

HOUSE No. 4003

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

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 to protect children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/29/2012</i>

HOUSE No. 4003

By Ms. Peisch of Wellesley, a petition (subject to Joint Rule 12) of Alice Hanlon Peisch relative to the protection of children. Education.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to protect children.

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. Subsection (a) of section 7 of chapter 15D of the General Laws, as
2 appearing in the 2010 Official Edition, is hereby amended by inserting at the end thereof the
3 following paragraph:-

4 As part of the department’s licensure and Background Record Check process, the
5 department shall conduct fingerprint-based checks of the state and national criminal history
6 databases, pursuant to section 16962 of chapter 42 of the United States Code, before issuing any
7 license. Said fingerprint-based checks shall be conducted on any applicant for a family child
8 care, small group and school age, large group and school age, residential and placement license
9 or family child care assistant certificate. In addition, said fingerprint based checks shall be
10 conducted for all applicants for employment, who have the potential for unsupervised contact
11 with children, in any department licensed or funded program and for all household members or
12 persons regularly on the premises, aged 15 and older, of applicants for family child care
13 licensure. Such fingerprint-based checks shall also be required for all in-home non-relative

14 department funded caregivers, and for all applicants to be adoptive or foster parents. Authorized
15 department staff may receive and appropriately disseminate all criminal offender record
16 information and the results of checks of state and national criminal information databases,
17 pursuant to section 16962 of chapter 42 of the United States Code, in accordance with the law.

18 SECTION 2. Subsection (b) of section 7 of said chapter 15D of the General Laws, as so
19 appearing, is hereby amended by inserting at the end thereof the following paragraph:-

20 As part of the department's approval process, the department shall conduct fingerprint-
21 based checks of the national crime information databases pursuant to section 16962 of chapter 42
22 of the United States Code before issuing any approval. Said fingerprint based checks shall be
23 conducted for all applicants for employment, who have the potential for unsupervised contact
24 with children, in any department approved program. Authorized department staff may receive
25 and appropriately disseminate all criminal offender record information and the results of checks
26 of state and national criminal information databases, pursuant to section 16962 of chapter 42 of
27 the United States Code, in accordance with the law.

28 SECTION 3. Subsection (b) of section 8 of said chapter 15D of the General Laws, as so
29 appearing, is hereby amended by inserting after the word "fees", in line 35, the following words:-
30 "which shall incorporate all fees associated with conducting fingerprint-based checks of the state
31 and national criminal history databases, pursuant to section 16962 of chapter 42 of the United
32 States Code, as set by the department,"

33 SECTION 4. Subsection (d) of section 8 of said chapter 15D of the General Laws, as so
34 appearing, is hereby amended by inserting after the word "check", in line 55, the following

35 words:- “and fingerprint-based checks of the state and national criminal history databases
36 pursuant to section 16962 of chapter 42 of the United States Code.”

37 SECTION 5. Section 8 of said chapter 15D of the General Laws, as so appearing, is
38 hereby amended by inserting at the end thereof the following new subsection:-

39 (j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsections (b)
40 and (d) of section 8 of chapter 15D will be submitted to the identification section of the
41 department of state police for a state criminal history check and forwarded to the Federal Bureau
42 of Investigation for a national criminal history check, according to the policies and procedures
43 established by the identification section and by the department of criminal justice information
44 services. Fingerprint submissions may be retained for the purpose of ensuring the continued
45 suitability for licensure, certification, approval or employment of those individuals.

46 The department of criminal justice information services shall disseminate the results of
47 the criminal background check to the department. The department shall retain information
48 obtained under this section according to the policies and procedures established by the
49 department of criminal justice information services and shall not disseminate the information
50 except as authorized by law.

51 The department, with approval from the board, shall amend its Background Record
52 Check regulations in a manner necessary to carry out the provisions of this section.

53 Any and all persons required to undergo the fingerprinting process described in this
54 chapter, including but not limited to any applicant for department licensure or for employment at
55 a department licensed or funded program, or any household member or person regularly on the
56 premises, aged fifteen and above in a family child care program, any prospective foster or

57 adoptive parent, and any in-home non-relative caregiver, shall pay a fee, to be established by the
58 department in consultation with the secretary of public safety and security, to offset the costs of
59 operating and administering a fingerprint-based criminal background check system. The
60 department licensed or funded programs may reimburse applicants for employment for all or part
61 of the fee on grounds of financial hardship. The fee shall be deposited into the Fingerprint-
62 Based Background Check Trust Fund established under section 2CCCC of chapter 29, provided,
63 however, that 10 percent of the fee may be retained by the commissioner to fund the
64 investigations unit.

65 SECTION 6. Section 9 of said chapter 15D of the General Laws, as so appearing, is
66 hereby amended by inserting at the end thereof the following new subsections:-

67 (d) In addition to the power of the department set forth in sections 7, 8 and 9 of chapter
68 15D, the department shall investigate any and all alleged violations of law or regulation under
69 the authority of this chapter as necessary for the protection of children. At any stage of an
70 investigation or proceeding occasioned by an allegation of any violation of this chapter and the
71 regulations promulgated thereunder, the commissioner may issue a subpoena or a subpoena
72 duces tecum to summon a witness or compel the production of documents. An individual who
73 holds a department license or works in a department licensed program is deemed to have
74 sufficient contacts with Massachusetts to confer jurisdiction pursuant to section 3 of chapter
75 223A. Department staff conducting such investigations may receive and appropriately
76 disseminate criminal offender record information and the results of finger-print based checks of
77 the state and national criminal information databases, pursuant to section 16962 of chapter 42 of
78 the United States Code, in accordance with the law.

79 (e) No person who files a complaint, reports alleged wrongdoing or provides information
80 about a licensee, applicant or any other person described in sections 7, 8 and 9 of this chapter, or
81 who assists the department, at its request, in discharging its duties and functions, shall be liable
82 in any cause of action arising out of the provision of such information or assistance if the person
83 acted in good faith and without malice.

84 SECTION 7. Chapter 29 of the General Laws is hereby amended by inserting after
85 section 2BBBB the following section: -

86 Section 2CCCC. There is hereby established and set up on the books of the
87 commonwealth a separate fund to be known as the Fingerprint-Based Background Check Trust
88 Fund. Amounts credited to such fund shall be available, without further appropriation, to the
89 executive office of public safety and security to carry out fingerprint-based state and national
90 background criminal checks for the purposes of employment, professional licensure and other
91 non-criminal justice purposes.

92 The fund shall be utilized for the sole purpose of carrying out state and national criminal
93 background checks and verifications, including, but not limited to, obtaining or contracting to
94 obtain fingerprints and fees from subjects, making payments charged by the Federal Bureau of
95 Investigation or other entity, staffing the department of state police and the department of
96 criminal justice information services to submit fingerprints and to obtain, verify and disseminate
97 the results of background checks, and maintaining the public safety information systems used to
98 obtain access to fingerprint-based state and national criminal background information.

99 SECTION 8. Section 1A of chapter 69 of the General Laws, as appearing in the 2010
100 Official Edition, is hereby amended by inserting after the second paragraph the following
101 paragraph:-

102 The commissioner may appoint a chief of investigations and other investigators, who
103 shall be exempt from chapter thirty-one and who may investigate alleged violations of law or
104 regulation under the authority of the commissioner as necessary for the protection of children.
105 Investigators may receive and appropriately disseminate all criminal offender record information
106 and the results of checks of national crime information databases, pursuant to section 16962 of
107 chapter 42 of the United States Code, in accordance with the law.

108 SECTION 9. Section 38G of chapter 71 of the General Laws, as appearing in the 2010
109 Official Edition, is hereby amended by inserting after the 15th paragraph the following
110 paragraphs:-

111 At any stage of an investigation or proceeding occasioned by an allegation of misconduct
112 by a licensed educator or an applicant for licensure, pursuant to this chapter and the regulations
113 promulgated hereunder, the commissioner may request and shall receive from school districts
114 and any public or private school in the Commonwealth, including a chapter 71B approved
115 special education program, any and all information and documents relating to any individual,
116 including the educator's complete personnel record, as defined in section 52C of chapter 149 and
117 including the results of checks of state and national criminal information databases. At any stage
118 of an investigation or proceeding occasioned by an allegation of misconduct by a licensed
119 educator or an applicant for licensure, pursuant to this chapter and the regulations promulgated
120 hereunder, the commissioner or his designee may issue a subpoena or a subpoena duces tecum to

121 summon a witness or compel the production of documents. An individual who holds teacher
122 certification pursuant to this section is deemed to have sufficient contacts with Massachusetts to
123 confer jurisdiction pursuant to section 3 of chapter 223A.

124 No person who files a complaint, reports alleged wrongdoing or provides information
125 about a licensed educator or administrator or an applicant for licensure pursuant to this section or
126 who assists the commissioner at his request in discharging his duties and functions shall be liable
127 in any cause of action arising out of the provision of such information or assistance if the person
128 acted in good faith and without malice.

129 SECTION 10. Section 38R of said chapter 71 of the General Laws, as so appearing, is
130 hereby amended by striking out the first and second paragraphs and inserting in place thereof the
131 following paragraphs:-

132 In a manner prescribed by the board of elementary and secondary education, the school
133 committee and superintendent of any city, town or regional school district and the principal or
134 other administrator, by whatever title the position be known, of a public or private school,
135 including a chapter 71B approved special education school program, shall obtain periodically,
136 but not less than every 3 years, from the department of criminal justice information services all
137 available criminal offender record information for any current or prospective employee or
138 volunteer of the school district, or for any subcontractor or laborer commissioned by the school
139 committee or school to perform work on school grounds, who may have direct and unmonitored
140 contact with children, including any individual who regularly provides school related
141 transportation to children.

142 Said school committee, superintendent or principal shall also obtain a state and national
143 fingerprint-based criminal background check, as authorized by Public Law 92-544, for the
144 purpose of determining the suitability of current and prospective employees of the school
145 department who may have direct and unmonitored contact with children. Said school committee,
146 superintendent or principal shall also obtain such a check for any individual who regularly
147 provides school related transportation to children and any subcontractor or laborer commissioned
148 by the school committee or school to perform work on school grounds who may have direct and
149 unmonitored contact with children. Fingerprints will be submitted to the identification section of
150 the department of state police for a state criminal history check and forwarded to the Federal
151 Bureau of Investigation for a national criminal history check, according to the policies and
152 procedures established by the identification section and by the department of criminal justice
153 information services. Fingerprint submissions may be retained for the purpose of ensuring the
154 continued suitability of those individuals.

155 The department of criminal justice information services shall disseminate the results of
156 the criminal background check to the school committee, superintendent or principal or the
157 designee of the school committee, superintendent or principal. The school committee,
158 superintendent or principal shall retain information obtained under this section according to the
159 policies and procedures established by the department of criminal justice information services
160 and shall not disseminate the information except as authorized by law. Said school committee,
161 superintendent or principal shall notify the commissioner of any criminal record information
162 relevant to the fitness for licensure of any holder of, or applicant for, a Massachusetts educator's
163 license.

164 The board shall in a manner provided by law and in accordance with sections 167 to 168,
165 inclusive of chapter 6, promulgate regulations necessary to carry out this section. The
166 regulations shall provide for the confidentiality of criminal offender record information and the
167 results of finger-print based checks of the state and national criminal history databases, pursuant
168 to section 16962 of chapter 42 of the United States Code, obtained pursuant to this section.

169 The applicant shall pay a fee, to be established by the secretary of administration and
170 finance in consultation with the secretary of public safety and security and the commissioner, to
171 offset the costs of operating and administering a fingerprint-based criminal background check
172 system. The school committee, superintendent or principal may reimburse applicants all or part
173 of the fee on grounds of financial hardship. The fee shall be deposited into the Fingerprint-
174 Based Background Check Trust Fund established under section 2CCCC of chapter 29, provided,
175 however, that 10 percent of the fee may be retained by the commissioner to fund the
176 investigations unit.

177 SECTION 11. Subsection (l) of section 51B of chapter 119 of the General Laws, as
178 appearing in the 2010 Official Edition, is hereby amended by inserting after the word “part,” in
179 line 124, the following words: -“or was committed by an individual the department has reason to
180 believe was licensed”; and further amended by inserting after the words “youth services”, in line
181 127, the following words: - “, or was employed at a facility approved or licensed by the
182 department of early education and care”.

183 SECTION 12. Section 10 of this act shall take effect on May 4, 2012.