

HOUSE BILL 373

F1, E4
HB 1008/20 – W&M

(PRE-FILED)

1lr1280

By: **Delegate Wilson**

Requested: October 29, 2020

Introduced and read first time: January 13, 2021

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 16, 2021

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; authorizing a county board or nonpublic school to share a certain employment
10 history review with other county boards and nonpublic schools; authorizing a
11 contracting agency to share a certain employment history review with other
12 contracting agencies; authorizing a county board ~~or~~, nonpublic school, or contracting
13 agency to use a certain employment history review under certain circumstances;
14 requiring certain applicants to provide certain information regarding certain
15 employers over a certain period of time; defining a certain term; altering a certain
16 definition; and generally relating to child abuse and sexual misconduct prevention
17 and the hiring of school employees.

18 BY repealing and reenacting, with amendments,
19 Article – Education
20 Section 6–113.2
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2020 Supplement)

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.



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

3 **Article – Education**

4 6–113.2.

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

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

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

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

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

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

16 [(6)] (7) “Sexual misconduct” has the meaning stated in § 6–113.1 of this
17 subtitle.

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

20 (1) The contact information of the following employers:

21 (i) The current employer;

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

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

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

30 (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~~ **EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION,**
28 **BEFORE** hiring an applicant for a position involving direct contact with minors, the county
29 board, nonpublic school, or contracting agency shall:

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

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

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

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

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

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

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

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

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

22 (i) The requesting county board, nonpublic school, or contracting
23 agency; and

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

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

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

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

1 (III) THE APPLICANT SWEARS OR AFFIRMS THAT THE APPLICANT
2 IS NOT DISQUALIFIED FROM EMPLOYMENT; AND

3 (IV) THE APPLICANT IS NOT AUTHORIZED TO WORK ALONE WITH
4 MINORS UNLESS THE APPLICANT:

5 1. WORKS IN THE IMMEDIATE VICINITY OF A
6 PERMANENT EMPLOYEE; OR

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

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

14 (I) RESCIND THE OFFER OF EMPLOYMENT; OR

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

18 (3) WITHIN 60 DAYS AFTER HIRING AN APPLICANT AS AN EMERGENT
19 EMPLOYEE, A COUNTY BOARD'S DECISION TO DISMISS THE EMERGENT EMPLOYEE,
20 FOR ANY REASON OTHER THAN CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT, MAY
21 BE APPEALED:

22 (I) IN ACCORDANCE WITH § 4-205 OF THIS ARTICLE;

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

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

27 (F) (1) A COUNTY BOARD OR NONPUBLIC SCHOOL IS AUTHORIZED TO
28 SHARE AN EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF
29 THIS SECTION WITH OTHER COUNTY BOARDS AND NONPUBLIC SCHOOLS.

30 (2) A CONTRACTING AGENCY IS AUTHORIZED TO SHARE AN
31 EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS
32 SECTION WITH OTHER CONTRACTING AGENCIES.

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

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

9 ~~(2)~~ (II) PROVIDES INFORMATION ABOUT ANY EMPLOYMENT
 10 SUBSEQUENT TO THE PREVIOUS EMPLOYMENT HISTORY REVIEW BY THE CURRENT
 11 OR FORMER COUNTY BOARD OR NONPUBLIC SCHOOL.

12 (2) A CONTRACTING AGENCY MAY USE AN EMPLOYMENT HISTORY
 13 REVIEW COMPLETED BY A CURRENT OR FORMER EMPLOYER IN THE MANNER
 14 REQUIRED UNDER SUBSECTION (C) OF THIS SECTION IF THE EMPLOYER IS A
 15 CONTRACTING AGENCY AND THE APPLICANT:

16 (I) SWEARS OR AFFIRMS THAT THE COMPLETED EMPLOYMENT
 17 HISTORY REVIEW INCLUDES ALL PRIOR EMPLOYMENT REQUIRED TO BE REPORTED
 18 UNDER THIS SECTION; AND

19 (II) PROVIDES INFORMATION ABOUT ANY EMPLOYMENT
 20 SUBSEQUENT TO THE PREVIOUS EMPLOYMENT HISTORY REVIEW BY THE
 21 CONTRACTING AGENCY.

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

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

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

34 (3) The appearance of a substitute employee on the substitute employee
 35 list of one county board, nonpublic school, or contracting agency does not relieve another

1 county board, nonpublic school, or contracting agency of the duty of compliance with this
2 section.

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

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

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

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

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

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

20 (iii) A contracting agency shall:

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

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

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

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

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

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

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

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

8 **[(h)] (K)** (1) A county board, nonpublic school, or contracting agency may not
9 enter into a collective bargaining agreement, an employment contract, an agreement for
10 resignation or termination, a severance agreement, or any other contract or agreement
11 that:

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

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

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

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

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

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

29 A. State law; or

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

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

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

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

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

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

16 (i) Acted with actual malice toward the employee or former
17 employee; or

18 (ii) Intentionally or recklessly disclosed false information about the
19 employee or former employee.

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

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

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

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

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

