

HOUSE No. 1433

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to ensuring quality for teacher licensure applicants..

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 2006 Official Edition,
2 is hereby amended by inserting, after section 38G, the following section:-

3 Section 38G 1/2. State and National Criminal History Background Check for Teacher
4 Licensure Applicants and Other School Personnel

5 (a) For the purposes of this section, the following words shall have the following
6 meanings:-

7 "Applicant", an individual who: applies for an initial educator license, as defined in
8 section 38G; who applies for a recertification of an educator license, as defined in section 38G,
9 after the effective date of this act; or who applies for any full-time or part-time employment in a
10 local school department that will expose the individual to unsupervised access to children in an
11 educational setting.

12 "Department", the department of education, as defined in section 1 of chapter 15.

"Educational setting", any vehicle, building, structure, location or other area, whether public or private property, utilized for or involved in the education, training, instruction, or supervision of children by a local, regional or charter school district, or the transportation of children to, from or in connection with any such activity.

"Unbecoming behavior", an offense established in sections 13B, 13H, 13J, 22A, 23, 24B, 26A, and 27A of chapter 265 or, sections 4, 4A and 29A-29C, inclusive, of chapter 272. "State and national criminal history background check", an investigation of the criminal record of an applicant, based on the criminal history record systems maintained by the Massachusetts state police and the Federal Bureau of Investigation and based on fingerprint identification or any other method of positive identification.

"Satisfactorily pass a state and national criminal history background check", a situation where the results or information generated by a state and national criminal history background check of an applicant do not indicate that the applicant has been convicted of a violent crime, a sex crime other than a sex crime classified as a misdemeanor or unbecoming behavior, as defined in subsection (a), or under a similar law of another state or the United States.

(b) (1) Beginning January 1, 2010 the department, or the superintendent of a school district where an applicant seeks any employment position in an educational setting, shall conduct a state and national criminal history background check on all applicants, as defined in this section. Each applicant shall provide written consent authorizing the release of any criminal history background information to the department or superintendent, as applicable. The department or superintendent, as applicable, shall receive the results of the state and national

34 criminal history background check and use those results to comply with subsections (c) and (d)
35 of this section.

36 (2) All fingerprints requested under this section shall be on an applicant fingerprint
37 card provided by the Massachusetts state police. The fingerprint cards shall be forwarded to the
38 Federal Bureau of Investigation by the Massachusetts state police after a state criminal
39 background check is conducted. The results of the state and federal background check shall be
40 sent to the department.

41 (c) (1) No superintendent shall employ, in any part-time or full-time employment
42 position in the district, any person who fails to satisfactorily pass a state and national criminal
43 history background check.

44 (2) Upon receiving a certified copy of a conviction showing that any district
45 employee in an educational setting has been convicted of a violent crime, sex crime other than a
46 sex crime classified as a misdemeanor or unbecoming behavior, as defined in subsection (a), or
47 under a similar law of another state or the United States, the superintendent shall immediately
48 discharge the district employee from his position of employment.

49 (3) This section shall apply to every teacher, teacher candidate, trade, vocational,
50 temporary substitute teacher, exchange teacher, regionally-licensed or certified teacher, teaching
51 administrative intern, and other full-time or part-time employee of any school district in an
52 educational setting.

53 (d) The commissioner of education shall not issue an educator license, as defined in
54 section 38G, or recertify any such educator license, as defined in section 38G, to any applicant,
55 and a superintendent shall not hire an applicant for any full-time or part-time employment

position in an educational setting in the district, unless and until the applicant satisfactorily passes a state and national criminal history background check.

(e) (1) All criminal history background information received by the department shall be confidential and marked as such and not further disclosed or made available for public inspection.

(2) Any reports and other information generated by state and national criminal history background checks under this section shall not be classified as public records and shall not be subject to the provisions of chapter 66.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, the following actions shall not be considered violations of this section: (A) disclosing reports and other information generated by a state and national criminal background check to the applicant or his representative, to give that applicant an opportunity to question and challenge the results of that background check; (B) releasing reports and other information generated by a state and national criminal background check to a court of this commonwealth in litigation pending before that court brought by the applicant to challenge the results of the state and national criminal background check; (C) use of reports and information generated by a state and national criminal background check for the preparation, investigation, and presentation of administrative proceedings involving the denial of certification or a restriction on unsupervised access to children in an educational setting.

(4) The commissioner shall promulgate regulations for a process to appeal a decision of the department to deny certification of an applicant or to restrict unsupervised access to children

in an educational setting for an applicant due to the results of a state and national criminal background check conducted according to this section.

(f) The fee for the state and national criminal background check shall be paid by the applicant and shall not be greater than the actual cost of processing the request and conducting the state and national criminal background check. The fee may be included in the cost of the teacher licensure application charged by the department.

(g) A school committee shall report to the department when any teacher, employee or administrator in its district is discharged under subdivision (2) or resigns from employment after a charge is filed with the school board for unbecoming behavior, or after charges are filed that are grounds for discharge under section subsection (a) or when a teacher, employee or administrator is suspended or resigns while an investigation is pending for unbecoming behavior under subsection (a). The report must be made to the department within 10 days of the discharge, suspension, or resignation has occurred. In the case of a teacher, upon receiving such a report the department shall immediately revoke the individual's license to teach.

SECTION 2. Section 38G of chapter 71, as so appearing, is amended by inserting in line 58, after the word "application" the following :- and satisfactory completion of the state and national criminal history background check, as established in section 38G1/2.

SECTION 3. Said section 38G of chapter 71 as so appearing is amended by striking out, in lines 71 and 72, the words "(3) be of sound moral character" and inserting in place thereof the following:-(3) pass a state and national criminal history background check as established by section 38G1/2".

98 SECTION 4. Said section 38G of chapter 71 as so appearing is amended by striking out,
99 in line 155, the words "(4) is of sound moral character" and inserting in place thereof the
100 following:- (4) pass a state and national criminal history background check, as established by
101 section 38G1/2.

102 SECTION 5. Said section 38G of chapter 71 is amended by inserting, in line 205, after
103 the word "responsibilities" the following:-, including the fee for the national and state criminal
104 history background check as established in section 38G1/2 of this chapter.

105 SECTION 6. Said section 38G of chapter 71 is amended by inserting in line 221, after the
106 words "employment" the following:- and has satisfactorily completed state and national criminal
107 history background checks.

108 SECTION 7. Section 38R of chapter 71 is repealed.