

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Owens**

A Bill

ACT 1310 OF 1995
HOUSE BILL 2163

For An Act To Be Entitled

8 "AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS OF PERSONS
9 APPLYING FOR A LICENSE ISSUED BY THE STATE BOARD OF
10 EDUCATION; AND FOR OTHER PURPOSES."

Subtitle

13 "TO REQUIRE CRIMINAL BACKGROUND CHECKS
14 OF PERSONS APPLYING FOR A LICENSE ISSUED
15 BY THE STATE BOARD OF EDUCATION."

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

19 SECTION 1. (a) (1) On and after July 1, 1996, each *first-time* applicant
20 for a license issued by the State Board of Education shall be required to
21 apply to the Identification Bureau of the Arkansas State Police for a *state*
22 and nationwide criminal records check, to be conducted by the Federal Bureau
23 of Investigation. The check shall conform to the applicable federal standards
24 and shall include the taking of fingerprints. Such applicant shall sign a
25 release of information to the State Department of Education and shall be
26 responsible to the *Arkansas State Police* for the payment of any fee associated
27 with the criminal records check.

28 (2) Upon completion of the criminal records check, the Identification
29 Bureau of the Arkansas State Police shall forward all information obtained
30 concerning the applicant *in the commission of any offense listed in subsection*
31 *(c) of this section* to the State Department of Education.

32 (3) At the conclusion of any background check required by this
33 subsection, the Identification Bureau of the Arkansas State Police shall
34 promptly destroy the fingerprint card of the applicant.

35 (b) (1) The State Board of Education is authorized to issue a six-month
36 nonrenewable *letter of provisional eligibility for licensure to a first-time*

1 applicant pending the results of the criminal records check.

2 (2) Upon receipt of information from the Identification Bureau of
3 the Arkansas State Police that the person holding such *letter of provisional*
4 *eligibility for licensure* has pleaded guilty, nolo contendere, or been found
5 guilty of any offense listed in subsection (c) of this section, the State
6 Board of Education shall immediately revoke the provisional *eligibility*.

7 (c) No person shall be eligible to receive or hold a license issued by
8 the State Board of Education if that person has pleaded guilty, nolo
9 contendere, or been found guilty of any of the following offenses by any court
10 in the state of Arkansas or of any similar offense by a court in another
11 state:

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

13 (2) Murder in the first and second degrees as prohibited in §§ 5-
14 10-102 and 5-10-103;

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

16 (4) Battery in the first and second degrees as prohibited in §§
17 5-13-201 and 5-13-202;

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

19 (6) Terroristic threatening in the first degree as prohibited in
20 § 5-13-301;

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

22 (8) Rape and carnal abuse in the first and second degrees as
23 prohibited in §§ 5-14-103 *through* 5-14-105;

24 (9) Sexual abuse in the first and second degrees as prohibited in
25 §§ 5-14-108 and 5-14-109;

26 (10) Violation of a minor in the first and second degrees as
27 prohibited in §§ 5-14-120 and 5-14-121;

28 (11) Incest as prohibited in § 5-26-202;

29 (12) Engaging children in sexually explicit conduct for use in
30 visual or print media, transportation of minors for prohibited sexual conduct,
31 or use of a child or consent to use of a child in a sexual performance by
32 producing, directing, or promoting a sexual performance by a child as
33 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

34 (13) Criminal attempt, criminal solicitation, or criminal
35 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to

1 commit any of the offenses listed in this subsection;

2 (14) Distribution to minors as prohibited in § 5-64-406;

3 (15) Manufacture, deliver or possess with intent to manufacture or
4 deliver any controlled substance as prohibited in § 5-64-401.

5 (d) *The provisions of subsection (c) of this section, and those of § 6-*
6 *17-405(a), may be waived by the State Board of Education upon request by the*
7 *board of a local school district, an affected applicant for licensure, or the*
8 *person holding a license subject to revocation. Circumstances for which a*
9 *waiver may be granted shall include, but not be limited to, the following:*

10 (1) *Age at which the crime was committed;*

11 (2) *Circumstances surrounding the crime;*

12 (3) *Length of time since the crime;*

13 (4) *Subsequent work history;*

14 (5) *Employment references;*

15 (6) *Character references; and*

16 (7) *Other evidence demonstrating that the applicant does not pose*
17 *a threat to the health or safety of school children or school personnel.*

18 (e) *Any information received by the State Department of Education from*
19 *the Identification Bureau of the Arkansas State Police pursuant to subsection*
20 *(a) of this section shall not be available for examination except by the*
21 *affected applicant for licensure, or his duly authorized representative, and*
22 *no record, file, or document shall be removed from the custody of the*
23 *department. Any information made available to the affected applicant for*
24 *licensure or the person whose license is subject to revocation shall only be*
25 *information pertaining to that applicant. Rights of privilege and*
26 *confidentiality established herein shall not extend to any document created*
27 *for purposes other than this background check.*

28 (f) *The State Board of Education is authorized to adopt the necessary*
29 *rules and regulations to fully implement the provisions of this section.*

30

31 SECTION 2. *Arkansas Code Annotated § 6-17-405 is hereby amended to read*
32 *as follows:*

33 "6-17-405. License revocation generally.

34 (a) *The State Board of Education shall revoke the license of any person*
35 *who has pleaded guilty, nolo contendere, or been found guilty of any of the*

1 following offenses by any court in the state of Arkansas or of any similar
2 offense by a court in another state, but only after an opportunity for a
3 hearing before the State board of Education upon reasonable notice in writing:

- 4 (1) Capital murder as prohibited in § 5-10-101;
- 5 (2) Murder in the first and second degrees as prohibited in §§ 5-
6 10-102 and 5-10-103;
- 7 (3) Manslaughter as prohibited in § 5-10-104;
- 8 (4) Battery in the first and second degrees as prohibited in §§
9 5-13-201 and 5-13-202;
- 10 (5) Aggravated assault as prohibited in § 5-13-204;
- 11 (6) Terroristic threatening in the first degree as prohibited in
12 § 5-13-301;
- 13 (7) Kidnapping as prohibited in § 5-11-102;
- 14 (8) Rape and carnal abuse in the first and second degrees as
15 prohibited in §§ 5-14-103 through 5-14-205;
- 16 (9) Sexual abuse in the first and second degrees as prohibited in
17 §§ 5-14-108 and 5-14-109;
- 18 (10) Violation of a minor in the first and second degrees as
19 prohibited in §§ 5-14-120 and 5-14-121;
- 20 (11) Incest as prohibited in § 5-26-202;
- 21 (12) Engaging children in sexually explicit conduct for use in
22 visual or print media, transportation of minors for prohibited sexual conduct,
23 or use of a child or consent to use of a child in a sexual performance by
24 producing, directing, or promoting a sexual performance by a child as
25 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 26 (13) Criminal attempt, criminal solicitation, or criminal
27 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to
28 commit any of the offenses listed in this subsection;
- 29 (14) Distribution to minors as prohibited in § 5-64-406;
- 30 (15) Manufacture, deliver or possess with intent to manufacture or
31 deliver any controlled substance as prohibited in § 5-64-401.

32 (b) (1) The State Board of Education may revoke or suspend the license
33 of any person holding such a license for cause occurring after July 3, 1989,
34 but only after an opportunity for a hearing before the State Board of
35 Education upon reasonable notice in writing of the cause to be considered.

1 (2) *_Cause_ for the purposes of this subsection means any of the*
2 *following:*

3 (A) *Pleading guilty, nolo contendere, or found guilty of a felony*
4 *not listed in subsection (a) of this section;*

5 (B) *Holding a license obtained by fraudulent means;*

6 (C) *Revocation of a license in another state;*

7 (D) *Intentionally compromising the validity or security of any*
8 *student test or testing program administered by or required by the State*
9 *Department of Education; or*

10 (E) *Knowingly submitting, through the superintendent or directly*
11 *to the State Department of Education, falsified information which is requested*
12 *or required by the State Department of Education.*

13 (c) *(1) The local board of directors of each school district shall report*
14 *to the State Board of Education the name of any person holding a license*
15 *issued by the State Board of Education and currently employed, or employed*
16 *during the two (2) previous school years, by the local district who has*
17 *pleaded guilty, nolo contendere, or been found guilty of a felony, who holds*
18 *such license obtained by fraudulent means, who has had a similar license*
19 *revoked in another state, who has intentionally compromised the validity or*
20 *security of any student test or testing program administered or required by*
21 *the State Department of Education, or who has knowingly submitted falsified*
22 *information requested or required by the State Department of Education.*

23 (2) *Willful failure of a local district to report such information*
24 *as required by this subsection may result in sanctions imposed by the State*
25 *Board of Education.*

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

28 (1) *Revoke a license permanently;*

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

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

33 (4) *Accept voluntary surrender of a license.*

34 (e) *Upon notice in writing that a revocation, suspension, or probation*
35 *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 is authorized to adopt the necessary
15 rules and regulations to fully implement the provisions of this section."

16

17 *SECTION 3. Arkansas Code Annotated § 6-17-404 is hereby amended to read*
18 *as follows:*

19 *"6-17-404. Certain teachers and administrators licensed in adjoining*
20 *state.*

21 *Any person licensed as a school teacher or administrator in an adjoining*
22 *state, who serves as a teacher or administrator in any public school in this*
23 *state located in a county having a population of at least forty-two thousand*
24 *(42,000) but not more than forty-seven thousand (47,000) according to the 1970*
25 *federal Decennial Census and having an intermix of students from Arkansas and*
26 *an adjoining state, and who is compensated for services in this state by an*
27 *adjoining state or school district or districts in such adjoining state, shall*
28 *without further qualification be allowed to serve in such school in a capacity*
29 *for which qualified in the adjoining state without affecting the rating of the*
30 *school. However, no such teacher or administrator shall receive a license*
31 *issued by the State Board of Education until that person complies with the*
32 *provisions of Section 1 of this act."*

33

34 *SECTION 4. All provisions of this act of a general and permanent nature*
35 *are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code*

1 Revision Commission shall incorporate the same in the Code.

2

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

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9 SECTION 6. All laws and parts of laws in conflict with this act are
10 hereby repealed.

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/s/Rep. Owens

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APPROVED: 4-14-95

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As Engrossed: 3/22/95 3/29/95 4/7/95

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