

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

SENATE BILL 431

4
5 By: Senator Mahony
6 By: Representative Ingram

For An Act To Be Entitled

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

Subtitle

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27
28 "PERTAINING TO CRIMINAL RECORDS CHECKS
29 FOR PUBLIC SCHOOL TEACHERS AND
30 ADMINISTRATORS."

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

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

36 "6-17-405. License revocation generally.

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

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

- 1 (17) Sexual solicitation of a child, as prohibited in § 5-14-110;
- 2 (18) Endangering the welfare of a minor in the first degree, as
- 3 prohibited in § 5-27-203;
- 4 (19) Pandering or possessing visual or print medium depicting
- 5 sexually explicit conduct involving a child, as prohibited by § 5-27-304;
- 6 (20) False imprisonment in the first degree, as prohibited in
- 7 § 5-11-103;
- 8 (21) Permanent detention or restraint, as prohibited in
- 9 § 5-11-106;
- 10 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)
- 11 and (a)(3) of § 5-27-221;
- 12 (23) Negligent homicide, as prohibited by § 5-10-105(a);
- 13 (24) Assault in the first degree, as prohibited by § 5-13-205;
- 14 (25) Coercion, as prohibited by § 5-13-208;
- 15 (26) Sexual misconduct, as prohibited by § 5-14-107;
- 16 (27) Public sexual indecency, as prohibited by § 5-14-111;
- 17 (28) Indecent exposure, as prohibited by § 5-14-112; and
- 18 (29) Endangering the welfare of a minor in the second degree, as
- 19 prohibited by § 5-27-204.

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

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

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

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

32 ~~(B)(C)~~ Holding a license obtained by fraudulent means;

33 ~~(C)(D)~~ Revocation of a license in another state;

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

1 _____(E)(F) Knowingly submitting, through the superintendent or
 2 directly to the Department of Education, falsified information which is
 3 requested or required by the Department of Education; or

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

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

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

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

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

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

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

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

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

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

30 (1) Revoke a license permanently;

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

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

35 (4) Accept voluntary surrender of a license.

36 (e) Upon notice in writing that a revocation, suspension, or probation

1 is being sought by the State Board of Education for a cause set forth herein,
2 a person may:

3 (1) Voluntarily surrender the license;

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

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

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

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

15 (f) The State Board of Education ~~is authorized to shall~~ adopt the
16 necessary rules and regulations to fully implement the provisions of this
17 section."
18

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

21 "6-17-410. First-time applicants and applicants for license renewal.

22 (a)(1)(A)(i) ~~On and after July 1, 1996, each~~ Each first-time applicant
23 for a license issued by the State Board of Education and each applicant for
24 his or her first license renewal on or after July 1, 1997, shall be required
25 to apply to the Identification Bureau of the Department of Arkansas State
26 Police for a state and nationwide criminal records check, to be conducted by
27 the Federal Bureau of Investigation.

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

30 (B) Such applicant shall sign a release of information to
31 the Department of Education and shall be responsible to the Department of
32 Arkansas State Police for the payment of any fee associated with the criminal
33 records check.

34 (2) Upon completion of the criminal records check, the
35 Identification Bureau of the Department of Arkansas State Police shall forward
36 all information obtained concerning the applicant in the commission of any

1 offense listed in subsection (c) of this section to the Department of
2 Education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (13) Distribution to minors, as prohibited in § 5-64-406;

7 (14) Manufacture, deliver, or possess with intent to manufacture
 8 or deliver any controlled substance, as prohibited in § 5-64-401; ~~and~~

9 (15) Criminal attempt, criminal solicitation, or criminal
 10 conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to
 11 commit any of the offenses listed in this subsection-;

12 (16) Carnal abuse in the third degree, as prohibited in
 13 § 5-14-106;

14 (17) Sexual solicitation of a child, as prohibited in § 5-14-110;

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

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

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

21 (21) Permanent detention or restraint, as prohibited in
 22 § 5-11-106;

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

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

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

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

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

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

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

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

33 (d)(1) The provisions of subsection (c) of this section, and those of
 34 § 6-17-405(a), may be waived by the State Board of Education upon request by:

35 (A) The board of a local school district;

36 (B) An affected applicant for licensure; or

1 (C) The person holding a license subject to revocation.

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

4 (A) The age at which the crime was committed;

5 (B) The circumstances surrounding the crime;

6 (C) The length of time since the crime;

7 (D) Subsequent work history;

8 (E) Employment references;

9 (F) Character references; and

10 (G) Other evidence demonstrating that the applicant does
11 not pose a threat to the health or safety of school children or school
12 personnel.

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

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

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

25 (f) The State Board of Education ~~is authorized to~~ shall adopt the
26 necessary rules and regulations to fully implement the provisions of this
27 section."
28

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 or educational cooperative shall require,
35 as a condition for initial employment by the district or cooperative, any
36 person holding a license issued by the State Board of Education and making

1 such application to authorize release to the Department of Education the
2 results of a state and nationwide criminal records check by the Identification
3 Bureau of the Department of Arkansas State Police, which conforms to the
4 applicable federal standards and includes the taking of the applicant's
5 fingerprints. This requirement shall be waived if the person has successfully
6 undergone a background check required under this section within the previous
7 three (3) years.

8 (2) The affected applicant shall be responsible to the Department of
9 Arkansas State Police for the payment of any fee associated with the criminal
10 records check.

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

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

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

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

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

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

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

1 Education."

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

5 "6-17-407. License revocation - Falsifying attendance records -
6 Investigating allegations of employee criminal misconduct.

7 (a)(1) The State Board of Education is directed to revoke the ~~teacher's~~
8 ~~certificate-license~~ of any ~~teacher of person in~~ this state who knowingly
9 falsifies any attendance records kept by him that are used in computing the
10 average daily attendance or average daily membership of the school district in
11 which the ~~teacher teaches person is employed~~, and the State Board of Education
12 is directed to revoke the ~~certificate-license~~ of any superintendent of schools
13 who knowingly permits or requires any ~~teacher person~~ to falsify such
14 attendance records.

15 ~~_____~~ (b)(2) Any ~~teacher person~~ or superintendent of schools whose
16 license ~~may be~~ is revoked as provided in this subsection shall not thereafter
17 be eligible to receive a license to teach in this state.

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

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

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

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

32

33 SECTION 5. All provisions of this act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

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

6

7 SECTION 7. All laws and parts of laws in conflict with this act are
8 hereby repealed.

9

10 SECTION 8. EMERGENCY. It is found and determined by the General
11 Assembly of the State of Arkansas that Arkansas public school students and
12 their parents or guardians should be secure in the knowledge that certified
13 personnel employed by the local school district do not have criminal records
14 and are not a potential threat to the safety of the students; and that an
15 increasing number of incidents are occurring where certified personnel
16 employed by local school districts are abusing students entrusted into the
17 care of the school district; and that in some cases these incidents could have
18 been avoided had the personnel been subjected to a criminal records check. It
19 is further found and determined that, in some instances, allegations of
20 employee criminal misconduct involving students are not being investigated by
21 those persons charged with administration of local school districts.
22 Therefore, an emergency is declared to exist and this act being immediately
23 necessary for the preservation of the public peace, health and safety shall
24 become effective on the date of its approval by the Governor. If the bill is
25 neither approved nor vetoed by the Governor, it shall become effective on the
26 expiration of the period of time during which the Governor may veto the bill.
27 If the bill is vetoed by the Governor and the veto is overridden, it shall
28 become effective on the date the last house overrides the veto.

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