

**HOUSE . . . . . No. 434**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Natalie M. Blais*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing employee screening requirements in schools to prevent child sexual abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>1/18/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/25/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/30/2023</i>

**HOUSE . . . . . No. 434**

By Representative Blais of Deerfield, a petition (accompanied by bill, House, No. 434) of Natalie M. Blais, Carmine Lawrence Gentile and Vanna Howard for legislation to establish employee screening requirements in schools to prevent child sexual abuse. Education.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act establishing employee screening requirements in schools to prevent child sexual abuse.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 71 of the General Laws, as appearing in the 2014 Official Edition,  
2 is hereby amended by inserting after Section 38R the following new section:-

3 Section 38R1/2. Screening of prospective school employees for prior investigations into  
4 child abuse or sexual misconduct.

5 For the purposes of this section, the following definitions shall apply:-

6 “Child abuse” means the non-accidental commission of any act by a caregiver which  
7 causes or creates a substantial risk of physical or emotional injury or sexual abuse of a child or  
8 student; or the victimization of a child or student through sexual exploitation, regardless if the  
9 person responsible is a caretaker.

10 “Sexual misconduct” means any verbal, nonverbal, written, or electronic communication,  
11 or any other act directed toward or with a student that is designed to establish a sexual

12 relationship with the student, including a sexual invitation, dating or soliciting a date, engaging  
13 in sexual dialogue, making sexually suggestive comments, self-disclosure or physical exposure  
14 of a sexual or erotic nature, and any other sexual, indecent or erotic contact with a student.

15 (a) A school district, charter school, nonpublic school, or contracted service provider  
16 holding a contract with a school district, charter school, or nonpublic school may not offer  
17 employment to an applicant who would be employed by or work in a school in a position which  
18 involves direct or regular contact with students, unless the school district, charter school,  
19 nonpublic school, or contracted service provider requires the applicant to provide:

20 (1) A list, including name, address, telephone number and other relevant contact  
21 information of the applicant, including:

22 (i) Current employer;

23 (ii) All former employers that were school entities;

24 (iii) All former employers if the applicant was employed in positions that involved direct  
25 contact with children.

26 (2) A written authorization that consents to and authorizes disclosure by the applicant's  
27 current and former employers.

28 (3) A written statement of whether the applicant:

29 (i) has been the subject of (A) an abuse or sexual misconduct investigation by any  
30 employer, State licensing agency, law enforcement agency, unless the investigation resulted in a  
31 finding that the allegations were false or inconclusive; or (B) an investigation of abuse under  
32 section 51A of chapter 119 in which the allegations of abuse against the applicant were

33 substantiated by the department of children and families and not subsequently unsubstantiated or  
34 overturned on appeal;

35 (ii) has ever been disciplined, discharged, non-renewed, asked to resign from  
36 employment, resigned from or otherwise separated from any employment (A) while allegations  
37 of abuse or sexual misconduct were pending or under investigation, unless the investigation  
38 resulted in a finding that the allegations were false or inconclusive, or in the case of section 51A  
39 of chapter 119, unsubstantiated; or (B) due to an adjudication or findings of abuse or sexual  
40 misconduct.; or

41 (iii) has ever had a license, professional license or certificate suspended, surrendered or  
42 revoked (A) while allegations of abuse or sexual misconduct were pending or under  
43 investigation, unless the investigation resulted in a finding that the allegations were false or  
44 inconclusive, or in the case of section 51A of chapter 119, unsubstantiated; or (B) due to  
45 adjudicated findings of abuse or sexual misconduct.

46 (b) Before a school or contracted service provider may offer employment to an applicant  
47 who would be employed by or work in a school in a position involving direct or regular contact  
48 with children, the school or contracted service provider shall conduct a review of the  
49 employment history of the applicant by contacting those employers listed by the applicant and  
50 requesting the following information:

51 (1) The dates of employment of the applicant.

52 (2) A statement as to whether the applicant:

53 (i) was the subject of (A) an abuse or sexual misconduct investigation by any employer,  
54 State licensing agency, law enforcement agency, unless such investigation resulted in a finding  
55 that the allegations were false or inconclusive; or (B) an investigation of abuse under section  
56 51A of chapter 119 in which the allegations of abuse against the applicant were substantiated by  
57 the department of children and families and not subsequently unsubstantiated or overturned on  
58 appeal.

59 (ii) was disciplined, discharged, non-renewed, asked to resign from employment,  
60 resigned from or otherwise separated from any employment (A) while allegations of abuse or  
61 sexual misconduct were pending or under investigation, unless the investigation resulted in a  
62 finding that the allegations were false or inconclusive or, in the case of section 51A of chapter  
63 119, unsubstantiated; or (B) due to an adjudication or findings of abuse or sexual misconduct; or

64 (iii) has ever had a license, professional license or certificate suspended, surrendered or  
65 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or  
66 due to adjudicated findings of abuse or sexual misconduct.

67 (c) Before a school or contracted service provider may offer employment to an applicant  
68 who would be employed by or in a school entity in a position involving regular contact with  
69 children, the school entity or contracted service provider shall check the eligibility for  
70 employment or certification status of the applicant to determine whether the applicant holds valid  
71 and active certification appropriate for the position and is otherwise eligible for employment and  
72 whether the applicant has been the subject of professional discipline.

73 (d) An applicant who provides false information or willfully fails to disclose material  
74 required information shall be subject to discipline up to, and including, termination or denial of  
75 employment and may be subject to professional discipline.

76 (e) No later than 120 days after receiving a request for information under subsection (b),  
77 an employer that has or had an employment relationship with the applicant shall disclose the  
78 information requested. The employer shall disclose the information on a standardized form  
79 developed by the department of elementary and secondary education.

80 (f)(1) After reviewing the information initially disclosed under subsection (a)(2) and  
81 finding an affirmative response to subsection (a)(2)(i), (ii) or (iii), or disclosed under section (b)  
82 and finding an affirmative response to subsection (b)(2)(i), (ii) or (iii), where the prospective  
83 employing school or contractor makes a determination to consider the applicant for employment,  
84 the school or contractor shall request that former employers provide any additional material  
85 information about the matters disclosed. The applicant shall provide written authorization that  
86 consents to and authorizes disclosure by the applicant's current and former employers of said  
87 additional material information.

88 (2) Former employers shall provide the additional information requested no later than 90  
89 days after the prospective employer's request under this paragraph.

90 (3) Information received under this section shall not be deemed a public record for the  
91 purposes of section 10 of chapter 66.

92 (4) A school that receives the information under this subsection shall use the information  
93 solely for the purpose of evaluating an applicant's fitness to be hired or for continued  
94 employment.

95 (g) A school or independent contractor may hire an applicant on a provisional basis for  
96 no more than 90 days pending the school entity's or independent contractor's review of  
97 information and records received under this section, provided that all of the following are  
98 satisfied:

99 (1) the applicant has provided all of the information and supporting documentation  
100 required;

101 (2) the school administrator has no knowledge of information pertaining to the applicant  
102 that would disqualify the applicant from employment; and

103 (3) the applicant swears or affirms that the applicant is not disqualified from employment.

104 (h) A school or contractor may not enter into a collective bargaining agreement, an  
105 employment contract, an agreement for resignation or termination, a severance agreement or any  
106 other contract or agreement or take any action that interferes with the operation of section 51A of  
107 chapter 119 or appropriate criminal authority. Any provision of an employment contract or  
108 agreement for resignation or termination or a severance agreement that is executed, amended or  
109 entered into after the effective date of this section and that is contrary to this section shall be  
110 void.

111 (1) Any individual who is a school employee, contractor, or agent, or any State  
112 educational agency or local educational agency, shall be prohibited from assisting a school  
113 employee, contractor, or agent in obtaining a new job in another educational agency or school,  
114 apart from the routine transmission of administrative and personnel files, if the individual or  
115 agency knows, or has probable cause to believe, that such school employee, contractor, or agent  
116 engaged in sexual misconduct regarding a minor or student in violation of the law.

117 (2) Exception- The requirements of subsection (a) shall not apply if the information  
118 giving rise to probable cause:

119 (i) has been properly reported to a law enforcement agency with jurisdiction over the  
120 alleged misconduct; and has been properly reported to any other authorities as required by  
121 Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C.  
122 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of  
123 Federal Regulations, or any succeeding regulations; and

124 (ii) the matter has been officially closed or the prosecutor or police with jurisdiction over  
125 the alleged misconduct has investigated the allegations and notified school officials that there is  
126 insufficient information to establish probable cause that the school employee, contractor, or  
127 agent engaged in sexual misconduct regarding a minor or student in violation of the law;

128 (iii) the school employee, contractor, or agent has been charged with, and acquitted or  
129 otherwise exonerated of the alleged misconduct; or

130 (iv) the case or investigation remains open and there have been no charges filed against,  
131 or indictment of, the school employee, contractor, or agent within 4 years of the date on which  
132 the information was reported to a law enforcement agency.

133 (v)(A) For substitute employees, the employment history review required by this section  
134 shall be required only prior to the initial hiring of a substitute or placement on the school entity's  
135 approved substitute list and shall remain valid as long as the substitute continues to be employed  
136 by the same school entity or remains on the school entity's approved substitute list.



137 (B) A substitute seeking to be added to another school entity's substitute list shall  
138 undergo a new employment history review. The appearance of a substitute on one school entity's  
139 substitute list does not relieve another school entity from compliance with this section.

140 (C) An employment history review conducted upon initial hiring of a substitute employee  
141 by an contracted service provider, intermediate unit or any other entity that furnishes substitute  
142 staffing services to school entities shall satisfy the requirements of this section for all school  
143 entities using the services of that independent contractor, intermediate unit or other entity.

144 (D) A contracted service provider, intermediate unit or any other entity furnishing  
145 substitute staffing services to school entities shall comply with the provisions of this Act.

146 (E) For purposes of this subsection, "substitute employee" shall not mean school bus  
147 drivers employed by a contracted service provider.

148 (j)(1) For employees of contracted service providers, the employment history review  
149 required by this section shall be performed either at the time of the initial hiring of the employee  
150 or prior to the assignment of an existing employee to perform work for a school entity in a  
151 position involving regular contact with children. The review shall remain valid as long as the  
152 employee remains employed by that same contractor even though assigned to perform work for  
153 other school entities.

154 (2) A contracted service provider shall maintain records documenting employment  
155 history reviews for all employees as required by this section and, upon request, shall provide a  
156 school entity for which an employee is assigned to perform work access to the records pertaining  
157 to that employee.

158 (3) Prior to assigning an employee to perform work for a school in a position involving  
159 regular contact with children, the contracted service provider shall inform the school of any  
160 instance known to the contractor in which the employee:

161 (i) was the subject of any abuse or sexual misconduct investigation by any employer,  
162 State licensing agency, law enforcement authority or child protective services agency, unless  
163 such investigation resulted in a finding that allegations are false;

164 (ii) has ever been disciplined, discharged, non-renewed, removed from a substitute list,  
165 asked to resign from employment, resigned from or otherwise separated from any employment  
166 while allegations of abuse or sexual misconduct as described in subparagraph (i) were pending or  
167 under investigation, or due to an adjudication or findings of abuse or sexual misconduct; or

168 (iii) has ever had a license, professional license or certificate suspended, surrendered or  
169 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or  
170 due to an adjudication or findings of abuse or sexual misconduct.

171 (4) The independent contractor may not assign the employee to perform work for the  
172 school in a position involving direct contact with children where the school objects to the  
173 assignment after being informed of an instance of abuse or sexual misconduct.

174 (5) An applicant who has once undergone the employment history review required and  
175 seeks to transfer to or provide services to another school in the same district, diocese or religious  
176 judicatory or established and supervised by the same organization shall not be required to obtain  
177 additional reports before making such transfer.

178 (k) (1) An employer, school, school administrator or independent contractor who in good  
179 faith provides information or records including personnel records about a current or former  
180 employee's job performance and professional conduct to a prospective school employer or to the  
181 department of elementary and secondary education shall be immune from criminal and civil  
182 liability for the disclosure or any consequences of the disclosure, unless the information or  
183 records were provided with the knowledge that they were false or misleading. Such immunity  
184 shall be in addition to and not in limitation of any other immunity provided by law or any  
185 absolute or conditional privileges applicable to such disclosures by virtue of the circumstances or  
186 the applicant's consent thereto.

187 (2) Except where the laws of other states prevent the release of the information or records  
188 requested, or disclosure is restricted by the terms of a contract entered into prior to the effective  
189 date of this section, the willful failure of a former employer, school entity, school administrator  
190 or independent contractor to respond or provide the information and records as requested may  
191 result in civil penalties, and professional discipline where appropriate.

192 (3) Notwithstanding any provision of law to the contrary, an employer, school, school  
193 administrator, independent contractor or applicant shall report and disclose in accordance with  
194 this section all relevant information, records and documentation that may otherwise be  
195 confidential under section 10 of chapter 66.

196 (4) A school or independent contractor may not hire an applicant who does not provide  
197 the information required under subsection (a)(2) for a position involving contact with children.

198 (l) Nothing in this section shall be construed:

199 (1) To prevent a prospective employer from conducting further investigations of  
200 prospective employees or from requiring applicants to provide additional background  
201 information or authorizations beyond what is required under this section, nor to prevent a former  
202 employer from disclosing more information than what is required under this section.

203 (2) To relieve a school, school administrator or independent contractor of its legal  
204 responsibility to report suspected incidents of abuse in accordance with the provisions of section  
205 51A of chapter 119 or misconduct by a licensed educator in accordance with the reporting  
206 requirements of the department of elementary and secondary education.

207 (3) To relieve a school, school administrator or independent contractor of its legal  
208 responsibility to report suspected incidents of professional misconduct in accordance with  
209 chapter 119, section 51A or misconduct by a licensed educator in accordance with the reporting  
210 requirements of the department of elementary and secondary education.

211 (4) To prohibit the right of the exclusive representative pursuant to chapter 150E to  
212 challenge the validity of an employee's termination or discipline under a collective bargaining  
213 agreement or any relevant statute

214 (m)(1) The office of the attorney general shall have jurisdiction to determine willful  
215 violations of this section and may, following a hearing, assess a civil penalty not to exceed ten  
216 thousand dollars (\$10,000). School entities shall be barred from contracting with an independent  
217 contractor who is found to have willfully violated the provisions of this section. Willful  
218 violations of the provisions of this section shall be reported to the relevant licensing authority.

219 (2) Notwithstanding any other provision of law to the contrary, the department of  
220 elementary and secondary education shall report all willful violations of the provisions of these

221 sections to the National Association of State Directors of Teacher Education and Certification  
222 Clearinghouse or any national databases serving the same purpose, all information required for  
223 participation in such a clearinghouse.

224 (3) The Department of Education shall notify each school district and school about the  
225 provisions of this act to ensure applicants and employers are aware of their respective rights and  
226 responsibilities under this act. The department shall develop standardized forms for applicants  
227 and employers to use to comply with the requirements of subsection (a) of this act, as well as any  
228 other informational materials that may assist applicants and employers in the implementation of  
229 and compliance with this act.

230 (4) The board of education may promulgate regulations for implementation and  
231 enforcement of this chapter. Upon release of the proposed regulations, the board shall file a copy  
232 of the regulations with the clerks of the house of representatives and the senate, who shall  
233 forward the regulations to the joint committee on education. Within 30 days of the filing, the  
234 committee may hold a public hearing and issue a report on the regulations and file the report  
235 with the board. The board, pursuant to applicable law, may adopt final regulations making  
236 revisions to the proposed regulations as it deems appropriate after consideration of the report and  
237 shall file a copy of the final regulations with the chairpersons of the joint committee on education  
238 and, not earlier than 30 days after the filing, the board shall file the final regulations with the  
239 state secretary.

240 (5) No employer shall be liable for injury, loss of property, personal injury or death  
241 caused by an act or omission of a public employee while acting in the scope of the public

242 employee's employment and arising out of the implementation of this chapter. This chapter shall  
243 not be construed as creating or imposing a specific duty of care.