

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

As Engrossed: S2/20/97

A Bill

SENATE BILL 472

4
5 By: Senator Edwards
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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."

Subtitle

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26
27 "PERTAINING TO CRIMINAL RECORDS CHECKS
28 FOR PUBLIC SCHOOL TEACHERS AND
29 ADMINISTRATORS."
30

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

32

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

35 "6-17-405. License revocation generally.

36 (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; ~~and~~
- 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 ~~occurring after July 3, 1989,~~
 21 but only after an opportunity for a hearing before the State Board of
 22 Education upon reasonable notice in 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 ~~_____ (B) (C)~~ Holding a license obtained by fraudulent means;

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

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

36 ~~_____ (E) (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~~ or

3 (G) Having an expunged conviction for any sexual offense
4 committed 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 ~~may shall~~ result in sanctions
24 imposed by the State Board of Education including, but not limited to, the
25 withholding of state aid from funds distributed to the district by the
26 Department of 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 ~~is authorized to~~ shall adopt the
15 necessary rules and regulations to fully implement the provisions of this
16 section."

17

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

20 "6-17-410. First-time applicants and applicants for license renewal.

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

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

29 (B) Such applicant shall sign a release of information to
30 the Department of Education. ~~and~~ Each first time applicant for a license shall
31 be responsible to the Department of Arkansas State Police for the payment of
32 any fee associated with the criminal records check. The State Department of
33 Education shall be responsible to the Department of Arkansas State Police for
34 the payment of any fee associated with the criminal records check at the time
35 of first license renewal.

36 (2) Upon completion of the criminal records check, the

1 Identification Bureau of the Department of Arkansas State Police shall forward
2 all information obtained concerning the applicant in the commission of any
3 offense listed in subsection (c) of this section to the Department of
4 Education.

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

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

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

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

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

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

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

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

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

29 (6) Terroristic threatening in the first degree, as prohibited in
30 § 5-13-301;

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

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

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

36 (10) Violation of a minor in the first degree and second degree,

1 as prohibited in §§ 5-14-120 and 5-14-121;

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

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

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

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

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

14 (16) Carnal abuse in the third degree, as prohibited in
15 § 5-14-106;

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

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

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

21 (20) False imprisonment in the first degree, as prohibited in
22 § 5-11-103;

23 (21) Permanent detention or restraint, as prohibited in
24 § 5-11-106;

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

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

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

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

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

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

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

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

35 (d)(1) The provisions of subsection (c) of this section, and those of
36 § 6-17-405(a), may be waived by the State Board of Education upon request by:

- 1 (A) The board of a local school district;
- 2 (B) An affected applicant for licensure; or
- 3 (C) The person holding a license subject to revocation.

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

- 6 (A) The age at which the crime was committed;
- 7 (B) The circumstances surrounding the crime;
- 8 (C) The length of time since the crime;
- 9 (D) Subsequent work history;
- 10 (E) Employment references;
- 11 (F) Character references; and
- 12 (G) Other evidence demonstrating that the applicant does

13 not pose a threat to the health or safety of school children or school
14 personnel.

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

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

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

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

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

33 "6-17-411. Criminal records check as a condition for initial employment
34 of certified personnel.

35 (a)(1) On and after the effective date of this section, the board of
36 directors of a local school district or educational cooperative shall require,

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

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

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

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

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

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

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

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

36 (2) Provided, however, that the board of directors of a local

1 school district is authorized to offer provisional employment to the affected
2 applicant pending receipt of eligibility information from the Department of
3 Education."

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

7 "6-17-407. License revocation - Falsifying attendance records -
8 Investigating allegations of employee criminal misconduct.

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

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

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

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

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

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

34
35 SECTION 5. All provisions of this act of a general and permanent nature
36 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 6. 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.

8

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

11

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

31

/s/Edwards

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