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For An Act To Be Entitled

9 "AN ACT TO AMEND ARK. CODE ANN. §§ 6-17-405 AND 6-17-410 TO
10 LIST ADDITIONAL CRIMINAL OFFENSES AS GROUNDS FOR THE
11 REVOCATION OF A LICENSE ISSUED BY THE STATE BOARD OF
12 EDUCATION AND TO REQUIRE MANDATORY SANCTIONS FOR LOCAL
13 SCHOOL DISTRICTS THAT FAIL TO REPORT EMPLOYEES OR FORMER
14 EMPLOYEES WHO MAY BE SUBJECT TO LICENSE REVOCATION AND TO
15 REQUIRE CRIMINAL RECORD CHECKS FOR APPLICANTS SEEKING
16 RENEWAL OF A LICENSE ISSUED BY THE STATE BOARD OF
17 EDUCATION; TO AMEND ARK. CODE ANN. § 6-17-407 TO REQUIRE
18 *SUPERINTENDENTS* TO INVESTIGATE ALLEGATIONS OF EMPLOYEE
19 CRIMINAL MISCONDUCT INVOLVING STUDENTS; TO REQUIRE
20 APPLICANTS HOLDING A LICENSE ISSUED BY THE STATE BOARD OF
21 EDUCATION TO FURNISH RESULTS OF A RECENT CRIMINAL RECORDS
22 CHECK AS A CONDITION FOR *INITIAL* EMPLOYMENT IN LOCAL
23 SCHOOL DISTRICTS; TO DECLARE AN EMERGENCY; AND FOR OTHER
24 PURPOSES."

25

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Subtitle

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"PERTAINING TO CRIMINAL RECORDS CHECKS
28 FOR PUBLIC SCHOOL TEACHERS AND
29 ADMINISTRATORS."

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31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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33 SECTION 1. Arkansas Code Annotated § 6-17-405 is amended to read as
34 follows:

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"6-17-405. License revocation generally.

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(a) The State Board of Education shall revoke the license of any person

1 who has pleaded guilty or nolo contendere to, or been found guilty of, any of
2 the following offenses by any court in the State of Arkansas or of any similar
3 offense by a court in another state or of any similar offense by a federal
4 court, but only after an opportunity for a hearing before the State Board of
5 Education upon reasonable notice in writing:

- 6 (1) Capital murder, as prohibited in § 5-10-101;
- 7 (2) Murder in the first degree and second degree, as prohibited
8 in §§ 5-10-102 and 5-10-103;
- 9 (3) Manslaughter, as prohibited in § 5-10-104;
- 10 (4) Battery in the first degree and second degree, as prohibited
11 in §§ 5-13-201 and 5-13-202;
- 12 (5) Aggravated assault, as prohibited in § 5-13-204;
- 13 (6) Terroristic threatening in the first degree, as prohibited in
14 § 5-13-301;
- 15 (7) Kidnapping, as prohibited in § 5-11-102;
- 16 (8) Rape and carnal abuse in the first degree and second degree,
17 as prohibited in §§ 5-14-103 - 5-14-105;
- 18 (9) Sexual abuse in the first degree and second degree, as
19 prohibited in §§ 5-14-108 and 5-14-109;
- 20 (10) Violation of a minor in the first degree and second degree,
21 as prohibited in §§ 5-14-120 and 5-14-121;
- 22 (11) Incest, as prohibited in § 5-26-202;
- 23 (12) Engaging children in sexually explicit conduct for use in
24 visual or print media, transportation of minors for prohibited sexual conduct,
25 or use of a child or consent to use of a child in a sexual performance by
26 producing, directing, or promoting a sexual performance by a child, as
27 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 28 (13) Distribution to minors, as prohibited in § 5-64-406;
- 29 (14) Manufacture, deliver, or possess with intent to manufacture
30 or deliver any controlled substance, as prohibited in § 5-64-401;
- 31 (15) Criminal attempt, criminal solicitation, or criminal
32 conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to
33 commit any of the offenses listed in this subsection;
- 34 (16) Carnal abuse in the third degree as prohibited in
35 § 5-14-106;
- 36 (17) Sexual solicitation of a child as prohibited in § 5-14-110;

1 (18) Endangering the welfare of a minor in the first degree as
2 prohibited in § 5-27-203;

3 (19) Pandering or possessing visual or print medium depicting
4 sexually explicit conduct involving a child as prohibited by § 5-27-304;

5 (20) False imprisonment in the first degree as prohibited in
6 § 5-11-103;

7 (21) Permanent detention or restraint as prohibited in
8 § 5-11-106;

9 (22) Permitting child abuse as prohibited in subdivisions (a)(1)
10 and (a)(3) of § 5-27-221;

11 (23) Negligent homicide as prohibited by § 5-10-105(a);

12 (24) Assault in the first degree as prohibited by § 5-13-205;

13 (25) Coercion as prohibited by § 5-13-208;

14 (26) Sexual misconduct as prohibited by § 5-14-107;

15 (27) Public sexual indecency as prohibited by § 5-14-111;

16 (28) Indecent exposure as prohibited by § 5-14-112; and

17 (29) Endangering the welfare of a minor in the second degree as
18 prohibited by § 5-27-204.

19 (b)(1) The State Board of Education may revoke or suspend the license
20 of any person holding such a license for cause , but only after an opportunity
21 for a hearing before the State Board of Education upon reasonable notice in
22 writing of the cause to be considered.

23 (2) Cause , for the purposes of this subsection, means any of the
24 following:

25 (A) Pleading guilty or nolo contendere to, or being found
26 guilty of, a felony not listed in subsection (a) of this section;

27 (B) *Pleading guilty or nolo contendere to or being found*
28 *guilty of a non-felony negligent homicide or a misdemeanor involving physical*
29 *mistreatment or abuse against a child and not listed in subsection (a) of this*
30 *section.*

31 (C) Holding a license obtained by fraudulent means;

32 (D) Revocation of a license in another state;

33 (E) Intentionally compromising the validity or security of
34 any student test or testing program administered by or required by the
35 Department of Education;

36 (F) Knowingly submitting, through the superintendent or

1 directly to the Department of Education, falsified information which is
2 requested or required by the Department of Education; or

3 (G) Having an expunged conviction for any sexual offense committed
4 against a child.

5 (3) For purposes of this subsection, child means a person
6 enrolled in the public schools of the State of Arkansas.

7 (c)(1) The local board of directors of each school district shall
8 report to the State Board of Education the name of any person holding a
9 license issued by the State Board of Education and currently employed, or
10 employed during the two (2) previous school years, by the local school
11 district who:

12 (A) Has pleaded guilty or nolo contendere to, or been found
13 guilty of a felony or any misdemeanor listed in subsection (a) of this
14 section;

15 (B) Holds such license obtained by fraudulent means;

16 (C) Has had a similar license revoked in another state;

17 (D) Has intentionally compromised the validity or security
18 of any student test or testing program administered or required by the
19 Department of Education; or

20 (E) Has knowingly submitted falsified information requested
21 or required by the Department of Education.

22 (2) Willful failure of a local school district to report such
23 information as required by this subsection shall result in sanctions imposed
24 by the State Board of Education including, but not limited to, the withholding
25 of state aid from funds distributed to the district by the Department of
26 Education.

27 (d) For cause as stated above, the State Board of Education is
28 authorized to:

29 (1) Revoke a license permanently;

30 (2) Suspend a license for a terminable period of time;

31 (3) Place a person on probationary status for a terminable period
32 of time, with the license to be revoked or suspended if the probationary
33 period is not successfully completed; or

34 (4) Accept voluntary surrender of a license.

35 (e) Upon notice in writing that a revocation, suspension, or probation
36 is being sought by the State Board of Education for a cause set forth herein,

1 a person may:

2 (1) Voluntarily surrender the license;

3 (2) Decline to answer the notice, in which case a hearing will be
4 held before the State Board of Education to establish by a preponderance of
5 the evidence that cause for the proposed action exists;

6 (3) Contest the complaint, in which case the person shall be
7 given an evidentiary hearing before the State Board of Education if one is
8 requested;

9 (4) Admit the allegations of fact and request an informal hearing
10 before the State Board of Education in mitigation of any penalty which may be
11 assessed; or

12 (5) Stipulate or reach a negotiated agreement, which must be
13 approved by the State Board of Education.

14 (f) The State Board of Education shall adopt the necessary rules and
15 regulations to fully implement the provisions of this section."

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17 SECTION 2. Arkansas Code Annotated § 6-17-410 is amended to read as
18 follows:

19 "6-17-410. First-time applicants and applicants for license renewal.

20 (a)(1)(A)(i) Each first-time applicant for a license issued by the
21 State Board of Education and each applicant for *his or her first* license
22 renewal *on or after July 1, 1997*, shall be required to apply to the
23 Identification Bureau of the Department of Arkansas State Police for a state
24 and nationwide criminal records check, to be conducted by the Federal Bureau
25 of Investigation.

26 (ii) The check shall conform to the applicable
27 federal standards and shall include the taking of fingerprints.

28 (B) *Such applicant shall sign a release of information to*
29 *the Department of Education and shall be responsible to the Department of*
30 *Arkansas State Police for the payment of any fee associated with the criminal*
31 *records check. The Department of Education shall be responsible to the*
32 *Department of Arkansas State Police for the payment of any fee associated with*
33 *the criminal record's check at the time of license renewal. Funding for such*
34 *fees shall come from the Public School Fund.*

35 (2) Upon completion of the criminal records check, the
36 Identification Bureau of the Department of Arkansas State Police shall forward

1 all information obtained concerning the applicant in the commission of any
2 offense listed in subsection (c) of this section to the Department of
3 Education.

4 (3) At the conclusion of any background check required by this
5 subsection, the Identification Bureau of the Department of Arkansas State
6 Police shall promptly destroy the fingerprint card of the applicant.

7 (b)(1) The State Board of Education is authorized to issue a six-month
8 nonrenewable letter of provisional eligibility for licensure to a first-time
9 applicant pending the results of the criminal records check.

10 (2) Upon receipt of information from the Identification Bureau of
11 the Department of Arkansas State Police that the person holding such letter of
12 provisional eligibility for licensure has pleaded guilty or nolo contendere
13 to, or been found guilty of, any offense listed in subsection (c) of this
14 section, the State Board of Education shall immediately revoke the provisional
15 eligibility.

16 (c) No person shall be eligible to receive or hold a license issued by
17 the State Board of Education if that person has pleaded guilty or nolo
18 contendere to, or been found guilty of, any of the following offenses by any
19 court in the State of Arkansas or of any similar offense by a court in another
20 state or of any similar offense by a federal court:

21 (1) Capital murder, as prohibited in § 5-10-101;

22 (2) Murder in the first degree and second degree, as prohibited
23 in §§ 5-10-102 and 5-10-103;

24 (3) Manslaughter, as prohibited in § 5-10-104;

25 (4) Battery in the first degree and second degree, as prohibited
26 in §§ 5-13-201 and 5-13-202;

27 (5) Aggravated assault, as prohibited in § 5-13-204;

28 (6) Terroristic threatening in the first degree, as prohibited in
29 § 5-13-301;

30 (7) Kidnapping, as prohibited in § 5-11-102;

31 (8) Rape and carnal abuse in the first degree and second degree,
32 as prohibited in §§ 5-14-103 - 5-14-105;

33 (9) Sexual abuse in the first degree and second degree, as
34 prohibited in §§ 5-14-108 and 5-14-109;

35 (10) Violation of a minor in the first degree and second degree,
36 as prohibited in §§ 5-14-120 and 5-14-121;

- 1 (11) Incest, as prohibited in § 5-26-202;
- 2 (12) Engaging children in sexually explicit conduct for use in
3 visual or print media, transportation of minors for prohibited sexual conduct,
4 or use of a child or consent to use of a child in a sexual performance by
5 producing, directing, or promoting a sexual performance by a child, as
6 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 7 (13) Distribution to minors, as prohibited in § 5-64-406;
- 8 (14) Manufacture, deliver, or possess with intent to manufacture
9 or deliver any controlled substance, as prohibited in § 5-64-401;
- 10 (15) Criminal attempt, criminal solicitation, or criminal
11 conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to
12 commit any of the offenses listed in this subsection;
- 13 (16) Carnal abuse in the third degree as prohibited in
14 § 5-14-106;
- 15 (17) Sexual solicitation of a child as prohibited in § 5-14-110;
- 16 (18) Endangering the welfare of a minor in the first degree as
17 prohibited in § 5-27-203;
- 18 (19) Pandering or possessing visual or print medium depicting
19 sexually explicit conduct involving a child as prohibited by § 5-27-304;
- 20 (20) False imprisonment in the first degree as prohibited in
21 § 5-11-103;
- 22 (21) Permanent detention or restraint as prohibited in
23 § 5-11-106;
- 24 (22) Permitting child abuse as prohibited in subdivisions (a)(1)
25 and (a)(3) of § 5-27-221;
- 26 (23) Negligent homicide as prohibited by § 5-10-105(a);
- 27 (24) Assault in the first degree as prohibited by § 5-13-205;
- 28 (25) Coercion as prohibited by § 5-13-208;
- 29 (26) Sexual misconduct as prohibited by § 5-14-107;
- 30 (27) Public sexual indecency as prohibited by § 5-14-111;
- 31 (28) Indecent exposure as prohibited by § 5-14-112; and
- 32 (29) Endangering the welfare of a minor in the second degree as
33 prohibited by § 5-27-204.
- 34 (d)(1) The provisions of subsection (c) of this section, and those of
35 § 6-17-405(a), may be waived by the State Board of Education upon request by:
- 36 (A) The board of a local school district;

- 1 (B) An affected applicant for licensure; or
- 2 (C) The person holding a license subject to revocation.

3 (2) Circumstances for which a waiver may be granted shall
4 include, but not be limited to, the following:

- 5 (A) The age at which the crime was committed;
- 6 (B) The circumstances surrounding the crime;
- 7 (C) The length of time since the crime;
- 8 (D) Subsequent work history;
- 9 (E) Employment references;
- 10 (F) Character references; and
- 11 (G) Other evidence demonstrating that the applicant does
12 not pose a threat to the health or safety of school children or school
13 personnel.

14 (e)(1) Any information received by the Department of Education from the
15 Identification Bureau of the Department of Arkansas State Police pursuant to
16 subsection (a) of this section shall not be available for examination except
17 by the affected applicant for licensure or his duly authorized representative,
18 and no record, file, or document shall be removed from the custody of the
19 department.

20 (2) Any information made available to the affected applicant for
21 licensure or the person whose license is subject to revocation shall be
22 information pertaining to that applicant only.

23 (3) Rights of privilege and confidentiality established herein
24 shall not extend to any document created for purposes other than this
25 background check.

26 (f) The State Board of Education shall adopt the necessary rules and
27 regulations to fully implement the provisions of this section."

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29 SECTION 3. Title 6, Chapter 17, Subchapter 4 of the Arkansas Code
30 Annotated is amended by adding a new section to read as follows:

31 *"6-17-411. Criminal records check as a condition for initial employment*
32 *of certified personnel.*

33 (a)(1) *On and after the effective date of this section, the board of*
34 *directors of a local school district shall require, as a condition for initial*
35 *employment by the district, any person holding a license issued by the State*
36 *Board of Education and making such application to authorize release to the*

1 Department of Education the results of a state and nationwide criminal records
2 check by the Identification Bureau of the Department of Arkansas State Police,
3 which conforms to the applicable federal standards and includes the taking of
4 the applicant's fingerprints.

5 (2) Unless the employing school district board of directors has taken
6 action to pay for the cost of criminal background checks required by this
7 section, the employment applicant shall be responsible to the Department of
8 Arkansas State Police for the payment of any fee associated with the criminal
9 records check.

10 (3) At the conclusion of the criminal records check required by this
11 section, the Identification Bureau of the Department of Arkansas State Police
12 shall promptly destroy the fingerprint card of the affected applicant.

13 (4)(A) Any information received by the Department of Education from the
14 Identification Bureau of the Department of Arkansas State Police pursuant to
15 this section shall not be available for examination except by the affected
16 applicant for employment or his duly authorized representative, and no record,
17 file, or document shall be removed from the custody of the department.

18 (B) Any information made available to the affected applicant for
19 employment shall be information pertaining to that applicant only.

20 (C) Rights of privilege and confidentiality established herein
21 shall not extend to any document created for purposes other than this
22 background check.

23 (D) The Department of Education shall promptly inform the board
24 of directors of the local school district whether or not the affected
25 applicant is eligible for employment as provided by subsection (b) of this
26 section.

27 (b)(1) No person holding a license by the State Board of Education
28 shall be eligible for employment by a local school district if the results of
29 the criminal records check released to the Department of Education by the
30 applicant reveal that the applicant has pleaded guilty or nolo contendere to,
31 or been found guilty of any offense that will or may result in license
32 revocation by the State Board of Education under §§ 6-17-405 and 6-17-410.

33 (2) Provided, however, that the board of directors of a local
34 school district is authorized to offer provisional employment to the affected
35 applicant pending receipt of eligibility information from the Department of
36 Education.

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SECTION 4. Arkansas Code Annotated § 6-17-407 is amended to read as follows:

"6-17-407. License revocation - Falsifying attendance records - Investigating allegations of employee criminal misconduct.

(a)(1) The State Board of Education is directed to revoke the license of any person in this state who knowingly falsifies any attendance records kept by him that are used in computing the average daily attendance or average daily membership of the school district in which the person is employed, and the State Board of Education is directed to revoke the license of any superintendent of schools who knowingly permits or requires any person to falsify such attendance records.

(2) Any person or superintendent of schools whose license is revoked as provided in this subsection shall not thereafter be eligible to receive a license to teach in this state.

(b)(1) The superintendent of schools shall be responsible for investigating and documenting allegations of criminal misconduct which may be carried out by his designee, as delineated in § 6-17-405, by a school district employee and involving a student or students. Such investigation may be conducted by the superintendent's designee.

(2) If the superintendent finds no basis for allegations of criminal misconduct, he shall not be required to place any documents relative to such allegations or the subsequent investigation in the employee's personnel file.

(3) Results of any such investigation shall not be available for examination except by the employee or his duly authorized representative or the office of the prosecuting attorney.

(4) Failure to comply with the requirements of this subsection shall be a Class C misdemeanor.

SECTION 5. *Employees, whether new or existing, who have a contract with or work for more than one school district in one (1) year shall be required to have only one criminal background check to satisfy the requirements of all employing school districts for that year.*

SECTION 6. All provisions of this act of a general and permanent nature

1 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
2 Revision Commission shall incorporate the same in the Code.

3

4 SECTION 7. If any provisions of this act or the application thereof to
5 any person or circumstances is held invalid, such invalidity shall not affect
6 other provisions or applications of the act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 act are declared to be severable.

9

10 SECTION 8. All laws and parts of laws in conflict with this act are
11 hereby repealed.

12

13 SECTION 9. EMERGENCY. It is found and determined by the General
14 Assembly of the State of Arkansas that Arkansas public school students and
15 their parents or guardians should be secure in the knowledge that certified
16 personnel employed by the local school district do not have criminal records
17 and are not a potential threat to the safety of the students; and that an
18 increasing number of incidents are occurring where certified personnel
19 employed by local school districts are abusing students entrusted into the
20 care of the school district; and that in some cases these incidents could have
21 been avoided had the personnel been subjected to a criminal records check. It
22 is further found and determined that, in some instances, allegations of
23 employee criminal misconduct involving students are not being investigated by
24 those persons charged with administration of local school districts.
25 Therefore, an emergency is declared to exist and this act being immediately
26 necessary for the preservation of the public peace, health and safety shall
27 become effective on the date of its approval by the Governor. If the bill is
28 neither approved nor vetoed by the Governor, it shall become effective on the
29 expiration of the period of time during which the Governor may veto the bill.
30 If the bill is vetoed by the Governor and the veto is overridden, it shall
31 become effective on the date the last house overrides the veto.

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/s/Rep. Ingram

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APPROVED:4-10-97

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