HOUSE DOCKET, NO. 1246 FILED ON: 1/18/2017

HOUSE . . . . . No. 841

The Commonwealth of Massachusetts

PRESENTED BY:

Paul R. Heroux

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 stop educator sexual abuse, misconduct and xxploitation S.E.S.A.M.E.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Paul R. Heroux	*2nd Bristol*	*1/18/2017*
Kay Khan	*11th Middlesex*	*1/30/2017*
Joan B. Lovely	*Second Essex*	*2/2/2017*
James R. Miceli	*19th Middlesex*	*1/28/2017*

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HOUSE . . . . . No. 841

By Mr. Heroux of Attleboro, a petition (accompanied by bill, House, No. 841) of Paul R. Heroux and others relative to the hiring of applicants who would be employed by or in schools in positions involving direct contact with children. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1374* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to stop educator sexual abuse, misconduct and xxploitation S.E.S.A.M.E.

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

SECTION 1. This Act maybe cited as the Stop Educator Sexual Abuse, Misconduct and Exploitation (S.E.S.A.M.E.) Act of 2015. This Act shall apply to all positions for employment at public and private school entities and independent contractors of public and private school entities involving direct contact with children.

SECTION 2. The following words and phrases shall have the meanings given to them in this Act:

"Abuse." Conduct that falls under the purview and reporting requirements of Chapter 119 of the General Laws and is directed toward or against a child or a student, regardless of the age of the child or student.

"Direct contact with children." The possibility of care, supervision, guidance or control of children or routine interaction with children.

"School entity." Any public school, including a charter school, private school, non-public school, intermediate unit or area vocational-technical school operating within this Commonwealth.

"Sexual misconduct." Any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such acts include, but are not limited to:

(i) Sexual or romantic invitation

(ii) Dating or soliciting dates

(iii) Engaging in sexualized or romantic dialogue

(iv) Making sexually suggestive comments

(v) Self-disclosure or physical exposure of a sexual, romantic or erotic nature

(vi) Any sexual, indecent, romantic or erotic contact with the child or student

SECTION 3. In addition to fulfilling the requirements of General Laws Chapter 71, §38R (relating to background checks for employment in schools), before a school entity or independent contractor may offer employment to an applicant who would be employed by or in a school entity in a position involving direct contact with children, the school entity or independent contractor shall require the applicant to provide:

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

(A) Current employer

(B) All former employers that were school entities

(C) All former employers where the applicant was employed in positions that involved contact with children.

(ii) A written authorization that consents to and authorizes disclosure by the applicant's current and former employers in subparagraph (i) of the information requested under subparagraph (iii) and the release of related records and that releases those employers from liability that may arise from such disclosure or release of records pursuant to this section.

(iii) A written statement of whether the applicant:

(A) has been the subject of an abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency or child protective services agency, unless the investigation resulted in a finding that the allegations were false;

(B) has ever been disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of abuse or sexual misconduct were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct.; or

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

SECTION 4. Before a school entity or independent contractor may offer employment to an applicant who would be employed by or in a school entity in a position involving contact with children, the school entity or independent contractor shall conduct a review of the employment history of the applicant by contacting those employers listed by the applicant and requesting the following information:

(i) The dates of employment of the applicant.

(ii) A statement as to whether the applicant:

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

(B) was disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of abuse or sexual misconduct were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct; or

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

SECTION 5. Before a school entity or independent contractor may offer employment to an applicant who would be employed by or in a school entity in a position involving direct contact with children, the school entity or independent contractor shall check the eligibility for employment or certification status of any applicant involving contact with children to determine

whether the applicant holds valid and active certification appropriate for the position and is otherwise eligible for employment and whether the applicant has been the subject of public professional discipline.

SECTION 6. An applicant who provides false information or willfully fails to disclose information required shall be subject to discipline up to, and including, termination or denial of employment and may be subject to professional discipline in accordance with the rules and regulations of the Department of Elementary and Secondary Education.

SECTION 7. No later than twenty (20) days after receiving a request for information required, an employer that has or had an employment relationship with the applicant shall disclose the information requested.

(i) The employer shall disclose the information on a standardized form developed by the Department of Elementary and Secondary Education.

(ii) After reviewing the information initially disclosed under SECTION 3. and finding an affirmative response to subsection (ii) (A), (B) or (C) , where the prospective employing school entity or contractor makes a determination to further consider the applicant for employment, the school entity or contractor shall request that former employers provide additional information about the matters disclosed and all related records.

(iii) Former employers shall provide the additional information requested no later than sixty (60) days after the prospective employer's request under this paragraph.

(iv) Information received under this section shall not be deemed a public record for the purposes of General Laws Chapter 66, §10.

(v) A school entity that receives the information under this subsection may use the information for the purpose of evaluating an applicant's fitness to be hired or for continued employment and may report the information as appropriate to the Department of Elementary and Secondary Education, a State licensing agency, law enforcement agency, child protective services agency, another school entity or prospective employer.

SECTION 8. An employer, school entity, school administrator or independent contractor that provides information or records about a current or former employee or applicant shall be immune from criminal liability and civil liability for the disclosure of the information, unless the information or records provided were knowingly false. Such immunity shall be in addition to and not in limitation of any other immunity provided by law or any absolute or conditional privileges applicable to such disclosures by virtue of the circumstances or the applicant's consent thereto.

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

(ii) Notwithstanding any provision of law to the contrary, an employer, school entity, school administrator, independent contractor or applicant shall report and disclose in accordance with this section all relevant information, records and documentation that may otherwise be confidential under General Laws Chapter 66, §10.

(iii) A school entity or independent contractor may not hire an applicant who does not provide the information required under SECTION 4. (ii) (A), (B), or (C) for a position involving contact with children.

SECTION 9. A school entity or independent contractor may hire an applicant on a provisional basis for a period not to exceed ninety (90) days pending the school entity's or independent contractor's review of information and records received under this section, provided that all of the following are satisfied:

(i) The applicant has provided all of the information and supporting documentation required.

(ii) The school administrator has no knowledge of information pertaining to the applicant that would disqualify the applicant from employment.

(iii) The applicant swears or affirms that the applicant is not disqualified from employment.

(iv) The applicant is not permitted to work alone with children and works in the immediate vicinity of a permanent employee.

SECTION 10. On or after the effective date of this section, a school entity or independent contractor may not enter into a collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any other contract or agreement or take any action that:

(i) has the effect of suppressing information relating to an investigation related to a report of suspected abuse or sexual misconduct by a current or former employee;

(ii) affects the ability of the school entity or independent contractor to report suspected abuse or sexual misconduct to the appropriate authorities; or

(iii) requires the school entity or independent contractor to expunge information about allegations or findings of suspected abuse or sexual misconduct from any documents maintained by the school entity or independent contractor, unless after investigation the allegations are found to be false.

(iv) Any provision of an employment contract or agreement for resignation or termination or a severance agreement that is executed, amended or entered into after the effective date of this section and that is contrary to this section shall be void and unenforceable.

SECTION 11. For substitute employees, the employment history review required by this section shall be required only prior to the initial hiring of a substitute or placement on the school entity's approved substitute list and shall remain valid as long as the substitute continues to be employed by the same school entity or remains on the school entity's approved substitute list.

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

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

(iii) An independent contractor, intermediate unit or any other entity furnishing substitute staffing services to school entities shall comply with the provisions of this Act.

(iv) For purposes of this subsection, "substitute employee" shall not mean school bus drivers employed by an independent contractor.

SECTION 12. For employees of independent contractors, the employment history review required by this section shall be performed, either at the time of the initial hiring of the employee or prior to the assignment of an existing employee to perform work for a school entity in a position involving direct contact with children. The review shall remain valid as long as the employee remains employed by that same independent contractor, even though assigned to perform work for other school entities.

(i) An independent contractor shall maintain records documenting employment history reviews for all employees as required by this section and, upon request, shall provide a school entity for which an employee is assigned to perform work access to the records pertaining to that employee.

(ii) Prior to assigning an employee to perform work for a school entity in a position involving direct contact with children, the independent contractor shall inform the school entity of any instance known to the independent contractor in which the employee:

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

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

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

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

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

(v) Nothing in this section shall be construed:

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

(B) To relieve a school entity, school administrator or independent contractor of its legal responsibility to report suspected incidents of abuse in accordance with the provisions of Chapter 119, section 51A.

(C) To relieve a school entity, school administrator or independent contractor of its legal responsibility to report suspected incidents of professional misconduct in accordance with Chapter 119 51A.

(D) To prohibit the right of the exclusive representative under a collective bargaining agreement to grieve and arbitrate the validity of an employee's termination or discipline for just cause or for the causes set forth in this act.

(E) The Department of Elementary and Secondary Education shall have jurisdiction to determine willful violations of this section and may, following a hearing, assess a civil penalty not to exceed ten thousand dollars ($10,000). School entities shall be barred from contracting with an independent contractor who is found to have willfully violated the provisions of this section.

(F) Notwithstanding any provision of law to the contrary, the Department of Elementary and Secondary Education may initiate disciplinary action before a hearing officer pursuant its regulations, against any applicant, employee, independent contractor or school administrator for willful violations of this section.

(G) The Department of Elementary and Secondary Education may adopt rules and regulations establishing procedures relating to disciplinary proceedings and the assessment of penalties in connection with this section.