

HOUSE No. 434

The Commonwealth of Massachusetts

PRESENTED BY:

Natalie M. Blais

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing employee screening requirements in schools to prevent child sexual abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>1/18/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/25/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/30/2023</i>

HOUSE No. 434

By Representative Blais of Deerfield, a petition (accompanied by bill, House, No. 434) of Natalie M. Blais, Carmine Lawrence Gentile and Vanna Howard for legislation to establish employee screening requirements in schools to prevent child sexual abuse. Education.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing employee screening requirements in schools to prevent child sexual abuse.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 71 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting after Section 38R the following new section:-

3 Section 38R1/2. Screening of prospective school employees for prior investigations into
4 child abuse or sexual misconduct.

5 For the purposes of this section, the following definitions shall apply:-

6 “Child abuse” means the non-accidental commission of any act by a caregiver which
7 causes or creates a substantial risk of physical or emotional injury or sexual abuse of a child or
8 student; or the victimization of a child or student through sexual exploitation, regardless if the
9 person responsible is a caretaker.

10 “Sexual misconduct” means any verbal, nonverbal, written, or electronic communication,
11 or any other act directed toward or with a student that is designed to establish a sexual

12 relationship with the student, including a sexual invitation, dating or soliciting a date, engaging
13 in sexual dialogue, making sexually suggestive comments, self-disclosure or physical exposure
14 of a sexual or erotic nature, and any other sexual, indecent or erotic contact with a student.

15 (a) A school district, charter school, nonpublic school, or contracted service provider
16 holding a contract with a school district, charter school, or nonpublic school may not offer
17 employment to an applicant who would be employed by or work in a school in a position which
18 involves direct or regular contact with students, unless the school district, charter school,
19 nonpublic school, or contracted service provider requires the applicant to provide:

20 (1) A list, including name, address, telephone number and other relevant contact
21 information of the applicant, including:

22 (i) Current employer;

23 (ii) All former employers that were school entities;

24 (iii) All former employers if the applicant was employed in positions that involved direct
25 contact with children.

26 (2) A written authorization that consents to and authorizes disclosure by the applicant's
27 current and former employers.

28 (3) A written statement of whether the applicant:

29 (i) has been the subject of (A) an abuse or sexual misconduct investigation by any
30 employer, State licensing agency, law enforcement agency, unless the investigation resulted in a
31 finding that the allegations were false or inconclusive; or (B) an investigation of abuse under
32 section 51A of chapter 119 in which the allegations of abuse against the applicant were

33 substantiated by the department of children and families and not subsequently unsubstantiated or
34 overturned on appeal;

35 (ii) has ever been disciplined, discharged, non-renewed, asked to resign from
36 employment, resigned from or otherwise separated from any employment (A) while allegations
37 of abuse or sexual misconduct were pending or under investigation, unless the investigation
38 resulted in a finding that the allegations were false or inconclusive, or in the case of section 51A
39 of chapter 119, unsubstantiated; or (B) due to an adjudication or findings of abuse or sexual
40 misconduct.; or

41 (iii) has ever had a license, professional license or certificate suspended, surrendered or
42 revoked (A) while allegations of abuse or sexual misconduct were pending or under
43 investigation, unless the investigation resulted in a finding that the allegations were false or
44 inconclusive, or in the case of section 51A of chapter 119, unsubstantiated; or (B) due to
45 adjudicated findings of abuse or sexual misconduct.

46 (b) Before a school or contracted service provider may offer employment to an applicant
47 who would be employed by or work in a school in a position involving direct or regular contact
48 with children, the school or contracted service provider shall conduct a review of the
49 employment history of the applicant by contacting those employers listed by the applicant and
50 requesting the following information:

51 (1) The dates of employment of the applicant.

52 (2) A statement as to whether the applicant:

53 (i) was the subject of (A) an abuse or sexual misconduct investigation by any employer,
54 State licensing agency, law enforcement agency, unless such investigation resulted in a finding
55 that the allegations were false or inconclusive; or (B) an investigation of abuse under section
56 51A of chapter 119 in which the allegations of abuse against the applicant were substantiated by
57 the department of children and families and not subsequently unsubstantiated or overturned on
58 appeal.

59 (ii) was disciplined, discharged, non-renewed, asked to resign from employment,
60 resigned from or otherwise separated from any employment (A) while allegations of abuse or
61 sexual misconduct were pending or under investigation, unless the investigation resulted in a
62 finding that the allegations were false or inconclusive or, in the case of section 51A of chapter
63 119, unsubstantiated; or (B) due to an adjudication or findings of abuse or sexual misconduct; or

64 (iii) has ever had a license, professional license or certificate suspended, surrendered or
65 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
66 due to adjudicated findings of abuse or sexual misconduct.

67 (c) Before a school or contracted service provider may offer employment to an applicant
68 who would be employed by or in a school entity in a position involving regular contact with
69 children, the school entity or contracted service provider shall check the eligibility for
70 employment or certification status of the applicant to determine whether the applicant holds valid
71 and active certification appropriate for the position and is otherwise eligible for employment and
72 whether the applicant has been the subject of professional discipline.

73 (d) An applicant who provides false information or willfully fails to disclose material
74 required information shall be subject to discipline up to, and including, termination or denial of
75 employment and may be subject to professional discipline.

76 (e) No later than 120 days after receiving a request for information under subsection (b),
77 an employer that has or had an employment relationship with the applicant shall disclose the
78 information requested. The employer shall disclose the information on a standardized form
79 developed by the department of elementary and secondary education.

80 (f)(1) After reviewing the information initially disclosed under subsection (a)(2) and
81 finding an affirmative response to subsection (a)(2)(i), (ii) or (iii), or disclosed under section (b)
82 and finding an affirmative response to subsection (b)(2)(i), (ii) or (iii), where the prospective
83 employing school or contractor makes a determination to consider the applicant for employment,
84 the school or contractor shall request that former employers provide any additional material
85 information about the matters disclosed. The applicant shall provide written authorization that
86 consents to and authorizes disclosure by the applicant's current and former employers of said
87 additional material information.

88 (2) Former employers shall provide the additional information requested no later than 90
89 days after the prospective employer's request under this paragraph.

90 (3) Information received under this section shall not be deemed a public record for the
91 purposes of section 10 of chapter 66.

92 (4) A school that receives the information under this subsection shall use the information
93 solely for the purpose of evaluating an applicant's fitness to be hired or for continued
94 employment.

95 (g) A school or independent contractor may hire an applicant on a provisional basis for
96 no more than 90 days pending the school entity's or independent contractor's review of
97 information and records received under this section, provided that all of the following are
98 satisfied:

99 (1) the applicant has provided all of the information and supporting documentation
100 required;

101 (2) the school administrator has no knowledge of information pertaining to the applicant
102 that would disqualify the applicant from employment; and

103 (3) the applicant swears or affirms that the applicant is not disqualified from employment.

104 (h) A school or contractor may not enter into a collective bargaining agreement, an
105 employment contract, an agreement for resignation or termination, a severance agreement or any
106 other contract or agreement or take any action that interferes with the operation of section 51A of
107 chapter 119 or appropriate criminal authority. Any provision of an employment contract or
108 agreement for resignation or termination or a severance agreement that is executed, amended or
109 entered into after the effective date of this section and that is contrary to this section shall be
110 void.

111 (1) Any individual who is a school employee, contractor, or agent, or any State
112 educational agency or local educational agency, shall be prohibited from assisting a school
113 employee, contractor, or agent in obtaining a new job in another educational agency or school,
114 apart from the routine transmission of administrative and personnel files, if the individual or
115 agency knows, or has probable cause to believe, that such school employee, contractor, or agent
116 engaged in sexual misconduct regarding a minor or student in violation of the law.

117 (2) Exception- The requirements of subsection (a) shall not apply if the information
118 giving rise to probable cause:

119 (i) has been properly reported to a law enforcement agency with jurisdiction over the
120 alleged misconduct; and has been properly reported to any other authorities as required by
121 Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C.
122 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of
123 Federal Regulations, or any succeeding regulations; and

124 (ii) the matter has been officially closed or the prosecutor or police with jurisdiction over
125 the alleged misconduct has investigated the allegations and notified school officials that there is
126 insufficient information to establish probable cause that the school employee, contractor, or
127 agent engaged in sexual misconduct regarding a minor or student in violation of the law;

128 (iii) the school employee, contractor, or agent has been charged with, and acquitted or
129 otherwise exonerated of the alleged misconduct; or

130 (iv) the case or investigation remains open and there have been no charges filed against,
131 or indictment of, the school employee, contractor, or agent within 4 years of the date on which
132 the information was reported to a law enforcement agency.

133 (v)(A) For substitute employees, the employment history review required by this section
134 shall be required only prior to the initial hiring of a substitute or placement on the school entity's
135 approved substitute list and shall remain valid as long as the substitute continues to be employed
136 by the same school entity or remains on the school entity's approved substitute list.

137 (B) A substitute seeking to be added to another school entity's substitute list shall
138 undergo a new employment history review. The appearance of a substitute on one school entity's
139 substitute list does not relieve another school entity from compliance with this section.

140 (C) An employment history review conducted upon initial hiring of a substitute employee
141 by an contracted service provider, intermediate unit or any other entity that furnishes substitute
142 staffing services to school entities shall satisfy the requirements of this section for all school
143 entities using the services of that independent contractor, intermediate unit or other entity.

144 (D) A contracted service provider, intermediate unit or any other entity furnishing
145 substitute staffing services to school entities shall comply with the provisions of this Act.

146 (E) For purposes of this subsection, "substitute employee" shall not mean school bus
147 drivers employed by a contracted service provider.

148 (j)(1) For employees of contracted service providers, the employment history review
149 required by this section shall be performed either at the time of the initial hiring of the employee
150 or prior to the assignment of an existing employee to perform work for a school entity in a
151 position involving regular contact with children. The review shall remain valid as long as the
152 employee remains employed by that same contractor even though assigned to perform work for
153 other school entities.

154 (2) A contracted service provider shall maintain records documenting employment
155 history reviews for all employees as required by this section and, upon request, shall provide a
156 school entity for which an employee is assigned to perform work access to the records pertaining
157 to that employee.

158 (3) Prior to assigning an employee to perform work for a school in a position involving
159 regular contact with children, the contracted service provider shall inform the school of any
160 instance known to the contractor in which the employee:

161 (i) was the subject of any abuse or sexual misconduct investigation by any employer,
162 State licensing agency, law enforcement authority or child protective services agency, unless
163 such investigation resulted in a finding that allegations are false;

164 (ii) has ever been disciplined, discharged, non-renewed, removed from a substitute list,
165 asked to resign from employment, resigned from or otherwise separated from any employment
166 while allegations of abuse or sexual misconduct as described in subparagraph (i) were pending or
167 under investigation, or due to an adjudication or findings of abuse or sexual misconduct; or

168 (iii) has ever had a license, professional license or certificate suspended, surrendered or
169 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
170 due to an adjudication or findings of abuse or sexual misconduct.

171 (4) The independent contractor may not assign the employee to perform work for the
172 school in a position involving direct contact with children where the school objects to the
173 assignment after being informed of an instance of abuse or sexual misconduct.

174 (5) An applicant who has once undergone the employment history review required and
175 seeks to transfer to or provide services to another school in the same district, diocese or religious
176 judicatory or established and supervised by the same organization shall not be required to obtain
177 additional reports before making such transfer.

178 (k) (1) An employer, school, school administrator or independent contractor who in good
179 faith provides information or records including personnel records about a current or former
180 employee's job performance and professional conduct to a prospective school employer or to the
181 department of elementary and secondary education shall be immune from criminal and civil
182 liability for the disclosure or any consequences of the disclosure, unless the information or
183 records were provided with the knowledge that they were false or misleading. Such immunity
184 shall be in addition to and not in limitation of any other immunity provided by law or any
185 absolute or conditional privileges applicable to such disclosures by virtue of the circumstances or
186 the applicant's consent thereto.

187 (2) Except where the laws of other states prevent the release of the information or records
188 requested, or disclosure is restricted by the terms of a contract entered into prior to the effective
189 date of this section, the willful failure of a former employer, school entity, school administrator
190 or independent contractor to respond or provide the information and records as requested may
191 result in civil penalties, and professional discipline where appropriate.

192 (3) Notwithstanding any provision of law to the contrary, an employer, school, school
193 administrator, independent contractor or applicant shall report and disclose in accordance with
194 this section all relevant information, records and documentation that may otherwise be
195 confidential under section 10 of chapter 66.

196 (4) A school or independent contractor may not hire an applicant who does not provide
197 the information required under subsection (a)(2) for a position involving contact with children.

198 (l) Nothing in this section shall be construed:

199 (1) To prevent a prospective employer from conducting further investigations of
200 prospective employees or from requiring applicants to provide additional background
201 information or authorizations beyond what is required under this section, nor to prevent a former
202 employer from disclosing more information than what is required under this section.

203 (2) To relieve a school, school administrator or independent contractor of its legal
204 responsibility to report suspected incidents of abuse in accordance with the provisions of section
205 51A of chapter 119 or misconduct by a licensed educator in accordance with the reporting
206 requirements of the department of elementary and secondary education.

207 (3) To relieve a school, school administrator or independent contractor of its legal
208 responsibility to report suspected incidents of professional misconduct in accordance with
209 chapter 119, section 51A or misconduct by a licensed educator in accordance with the reporting
210 requirements of the department of elementary and secondary education.

211 (4) To prohibit the right of the exclusive representative pursuant to chapter 150E to
212 challenge the validity of an employee's termination or discipline under a collective bargaining
213 agreement or any relevant statute

214 (m)(1) The office of the attorney general shall have jurisdiction to determine willful
215 violations of this section and may, following a hearing, assess a civil penalty not to exceed ten
216 thousand dollars (\$10,000). School entities shall be barred from contracting with an independent
217 contractor who is found to have willfully violated the provisions of this section. Willful
218 violations of the provisions of this section shall be reported to the relevant licensing authority.

219 (2) Notwithstanding any other provision of law to the contrary, the department of
220 elementary and secondary education shall report all willful violations of the provisions of these

221 sections to the National Association of State Directors of Teacher Education and Certification
222 Clearinghouse or any national databases serving the same purpose, all information required for
223 participation in such a clearinghouse.

224 (3) The Department of Education shall notify each school district and school about the
225 provisions of this act to ensure applicants and employers are aware of their respective rights and
226 responsibilities under this act. The department shall develop standardized forms for applicants
227 and employers to use to comply with the requirements of subsection (a) of this act, as well as any
228 other informational materials that may assist applicants and employers in the implementation of
229 and compliance with this act.

230 (4) The board of education may promulgate regulations for implementation and
231 enforcement of this chapter. Upon release of the proposed regulations, the board shall file a copy
232 of the regulations with the clerks of the house of representatives and the senate, who shall
233 forward the regulations to the joint committee on education. Within 30 days of the filing, the
234 committee may hold a public hearing and issue a report on the regulations and file the report
235 with the board. The board, pursuant to applicable law, may adopt final regulations making
236 revisions to the proposed regulations as it deems appropriate after consideration of the report and
237 shall file a copy of the final regulations with the chairpersons of the joint committee on education
238 and, not earlier than 30 days after the filing, the board shall file the final regulations with the
239 state secretary.

240 (5) No employer shall be liable for injury, loss of property, personal injury or death
241 caused by an act or omission of a public employee while acting in the scope of the public

242 employee's employment and arising out of the implementation of this chapter. This chapter shall
243 not be construed as creating or imposing a specific duty of care.