

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to S.P. 987, L.D. 2540, Bill, "An Act Concerning Fingerprinting and Background Checks for School Employees"

Amend the amendment by striking out all of section 3 and inserting in its place the following:

'Sec. 3. 20-A MRSa §6103-A is enacted to read:

§6103-A. Criminal history record information conviction data

This section applies to state and federal criminal history record checks and maintenance of criminal history record information and conviction data for applicants for certification, authorization or approval under chapter 501 or 502 and for applicants for educational personnel positions in schools.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicant" means:

(1) A person who applies for certification, authorization or approval under chapter 501 or 502;

(2) A person who applies for a position that requires certification, authorization or approval under chapter 501 or 502;

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(3) A person who applies for a position that requires certification or authorization and who holds a valid credential from another state, including a state that is a party state to an interstate agreement on qualifications of educational personnel under chapter 511; or

(4) A person whose certificate, authorization or approval has lapsed for more than 2 years as of the date of application for renewal subject to chapter 501 or 502 and who the department determines is an applicant.

For purposes of this section, "applicant" does not include a person who holds a valid certification, authorization or approval under chapter 501 or 502 and who was employed by a school prior to August 15, 2000, unless that person subsequently applies for a position with another school administrative unit or private school in the State and the person is one to whom the superintendent intends to extend an offer of employment.

B. "Bureau" means the State Bureau of Identification within the Department of Public Safety.

C. "School" means a public school in this State or a private school approved for attendance purposes under section 2902 that enrolls 60% or more publicly funded students.

D. "Superintendent" means the person in a school administrative unit or school union appointed and having the authority and responsibility under this Title and other applicable statutes. For the purposes of this section, "superintendent" includes the chief executive officer of a private school approved for attendance purposes under section 2902 that enrolls 50% or more publicly funded students.

2. Applicants for positions requiring certification and authorization. Beginning August 15, 2000, applicants for positions requiring certification and authorization under chapter 501 or 502 are subject to the provisions of this section. Fingerprinting of immediately affected applicants for certification and authorization, conducting of the needed state and federal criminal history record checks by the bureau and forwarding of the results by the bureau to the department must begin on August 15, 2000.

2 3. Applicants for positions requiring approval. Beginning
3 August 15, 2000, applicants for positions requiring approval
4 under chapter 502 are subject to the provisions of this section.
5 Fingerprinting of applicants for positions requiring initial
6 approval prior to being hired or placed under contract,
7 conducting of the needed state and federal criminal history
8 record checks by the bureau and forwarding of the results by the
9 bureau to the department must begin on August 15, 2000.

10 4. Criminal history record information. Criminal history
11 record information is obtained as follows:

12 A. The department shall request that for each applicant the
13 Department of Public Safety conduct a criminal history
14 record check. The criminal history record check must
15 include a check of the criminal history record information
16 maintained by the Maine Criminal Justice Information System
17 and by the Federal Bureau of Investigation. The Department
18 of Public Safety shall provide the criminal history record
19 information obtained from the Maine Criminal Justice
20 Information System and the Federal Bureau of Investigation
21 to the department. For purposes of this paragraph,
22 "applicant" does not include a person who holds a valid
23 certification, authorization or approval under chapter 501
24 or 502 and who was employed by a school prior to August 15,
25 2000; or

26 B. When an applicant who holds a valid certification,
27 authorization or approval under chapter 501 or 502 and was
28 employed by a school prior to August 15, 2000 subsequently
29 applies for a position with another school administrative
30 unit or private school, the superintendent of the school
31 administrative unit or private school to which the applicant
32 applies may request criminal history record information on
33 that applicant only if the governing body for that school
34 administrative unit or private school has decided to obtain
35 the same criminal history record information for all such
36 applicants seeking employment in that school administrative
37 unit or private school. Upon the request of that
38 superintendent, the department shall request that the
39 Department of Public Safety obtain a criminal history record
40 check. The criminal history record check must include a
41 check of the criminal history record information maintained
42 by the Maine Criminal Justice Information System and by the
43 Federal Bureau of Investigation. The Department of Public
44 Safety shall provide the criminal history record information
45 obtained from the Maine Criminal Justice Information System
46 and the Federal Bureau of Investigation to the department.
47 The department shall review the criminal history record
48 information obtained from the Maine Criminal Justice Information
49 System and the Federal Bureau of Investigation to the department.
50 The department shall review the criminal history record

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2 information and communicate to the superintendent the
3 department's determination concerning the approval or
4 disapproval of the applicant. The department shall indicate
5 approval for an applicant unless the applicant would be
6 subject to denial, revocation, suspension or nonrenewal
7 under section 13020, subsection 3-A.

8 5. Use of criminal history record. State and federal
9 criminal history record information may be used for the purpose
10 of screening educational personnel applicants by the department
11 in order to determine whether certification, authorization or
12 approval should be granted. State and federal criminal history
13 record information also may be reviewed by the department at the
14 request of a superintendent pursuant to subsection 4 for the
15 purpose of screening a person who is not currently employed in
16 that superintendent's school administrative unit and who is an
17 applicant for a position in that superintendent's school
18 administrative unit.

19 6. Issuance restriction. Issuance of a certificate,
20 authorization, approval or renewal to a person whose criminal
21 history record information includes a criminal conviction is
22 subject to the provisions of section 13020 and Title 5, chapter
23 341.

24 7. Confidentiality. Any criminal history record
25 information obtained under subsection 4 is confidential.

26 8. Expenses of criminal history record check. The
27 department or the superintendent that requests a criminal history
28 record check shall pay the expenses of the criminal history
29 record check. Except for any portion of the payment that
30 constitutes the processing fee charged by the Federal Bureau of
31 Investigation, all money received by the Maine State Police for
32 purposes of this section must be paid to the Treasurer of State.
33 The money must be applied to the expenses of administration
34 incurred by the Department of Public Safety.

35 9. Fingerprinting. An applicant shall submit to having
36 fingerprints taken. The Maine State Police, upon payment by the
37 department or the superintendent, shall take or cause to be taken
38 the applicant's fingerprints and shall forward the fingerprints
39 to the bureau so that the bureau can conduct state and federal
40 criminal history record checks.

41 10. Applicant's access to criminal history record check.
42 The subject of a Federal Bureau of Investigation criminal history
43 record check may receive a copy of a criminal history record
44 check by following the procedures outlined in 28 Code of Federal
45 Regulations, Sections 16.32 and 16.33. The subject of a state
46 record check may receive a copy of a criminal history record
47 check by following the procedures outlined in 28 Code of Federal
48 Regulations, Sections 16.32 and 16.33. The subject of a state
49 record check may receive a copy of a criminal history record
50 check by following the procedures outlined in 28 Code of Federal

criminal record check may inspect and review criminal record
information pursuant to Title 16, section 620.

11. Applicant's right to have fingerprints removed from
state repository upon retirement or career change. Teachers or
educational personnel whose certification, authorization or
approval has expired may request in writing that the bureau
remove their fingerprints from the bureau's fingerprint file. In
response to a written request, the bureau shall remove the
requester's fingerprints from the fingerprint file and provide
written confirmation of that removal to the requester.

12. Implementation. The requirements of this section must
be implemented as follows.

A. Persons other than those for whom certification or
authorization is required who are placed under contract by a
school and who are subject to the requirements of this
section shall meet these requirements by July 1, 2002.

B. Persons subject to the requirements of this section who
begin work in a school after August 15, 2000 shall meet
these requirements prior to their 20th day of work.

13. Rules. The commissioner shall adopt or amend rules
necessary to carry out this section. These rules must include a
listing of all positions that are subject to this section. Rules
adopted pursuant to this section are routine technical rules
pursuant to Title 5, chapter 375, subchapter II-A.'

Further amend the amendment in section 13 in paragraph F in
the last line (page 9, line 20 in amendment) by striking out the
following: "-4- 6" and inserting in its place the following: '4'

Further amend the amendment in section 14 in subsection 4 in
the last line (page 9, line 38 in amendment) by striking out the
following: "13" and inserting in its place the following: '11'

Further amend the amendment in section 15 in subsection 4 in
the last line (page 10, line 7 in amendment) by striking out the
following: "13" and inserting in its place the following: '11'

Further amend the amendment in section 17 in the 6th line
(page 10, line 25 in amendment) by striking out the following:
"August 1," and inserting in its place the following: 'August
15,'

Further amend the amendment in section 18 in the last line
(page 10, line 38 in amendment) by striking out the following:
"August 1," and inserting in its place the following: 'August
15,'

SENATE AMENDMENT

R.O.S.

2 Further amend the amendment in section 21 in the 2nd line
3 (page 11, line 27 in amendment) by striking out the following:
4 "August 1," and inserting in its place the following: 'August 15'

6 Further amend the amendment in section 21 in the last line
7 (page 11, line 35 in amendment) by striking out the following:
8 "September 1," and inserting in its place the following: 'August
9 15,'

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SUMMARY

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15 This amendment maintains the discretion of a school
16 superintendent to request criminal history record checks for
17 applicants as in Committee Amendment "B," but specifies that if a
18 superintendent requires a criminal history record check for an
19 employee who is certified, authorized or approved and employed in
20 another school administrative unit or private school and who
21 applies for employment in that superintendent's school
22 administrative unit or private school, then criminal history
23 record checks must be obtained for all applicants to that school
24 administrative unit whom the superintendent determines are
25 candidates to whom the superintendent intends to extend an offer
26 of employment.

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27 The amendment changes the date on which fingerprinting,
28 conducting of criminal history record checks and forwarding of
29 the results by the Department of Public Safety, State Bureau of
30 Identification must begin.

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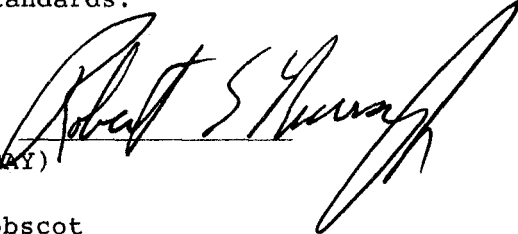
33 This amendment clarifies that it is the Department of Public
34 Safety that obtains criminal history record checks and that
35 criminal history record checks must include a check of the
36 criminal history record information maintained by the Maine
37 Criminal Justice Information System and by the Federal Bureau of
38 Investigation.

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39 The amendment also specifies that the Department of
40 Education shall indicate to the school superintendent approval

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L.D. 2540

for an applicant, unless the applicant would be subject to
denial, revocation, suspension or nonrenewal under the Department
of Education standards.

SPONSORED BY: 
(Senator MURRAY)

COUNTY: Penobscot