

MAINE STATE LEGISLATURE

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L.D. 890

DATE: 5-23-03

(Filing No. H-520)

MAJORITY
EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 667, L.D. 890, Bill, "An Act To Restrict Fingerprinting of Educational Personnel to New Hires"

Amend the bill by striking out the title and substituting the following:

'An Act To Restrict Fingerprinting of Educational Personnel to New Applicants for Certification, Authorization or Approval'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 20-A MRSA §6101, sub-§2, ¶B, as amended by PL 1995, c. 547, §4, is further amended to read:

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:

(1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;

(2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;

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- 2 (4) Credit information;
- 4 (5) Except as provided by subsection 1, the personal
6 history, general character or conduct of the employee
or any member of the employee's immediate family;
- 8 (6) Complaints, charges of misconduct, replies to
10 complaints and charges of misconduct and memoranda and
other materials pertaining to disciplinary action;
- 12 (7) Social security number;
- 14 (8) The teacher action plan and support system
16 documents and reports maintained for certification
purposes; and
- 18 (9) Criminal history record information obtained
20 pursuant to section ~~6103~~ 6103-A.

22 **Sec. 2. 20-A MRSA §6103**, as amended by PL 2003, c. 184, §1,
is repealed.

24 **Sec. 3. 20-A MRSA §6103-A** is enacted to read:

26 **§6103-A. Criminal history record information**

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

32 **A. "Applicant" means:**

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

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

44 **For purposes of this section, "applicant" does not include a**
46 **person who applies for a renewal of a certification,**
authorization or approval under chapter 501 or 502.

48 **B. "Bureau" means the Department of Public Safety, State**
Bureau of Identification.

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Repeal

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2. Implementation. Beginning August 15, 2003, applicants are subject to the provisions of this section. Fingerprinting of immediately affected applicants, conducting of the needed state and federal criminal history record checks by the bureau pursuant to subsection 4 and forwarding of the results by the bureau to the department must begin on August 15, 2003.

3. Compliance. A person who has complied with the requirements of this section is not required to submit to a subsequent criminal history record check or to fingerprinting.

4. Criminal history record information. The department shall request that for each applicant the bureau conduct a criminal history record check. The criminal history record check must include a check of the criminal history record information maintained by the Maine Criminal Justice Information System and by the Federal Bureau of Investigation. The bureau shall provide the criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation to the department.

5. Use of criminal history record. State and federal criminal history record information may be used for the purpose of screening educational personnel applicants by the department in order to determine whether certification, authorization or approval should be granted.

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

7. Confidentiality. Any information obtained pursuant to this section is confidential. The results of criminal history record checks received by the commissioner are for official use only and may not be disseminated outside the department.

8. Expense of obtaining information. The expense of obtaining the information required by this section must be paid by the State.

9. Fingerprinting. An applicant shall submit to having fingerprints taken. The Maine State Police, upon payment of the

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2 expenses as required in subsection 8, shall take or cause to be
3 taken the applicant's fingerprints and shall forward the
4 fingerprints to the bureau so that the bureau can conduct state
5 and federal criminal history record checks.

6 10. Applicant's access to criminal history record check.
7 The subject of a Federal Bureau of Investigation criminal history
8 record check may receive a copy of a criminal history record
9 check by following the procedures outlined in 28 Code of Federal
10 Regulations, Sections 16.32 and 16.33. The subject of a state
11 criminal record check may inspect and review criminal record
12 information pursuant to Title 16, section 620.

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

22 12. Rules. The commissioner shall adopt or amend rules
23 necessary to carry out this section. These rules must include a
24 listing of all positions that are subject to this section. Rules
25 adopted pursuant to this subsection are routine technical rules
26 pursuant to Title 5, chapter 375, subchapter 2-A.

27 **Sec. 4. 20-A MRSA §13011, sub-§1, ¶E,** as amended by PL 1997,
28 c. 452, §5, is further amended to read:

29 E. Certify or authorize personnel who provide early
30 childhood educational programs or developmental therapy to
31 children with disabilities from birth to under 9 years of
32 age in the home, in community-based special purpose and
33 integrated programs and in public schools; and

34 **Sec. 5. 20-A MRSA §13011, sub-§1, ¶F,** as repealed and replaced
35 by PL 1999, c. 791, §5, is repealed and the following enacted in
36 its place:

37 F. Approve persons for whom certification or authorization
38 is not required prior to their being hired or being placed
39 under contract by a public school; and

40 **Sec. 6. 20-A MRSA §13011, sub-§1, ¶G** is enacted to read:

41 G. Approve persons for whom certification or authorization
42 is not required prior to their being hired or being placed
43 under contract by a public school; and

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2 under contract by a private school approved for attendance
3 purposes under section 2902 that enrolls 60% or more
4 publicly funded students.

6 **Sec. 7. 20-A MRSA §13011, sub-§8,** as enacted by PL 1997, c.
7 452, §7, is amended to read:

8 **8. Criminal history record checks.** Criminal history record
9 checks of an applicant for certification, authorization, approval
10 or renewal must be conducted in accordance with this section,
11 section ~~6103~~ 6103-A and pursuant to rules adopted by the state
12 board. Rules adopted pursuant to this subsection are ~~mine~~
13 routine technical rules in accordance with Title 5, chapter 375,
14 subchapter II-A 2-A.

16 **Sec. 8. 20-A MRSA §13020, sub-§§3 and 4,** as enacted by PL 1983,
17 c. 845, §4, are amended to read:

18 **3. Denial of certificate for prior immoral conduct.**
19 Evidence that an applicant for initial certification,
20 authorization or approval or for renewal has injured the health
21 or welfare of a child through physical or sexual abuse or
22 exploitation is grounds for a denial of a certificate,
23 authorization or approval. Notwithstanding Title 5, chapter 341,
24 every a person, who, within 5 years of the application for
25 initial certification, authorization or approval or for renewal,
26 has been convicted in any state or federal court of a criminal
27 offense involving the physical or sexual abuse or exploitation of
28 a child, may be presumed by the commissioner to lack good moral
29 character for the purposes of this chapter. This presumption
30 shall--be is a rebuttable presumption. Notwithstanding Title 5,
31 chapter 341, the commissioner shall--be is entitled to consider
32 all records of prior criminal convictions involving child abuse
33 or exploitation in determining an applicant's eligibility for a
34 certificate, authorization or approval.

36 **4. Reinstatement of certificate, authorization or approval.**
37 Revoked certificates, authorizations or approvals may ~~only~~
38 be reinstated only in accordance with state board rules. The
39 following provisions govern the reinstatement of any certificate,
40 authorization or approval revoked for reasons of child abuse or
41 exploitation.

44 A. Notwithstanding Title 5, chapter 341, ~~no~~ a certificate,
45 authorization or approval revoked for reasons of child abuse
46 or exploitation may not be reinstated within 5 years of the
47 revocation and in no case less than 3 years from the
48 expiration of probation or parole or discharge from
49 imprisonment for a criminal conviction involving child abuse
50 or exploitation.

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2 B. In determining whether a certificate, authorization or
3 approval may be reinstated, the commissioner shall determine
4 whether the applicant has been sufficiently rehabilitated to
5 warrant the public trust. The applicant ~~shall be~~ is required
6 to demonstrate sufficient evidence of rehabilitation,
7 notwithstanding Title 5, chapter 341, and the commissioner
8 shall state in writing the basis for any decision ~~which~~ that
9 denies reinstatement of a certificate, authorization or
10 approval.

12 C. Denial of reinstatement pursuant to paragraph B may be
13 appealed to the Superior Court.

14 **Sec. 9. 25 MRSA §1541, sub-§8,** as enacted by PL 1999, c. 791,
15 §6, is repealed.

18 **Sec. 10. 25 MRSA §1542-A, sub-§1, ¶G,** as amended by PL 2001,
19 c. 52, §4, is further amended to read:

20 G. Who is a teacher or educational personnel applicant
21 subject to Title 20-A, section ~~6103~~ 6103-A;

24 **Sec. 11. 25 MRSA §1542-A, sub-§3, ¶F,** as enacted by PL 1999,
25 c. 110, §7, is amended to read:

26 F. The Maine State Police shall take or cause to be taken
27 the fingerprints of the person named in subsection 1,
28 paragraph G, ~~at the request of that person and upon payment~~
29 ~~of the expenses specified under~~ pursuant to Title 20-A,
30 section ~~6103~~ 6103-A, subsection 4.

32 **Sec. 12. 25 MRSA §1542-A, sub-§4,** as amended by PL 2001, c.
33 52, §8, is further amended to read:

36 **4. Duty to submit to State Bureau of Identification.** It is
37 the duty of the law enforcement agency taking the fingerprints as
38 required by subsection 3, paragraphs A, B and G to transmit
39 immediately to the State Bureau of Identification the criminal
40 fingerprint record. Fingerprints taken pursuant to subsection 1,
41 paragraph C, D, E or F or pursuant to subsection 5 may not be
42 submitted to the State Bureau of Identification unless an express
43 request is made by the commanding officer of the State Bureau of
44 Identification. Fingerprints taken pursuant to subsection 1,
45 paragraph G must be transmitted immediately to the State Bureau
46 of Identification to enable the bureau to conduct state and
47 national criminal history record checks for the Department of
48 Education. The bureau may not use the fingerprints for any
49 purpose other than that provided for under Title 20-A, section
50 ~~6103~~ 6103-A. The bureau shall retain the fingerprints, except as

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2 provided under Title 20-A, section 6103, ~~subsection 9~~ 6103-A,
3 subsection 11. Fingerprints taken pursuant to subsection 1,
4 paragraph I must be transmitted immediately to the State Bureau
5 of Identification to enable the bureau to conduct state and
6 national criminal history record checks for the court.

7 **Sec. 13. Removal or deletion of fingerprints from state repository.**
8 Within 90 days of the effective date of this Act, the Department
9 of Public Safety, State Bureau of Identification shall remove or
10 delete the fingerprints collected from those educational
11 personnel who were subject to the requirements of the Maine
12 Revised Statutes, Title 20-A, former section 6103 but are not
13 subject to the requirements of Title 20-A, section 6103-A. In
14 response to a written request, the State Bureau of Identification
15 shall provide written confirmation to any such educational
16 personnel that their fingerprints have been removed or deleted
17 from the state repository.'

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20 **SUMMARY**

21 This amendment is the majority report of the Joint Standing
22 Committee on Education and Cultural Affairs. The amendment
23 changes the title and strikes and replaces the bill. The
24 amendment accomplishes the following.

25
26 1. It clarifies that, beginning on August 15, 2003 the
27 fingerprinting and criminal history record check requirements for
28 educational personnel must be limited to applicants for initial
29 certification, authorization and approval from the Department of
30 Education under the Maine Revised Statutes, Title 20-A, chapters
31 501 and 502.

32
33 2. It includes in the definition of "applicant" a person
34 who applies for a position that requires certification or
35 authorization and who holds a valid credential from another
36 state, including a state that is a party state to an interstate
37 agreement on qualifications of educational personnel under Title
38 20-A, chapter 511.

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40 3. It excludes from the definition of "applicant" a person
41 who is an applicant for renewal of certification, authorization
42 and approval from the Department of Education under Title 20-A,
43 chapters 501 and 502.
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4. It removes the provision from the bill that would have authorized the Maine State Police and the Commissioner of Education to release statistics and certain general information relating to the fingerprinting and criminal history record check of educational personnel.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 890

An Act to Restrict Fingerprinting of Educational Personnel to New Applicants for Certification, Authorization or Approval

LR 0418(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Education and Cultural Affairs

Fiscal Note Required: Yes

Majority Report

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional cost to the Department of Education associated with rulemaking can be absorbed utilizing existing budgeted resources.