ACCORDANCE WITH § 6-202 OF THIS  
 27 TITLE.

28 ~~(H) MAY NOT BE A SUBJECT OF COLLECTIVE BARGAINING FOR~~  
 29 ~~CERTIFICATED EMPLOYEES UNDER SUBTITLE 4 OF THIS TITLE.~~

30 (F) A COUNTY BOARD OR NONPUBLIC SCHOOL IS AUTHORIZED TO SHARE AN  
 31 EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS  
 32 SECTION WITH OTHER COUNTY BOARDS AND NONPUBLIC SCHOOLS.

1           **(G) A COUNTY BOARD OR NONPUBLIC SCHOOL MAY USE AN EMPLOYMENT**  
2 **HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS SECTION COMPLETED**  
3 **BY A CURRENT OR FORMER EMPLOYER IF THE EMPLOYER IS A COUNTY BOARD OR**  
4 **NONPUBLIC SCHOOL AND THE APPLICANT:**

5           **(1) SWEARS OR AFFIRMS THAT THE COMPLETED EMPLOYMENT**  
6 **HISTORY REVIEW INCLUDES ALL PRIOR EMPLOYMENT REQUIRED TO BE REPORTED**  
7 **UNDER THIS SECTION; AND**

8           **(2) PROVIDES INFORMATION ABOUT ANY EMPLOYMENT SUBSEQUENT**  
9 **TO THE PREVIOUS EMPLOYMENT HISTORY REVIEW BY THE CURRENT OR FORMER**  
10 **COUNTY BOARD.**

11           ~~[(e)]~~ **(H)**   (1)   (i)   A county board, nonpublic school, or contracting agency  
12 shall conduct an employment history review of an applicant for a substitute position  
13 involving direct contact with minors as required under subsection (c) of this section before  
14 the initial hiring of the substitute employee or placement on the approved substitute  
15 employee list of the county board, nonpublic school, or contracting agency.

16                           (ii)   An employment history review of a substitute employee shall  
17 remain valid as long as the substitute employee continues to be employed by the same  
18 county board or remains on the approved substitute employee list of the nonpublic school  
19 or contracting agency.

20           (2)   If a substitute employee is seeking to be added to the substitute  
21 employee list of another county board, nonpublic school, or contracting agency, a new  
22 employment history review in accordance with subsection (c) of this section is required.

23           (3)   The appearance of a substitute employee on the substitute employee  
24 list of one county board, nonpublic school, or contracting agency does not relieve another  
25 county board, nonpublic school, or contracting agency of the duty of compliance with this  
26 section.

27           (4)   An employment history review conducted on the initial hiring of a  
28 substitute employee by a contracting agency, an intermediate unit, or any other entity that  
29 provides substitute staffing services to a county board or a nonpublic school shall satisfy  
30 the requirements of this section for all school entities using the services of that contracting  
31 agency, intermediate unit, or other entity.

32           (5)   A contracting agency, an intermediate unit, or any other entity  
33 providing substitute staffing services to a school entity shall comply with the provisions of  
34 this section.

1            **[(f)] (I)**        (1)    (i)    A contracting agency shall conduct an employment history  
2 review of an applicant for employment with the contracting agency as required under  
3 subsection (c) of this section:

4                            1.        At the time of the initial hiring of the employee; or

5                            2.        Before the employee is assigned to work for a school entity  
6 in a position involving direct contact with minors.

7                            (ii)    The employment history review under subparagraph (i) of this  
8 paragraph shall remain valid as long as the employee continues to be employed by the  
9 hiring contracting agency.

10                          (iii)    A contracting agency shall:

11                            1.        Maintain a record of each employee's employment history  
12 review required under this subsection; and

13                            2.        On request of the school entity to which an employee is  
14 assigned, provide access to the contracting agency's records of that employee.

15                          (2)    (i)    Before assigning an employee to perform work for a school entity  
16 in a position involving direct contact with minors, a contracting agency shall provide notice  
17 to the school entity of any affirmative responses to the child sexual abuse or sexual  
18 misconduct questions required under subsection (b)(3) of this section.

19                            (ii)    A contracting agency may not assign an employee to perform  
20 work for a school entity in a position involving direct contact with minors if the school entity  
21 objects to the assignment after receiving the notice required under subparagraph (i) of this  
22 paragraph.

23            **[(g)] (J)**        (1)    Information and records about an applicant received by a county  
24 board, nonpublic school, or contracting agency under this section are not a public record for  
25 the purposes of the Maryland Public Information Act.

26                          (2)    A county board, nonpublic school, or contracting agency that receives  
27 information and records from an employer about an applicant under this section may:

28                            (i)    Use the information and records for the purpose of evaluating the  
29 applicant's fitness to be hired or for continued employment; and

30                            (ii)    Report the information to the Department, a State licensing  
31 agency, a law enforcement agency, a child protective services agency, another school entity,  
32 or any other prospective employer, as appropriate.

33            **[(h)] (K)**        (1)    A county board, nonpublic school, or contracting agency may not  
34 enter into a collective bargaining agreement, an employment contract, an agreement for

1 resignation or termination, a severance agreement, or any other contract or agreement  
2 that:

3 (i) Has the effect of suppressing information relating to an  
4 investigation or disciplinary action in response to a report of suspected child sexual abuse  
5 or sexual misconduct by a current or former employee;

6 (ii) Affects the ability of the county board, nonpublic school, or  
7 contracting agency to report suspected child sexual abuse or sexual misconduct to the  
8 appropriate authorities; or

9 (iii) Requires the county board, nonpublic school, or contracting  
10 agency to expunge information about allegations or findings of suspected child sexual abuse  
11 or sexual misconduct from any document maintained by the employer unless the  
12 investigation resulted in a finding by:

13 1. The employer that allegations that the applicant engaged  
14 in sexual misconduct lacked sufficient evidence according to the policies of the county board  
15 or nonpublic school;

16 2. An arbitrator or a county board to reject any disciplinary  
17 action in response to allegations that the applicant engaged in sexual misconduct;

18 3. A State licensing agency that allegations that the  
19 applicant engaged in sexual misconduct lacked sufficient evidence according to:

20 A. State law; or

21 B. The policies of the county board or nonpublic school;

22 4. A law enforcement agency that allegations that the  
23 applicant engaged in child sexual abuse were unfounded; or

24 5. A child protective services agency that allegations that the  
25 applicant engaged in child sexual abuse were ruled out.

26 (2) A provision of an employment contract, an agreement for resignation or  
27 termination, or a severance agreement that is executed, amended, or entered into on or  
28 after July 1, 2019, and that is contrary to this section is void and unenforceable.

29 **[(i)] (L)** If there is a lapse in the operation of or the Department suspends the  
30 use of a system or database that the Department uses to check an applicant's eligibility for  
31 employment or certification status, the Department shall notify the county boards,  
32 nonpublic schools, and any contracting agencies within 48 hours of the lapse or the  
33 suspension of the use of the system or database.



1            **[(j)] (M)**        (1)     A person acting in good faith may not be held liable for disclosing  
2 any information or records related to child sexual abuse or sexual misconduct about a  
3 current or former employee's professional conduct or reason for termination of employment  
4 to a county board, a nonpublic school, a contracting agency, the Department, or any other  
5 potential employer in accordance with this section unless the person:

6                            (i)     Acted with actual malice toward the employee or former  
7 employee; or

8                            (ii)    Intentionally or recklessly disclosed false information about the  
9 employee or former employee.

10                        (2)     The immunity from liability under paragraph (1) of this subsection  
11 shall be in addition to, and not a limitation of, any other immunity provided by law or any  
12 absolute or conditional privilege applicable to the disclosure of information or records or  
13 the applicant's consent to the disclosure.

14            **[(k)] (N)**        (1)     An applicant who provides false information or willfully fails to  
15 disclose material information required under this section shall be subject to professional  
16 discipline, including termination or denial of employment, and may be subject to  
17 professional discipline in accordance with the regulations of the Department.

18                        (2)     (i)     Subject to subparagraph (ii) of this paragraph, the willful failure  
19 of an employer or former employer to respond to or provide the information and records  
20 requested by a county board, nonpublic school, or contracting agency under this section  
21 may result in civil penalties or professional discipline, if appropriate.

22                            (ii)    An employer or a former employer may not be held liable for  
23 failure to respond to a request for information about an applicant under this section if:

24    1.     The laws of the state in which the employer or former  
25 employer is located prohibit the release of the information or records requested; or

26    2.     The disclosure of the information and records requested is  
27 restricted by the terms of a contract entered into on or before June 30, 2019.

28                        (3)     (i)     Notwithstanding any other provision of law, the Department  
29 may initiate disciplinary action before a hearing officer in accordance with the  
30 Department's regulations against an applicant, an employee, a contracting agency, or a  
31 school administrator for willful violations of this section.

32                            (ii)    The Department may adopt regulations establishing procedures  
33 for disciplinary proceedings and the assessment of penalties in accordance with this section.

34            **[(l)] (O)**        Nothing in this section shall be construed:

1 (1) To prevent a county board, nonpublic school, or contracting agency  
2 from:

3 (i) Conducting further investigations of prospective employees;

4 (ii) Requesting applicants to provide additional background  
5 information or authorizations beyond the information or authorizations required under this  
6 section; or

7 (iii) Requesting that an employer or a former employer provide more  
8 information than is required under this section;

9 (2) To relieve a county board, a nonpublic school, a contracting agency, or  
10 any other mandated reporter of the legal responsibility to report suspected incidents of  
11 child sexual abuse or sexual misconduct in accordance with State law or the reporting  
12 requirements of the Department; or

13 (3) To prohibit the right of an exclusive representative under a collective  
14 bargaining agreement to grieve and arbitrate the validity of an employee's termination or  
15 discipline for just cause or for the causes set forth in this section.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
17 1, 2020.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.