

HOUSE BILL NO. 485

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Garrett)

A BILL to amend and reenact §§ 22.1-296.1, 22.1-296.2, and 22.1-296.4 of the Code of Virginia, relating to school boards; employee background checks and applications.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-296.1, 22.1-296.2, and 22.1-296.4 of the Code of Virginia are amended and reenacted as follows:**

**§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required; penalty.**

A. As a condition of employment for all of its public school employees, whether ~~full-time~~ (i) the position is full time or ~~part-time~~, part time; permanent, or temporary; or in-person, remote, or some combination thereof or (ii) the employee is fully licensed, provisionally licensed, or unlicensed, every school board shall require on its application for employment certification of whether the applicant has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse, or rape of a child, or the solicitation of any such offense; or any crime of moral turpitude. Any individual making a materially false statement regarding any such offense is guilty of a Class 1 misdemeanor and, in the case of a teacher, upon conviction, the fact of such conviction is grounds for the Board to revoke his license to teach.

B. No school board shall employ any individual who has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 or any offense involving the sexual molestation ~~of~~, physical or sexual abuse, or rape of a child, or the solicitation of any such offense.

C. Any school board may employ any individual who has been convicted of any felony or crime of moral turpitude that is not set forth in the definition of barrier crime in subsection A of § 19.2-392.02

27 and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, or the solicitation  
28 of any such offense, provided that in the case of a felony conviction, such individual has had his civil  
29 rights restored by the Governor.

30 D. Every school board shall also require on its application for employment, as a condition of  
31 employment requiring direct contact with students, whether ~~full-time~~ (i) the position is full time or part-  
32 time, part time; permanent, or temporary; or in-person, remote, or some combination thereof or (ii) the  
33 employee is fully licensed, provisionally licensed, or unlicensed, certification that the applicant has not  
34 been the subject of a founded case of child abuse and neglect. Any person making a materially false  
35 statement regarding a finding of child abuse and neglect is guilty of a Class 1 misdemeanor and upon  
36 conviction, the fact of such conviction is grounds for the Board to revoke such person's license to teach.

37 E. As a condition of awarding a contract for the provision of services that require the contractor or  
38 his employees to have direct contact with students through the provision of synchronous virtual instruction  
39 or on school property during regular school hours or during school-sponsored activities, the school board  
40 shall require the contractor to provide certification of whether any individual who will provide such  
41 services has been convicted of any violent felony set forth in the definition of barrier crime in subsection  
42 A of § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse, or rape of a  
43 child, or the solicitation of any such offense; or any crime of moral turpitude.

44 Any individual making a materially false statement regarding any such offense is guilty of a Class  
45 1 misdemeanor and, upon conviction, the fact of such conviction is grounds for the revocation of the  
46 contract to provide such services and, when relevant, the revocation of any license required to provide  
47 such services. School boards shall not be liable for materially false statements regarding the certifications  
48 required by this subsection.

49 This subsection shall not apply to a contractor or his employees providing services to a school  
50 division in an emergency or exceptional situation, such as when student health or safety is endangered or  
51 when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it  
52 is reasonably anticipated that the contractor or his employees will have no direct contact with students.

53 F. No school board shall award a contract for the provision of services that require the contractor  
54 or his employees to have direct contact with students through the provision of synchronous virtual  
55 instruction or on school property during regular school hours or during school-sponsored activities when  
56 any individual who provides such services has been convicted of any violent felony set forth in the  
57 definition of barrier crime in subsection A of § 19.2-392.02 or any offense involving the sexual  
58 molestation, physical or sexual abuse, or rape of a child, or the solicitation of any such offense.

59 G. Any school board may award a contract for the provision of services that require the contractor  
60 or his employees to have direct contact with students on school property during regular school hours or  
61 during school-sponsored activities when any individual who provides such services has been convicted of  
62 any felony or crime of moral turpitude that is not set forth in the definition of barrier crime in subsection  
63 A of § 19.2-392.02 and does not involve the sexual molestation, physical or sexual abuse, or rape of a  
64 child, or the solicitation of any such offense, provided that in the case of a felony conviction, such  
65 individual has had his civil rights restored by the Governor.

66 H. For the purposes of this section, "school board" includes the Board of Visitors of the Virginia  
67 School for the Deaf and the Blind, which, for the purpose of receiving criminal history record information  
68 pertaining to an application for employment from the Central Criminal Records Exchange, shall be a  
69 governmental entity.

70 **§ 22.1-296.2. Fingerprinting required; reciprocity permitted; participation in Virginia**  
71 **Record of Arrest and Prosecution (Rap) Back Service required.**

72 A. As a condition of employment, the school boards of the Commonwealth shall require any  
73 applicant who is offered or accepts employment, whether (i) the position is full time or part time~~or~~;  
74 permanent or temporary; or in-person, remote, or some combination thereof or (ii) the employee is fully  
75 licensed, provisionally licensed, or unlicensed, to submit to fingerprinting and to provide personal  
76 descriptive information to be forwarded along with the applicant's fingerprints through the Central  
77 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal  
78 history record information regarding such applicant. The school board may ~~(+)~~ (a) pay for all or a portion

79 of the cost of the fingerprinting or criminal records check or ~~(ii)~~ (b) in its discretion, require the applicant  
80 to pay for all or a portion of the cost of such fingerprinting or criminal records check.

81 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that  
82 no record exists, shall report to the school board, which shall be a governmental entity, whether or not the  
83 applicant has ever been convicted of a felony or a Class 1 misdemeanor or an equivalent offense in another  
84 state.

85 To conserve the costs of conducting criminal history record checks to applicants and school boards,  
86 upon the written request and permission of the applicant, a school board shall inform another school board  
87 with which reciprocity has been established, and to which the applicant also has applied for employment,  
88 of the results of the criminal history record information conducted within the previous 90 days that it  
89 obtained concerning the applicant. Criminal history record information pertaining to an applicant for  
90 employment by a school board shall be exchanged only between school boards in the Commonwealth in  
91 which a current agreement of reciprocity for the exchange of such information has been established and  
92 is in effect. Reciprocity agreements between school boards shall provide for the apportionment of the costs  
93 of the fingerprinting or criminal records check between the applicant and the school board, as prescribed  
94 in this section. However, school boards that enter into reciprocity agreements shall not each levy the costs  
95 of the fingerprinting or criminal records check on the applicant.

96 B. The division superintendent shall inform the relevant school board of any notification of arrest  
97 of a school board employee received pursuant to § 19.2-83.1. The school board shall require such  
98 employee, whether (i) the position is full time or part time; ~~or~~ permanent or temporary; ~~or in-person,~~  
99 remote, or some combination thereof or (ii) the employee is fully licensed, provisionally licensed, or  
100 unlicensed, to submit to fingerprinting and to provide personal descriptive information to be forwarded  
101 along with the employee's fingerprints through the Central Criminal Records Exchange to the Federal  
102 Bureau of Investigation for the purpose of obtaining criminal history record information regarding such  
103 employee. The school board may ~~(i)~~ (a) pay for all or a portion of the cost of the fingerprinting or criminal  
104 records check or (ii) in its discretion, require the applicant to pay for all or a portion of the cost of such  
105 fingerprinting or criminal records check.

106 The Central Criminal Records Exchange, upon receipt of an employee's record or notification that  
107 no record exists, shall report to the school board whether or not the employee has been convicted of any  
108 of the offenses listed in subsection A. The contents of the employee's record shall be used by the school  
109 board solely to implement the provisions of §§ 22.1-307 and 22.1-315.

110 C. The Central Criminal Records Exchange shall not disclose information to the school board  
111 regarding charges or convictions of any crimes not specified in this section. If an applicant is denied  
112 employment or a current employee is suspended or dismissed because of information appearing on his  
113 criminal history record, the school board shall provide a copy of the information obtained from the Central  
114 Criminal Records Exchange to the applicant or employee. The information provided to the school board  
115 shall not be disseminated except as provided in this section.

116 D. Each school board shall participate in the Virginia Record of Arrest and Prosecution (Rap) Back  
117 Service established pursuant to § 52-46 for each individual that it employs and shall determine the manner  
118 in which the per-individual fee for such service is apportioned between the school board and such  
119 employees.

120 E. For the purposes of this section, "school board" includes the Board of Visitors of the Virginia  
121 School for the Deaf and the Blind, which, for the purpose of receiving criminal history record information  
122 pertaining to an application for employment from the Central Criminal Records Exchange, shall be a  
123 governmental entity.

124 **§ 22.1-296.4. Child abuse and neglect data required.**

125 A. Every school board and every governing board or administrator of a private school accredited  
126 pursuant to § 22.1-19 shall require, as a condition of employment, that any applicant who is offered or  
127 accepts employment requiring direct contact with students, whether ~~full-time~~ (i) the position is full time  
128 ~~or part-time, part time, permanent or temporary,; or in-person, remote, or some combination thereof~~ or (ii)  
129 the employee is fully licensed, provisionally licensed, or unlicensed, provide written consent and the  
130 necessary personal information for the school board, governing board, or administrator to obtain a search  
131 of the registry of founded complaints of child abuse and neglect maintained by the Department of Social  
132 Services pursuant to § 63.2-1515. The school board, governing board, or administrator shall ensure that

133 all such searches are requested in conformance with the regulations of the Board of Social Services. In  
134 addition, where the applicant has resided in another state within the last five years, the school board,  
135 governing board, or administrator shall require as a condition of employment that such applicant provide  
136 written consent and the necessary personal information for the school board, governing board, or  
137 administrator to obtain information from each relevant state as to whether the applicant was the subject of  
138 a founded complaint of child abuse and neglect in such state. The school board, governing board or  
139 administrator shall take reasonable steps to determine whether the applicant was the subject of a founded  
140 complaint of child abuse and neglect in the relevant state. The Department of Social Services shall  
141 maintain a database of central child abuse and neglect registries in other states that provide access to out-  
142 of-state school boards, for use by local school boards, governing boards, and administrators. The applicant  
143 may be required to pay the cost of any search conducted pursuant to this subsection at the discretion of  
144 the school board, governing board, or administrator. From such funds as may be available for this purpose,  
145 however, the school board or the governing board or administrator may pay for the search.

146         The Department of Social Services shall respond to such request by the school board, governing  
147 board, or administrator in cases where there is no match within the central registry regarding applicants  
148 for employment within 10 business days of receipt of such request. In cases where there is a match within  
149 the central registry regarding applicants for employment, the Department of Social Services shall respond  
150 to such request by the school board, governing board, or administrator within 30 business days of receipt  
151 of such request. The request and response may be sent electronically or by first-class mail or facsimile  
152 transmission.

153         B. If the response obtained pursuant to subsection A indicates that the applicant is the subject of a  
154 founded case of child abuse and neglect, such applicant shall be denied employment or the employment  
155 shall be rescinded.

156         C. If an applicant is denied employment because of information appearing on his record in the  
157 registry, the school board, governing board, or administrator shall provide a copy of the information  
158 obtained from the registry to the applicant. The information provided to the school board, governing board,

**159** or administrator by the Department of Social Services shall be confidential and shall not be disseminated  
**160** by the school board, governing board, or administrator.

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