

SENATE No. 322

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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 relative to the screening of prospective school employees for prior investigations into child abuse or sexual misconduct.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>1/29/2019</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>2/1/2019</i>

SENATE No. 322

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 322) of Patrick M. O'Connor, Patrick Joseph Kearney and Donald F. Humason, Jr. for legislation relative to the screening of prospective school employees for prior investigations into child abuse or sexual misconduct. Education.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the screening of prospective school employees for prior investigations into child abuse or sexual misconduct.

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 shall not employ for
17 pay or contract for the paid services of any person serving in a position which involves regular
18 contact with students unless the school district, charter school, nonpublic school, or contracted
19 service provider:

20 i. Requires the applicant to provide:

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

23 (a.) current employer;

24 (b.) all former employers within the last 20 years that were schools; and

25 (c.) all former employers within the last 20 years where the applicant was employed in a
26 position that involved direct contact with children; and

27 (2) A written authorization that consents to and authorizes disclosure of the information
28 requested under subsection b. of this section and the release of related records by the applicant’s
29 employers listed under paragraph (1) of this subsection, and that releases those employers from
30 liability that may arise from the disclosure or release of records;

31 (3) A written statement as to whether the applicant:

32 (a.) has been the subject of any child abuse or sexual misconduct investigation by any
33 employer, State licensing agency, law enforcement agency, or the Division of Child Protection
34 and Permanency in the Department of Children and Families, unless the investigation resulted in
35 a finding that the allegations were false or the alleged incident of child abuse or sexual
36 misconduct was not substantiated;

37 (b.) has ever been disciplined, discharged, nonrenewed, asked to resign from
38 employment, resigned from or otherwise separated from any employment while allegations of
39 child abuse or sexual misconduct were pending or under investigation, or due to an adjudication
40 or finding of child abuse or sexual misconduct; or

41 (c.) has ever had a license, professional license, or certificate suspended, surrendered, or
42 revoked while allegations of child abuse or sexual misconduct were pending or under
43 investigation, or due to an adjudication or finding of child abuse or sexual misconduct; and

44 (3) Conducts a review of the employment history of the applicant by contacting those
45 employers listed by the applicant under the provisions of paragraph (1) of subsection (a) of this
46 section and requesting the following information:

47 (a.) The dates of employment of the applicant; and

48 (b.) A statement as to whether the applicant:

49 (1) was the subject of any child abuse or sexual misconduct investigation by any
50 employer, State licensing agency, law enforcement agency, or the Division of Child Protection
51 and Permanency in the Department of Children and Families, unless the investigation resulted in

52 a finding that the allegations were false or the alleged incident of child abuse or sexual
53 misconduct was not substantiated;

54 (2) was disciplined, discharged, nonrenewed, asked to resign from employment, resigned
55 from or otherwise separated from any employment while allegations of child abuse or sexual
56 misconduct were pending or under investigation, or due to an adjudication or finding of child
57 abuse or sexual misconduct; or

58 (3) has ever had a license, professional license, or certificate suspended, surrendered, or
59 revoked while allegations of child abuse or sexual misconduct were pending or under
60 investigation, or due to an adjudication or finding of child abuse or sexual misconduct.

61 The review of the employment history may be conducted through telephonic, electronic,
62 or written communications. If the review is conducted by telephone, the results of the review
63 shall be documented in writing by the prospective employer.

64 (B) An applicant who willfully provides false information or willfully fails to disclose
65 information required in subsection (ii)(a.) of this act:

66 (1) shall be subject to discipline up to, and including, termination or denial of
67 employment; and

68 (2) may be subject to a monetary fine of not more than \$500

69 A school district, charter school, nonpublic school, or contracted service provider holding
70 a contract with a school district, charter school, or nonpublic school shall include a notification
71 of the penalties set forth in this section on all applications for employment for positions which
72 involve regular contact with students.

73 (C) No later than 20 days after receiving a request for information under subsection (A)
74 of this act, an employer that has or had an employment relationship within the last 20 years with
75 the applicant shall disclose the information requested on a standardized form developed by the
76 Department of Education.

77 The prospective employer, in conducting the review of the employment history of an out-
78 of-State applicant, shall make, and document with specificity, diligent efforts to:

79 (1) verify the information provided by the applicant pursuant to subsection (A) of this act;
80 and

81 (2) obtain from any out-of-State employers listed by the applicant the information
82 requested pursuant to subsection (A) of this act.

83 The failure of an employer to provide the information requested pursuant to subsection
84 (A) of this act within the 20 day timeframe may be grounds for the automatic disqualification of
85 an applicant from employment with a school district, charter school, nonpublic school, or
86 contracted service provider. A school district, charter school, nonpublic school, or contracted
87 service provider shall not be liable for any claims brought by an applicant who is not offered
88 employment or whose employment is terminated:

89 (1) because of any information received by the school district, charter school, nonpublic
90 school, or contracted service provider from an employer pursuant to section (A) of this act; or

91 (2) due to the inability of the school district, charter school, nonpublic school, or
92 contracted service provider to conduct a full review of the applicant's employment history
93 pursuant to subsection (A)(ii) of this act.

94 A school district, charter school, nonpublic school, or contracted service provider shall
95 have the right to immediately terminate an individual's employment or rescind an offer of
96 employment if:

97 (1) the applicant is offered employment or commences employment with the school
98 district, charter school, nonpublic school, or contracted service provider following the effective
99 date of this act; and

100 (2) information regarding the applicant's history of sexual misconduct or child abuse is
101 subsequently discovered or obtained by the employer that the employer determines disqualifies
102 the applicant or employee from employment with the school district, charter school, nonpublic
103 school, or contracted service provider.

104 The termination of employment pursuant to this subsection may be subject to appeal.

105 (D) After reviewing the information disclosed under subsection (A) of this act and
106 finding an affirmative response to any of the inquiries, the prospective employer, prior to
107 determining to continue with the applicant's job application process, shall make further inquiries
108 of the applicant's current or former employer to ascertain additional details regarding the matter
109 disclosed.

110 A school district, charter school, nonpublic school, or contracted service provider may
111 employ or contract with an applicant on a provisional basis for a period not to exceed 90 days
112 pending review by the school district, charter school, nonpublic school, or contracted service
113 provider of information received pursuant to subsection (A) of this act, provided that all of the
114 following conditions are satisfied:

115 (1) the applicant has complied with subsection (A) of this act;

116 (2) the school district, charter school, nonpublic school, or contracted service provider
117 has no knowledge or information pertaining to the applicant that the applicant is required to
118 disclose pursuant to this act; and

119 (3) the school district, charter school, nonpublic school, or contracted service provider
120 determines that special or emergent circumstances exist that justify the temporary employment of
121 the applicant.

122 (E) Information received by an employer under this act shall not be deemed a public
123 record.

124 An employer, school district, charter school, nonpublic school, school administrator, or
125 contracted service provider that provides information or records about a current or former
126 employee or applicant shall be immune from criminal and civil liability for the disclosure of the
127 information, unless the information or records provided were knowingly false. The immunity
128 shall be in addition to and not in limitation of any other immunity provided by law.

129 (F) On or after the effective date of this act, a school district, charter school, nonpublic
130 school, or contracted service provider may not take any action that:

131 (1) has the effect of suppressing or destroying information relating to an investigation
132 related to a report of suspected child abuse or sexual misconduct by a current or former
133 employee;

134 (2) affects the ability of the school district, charter school, nonpublic school, or
135 contracted service provider to report suspected child abuse or sexual misconduct to the
136 appropriate authorities; or

137 (3) requires the school district, charter school, nonpublic school, or contracted service
138 provider to expunge information about allegations or finding of suspected child abuse or sexual
139 misconduct from any documents maintained by the school district, charter school, nonpublic
140 school, or contracted service provider, unless after investigation the allegations are found to be
141 false or the alleged incident of child abuse or sexual misconduct has not been substantiated.

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

145 (G) The Department of Education shall establish a public awareness campaign to
146 publicize the provisions of this act and to ensure applicants and employers are aware of their
147 respective rights and responsibilities under this act. The department shall post on its website
148 guidance documents and any other informational materials that may assist applicants and
149 employers in the implementation of and compliance with this act.

150 The department shall develop forms for applicants and employers that may be used to
151 comply with the requirements of subsection (A) of this act, as well as any other forms necessary
152 to carry out the provisions of this act.

153 SECTION 2. This act shall take effect 120 days following its passage.