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HOUSE BILL 121

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Thomas E. Swisstack

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING BACKGROUND CHECKS FOR ALL
EMPLOYEES AND APPLICANTS WHO HAVE BEEN OFFERED EMPLOYMENT WITH
SCHOOL DISTRICTS AND FOR ALL OTHER PERSONS WHO WILL HAVE
UNSUPERVISED ACCESS TO STUDENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-10A-5 NMSA 1978 (being Laws 1997,
Chapter 238, Section 1, as amended) is amended to read:

"22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--
REPORTING REQUIRED--LIMITED IMMUNITY--PENALTY FOR FAILURE TO
REPORT. --

A. Except as provided in Subsection B of this
section, an applicant for [~~initial~~] licensure shall be
fingerprinted and shall provide two fingerprint cards or the
equivalent electronic fingerprints to the department to obtain

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1 the applicant's federal bureau of investigation record.
2 Convictions of felonies or misdemeanors contained in the
3 federal bureau of investigation record shall be used in
4 accordance with the Criminal Offender Employment Act. Other
5 information contained in the federal bureau of investigation
6 record, if supported by independent evidence, may form the
7 basis for the denial, suspension or revocation of a license for
8 good and just cause. Records and related information shall be
9 privileged and shall not be disclosed to a person not directly
10 involved in the licensure or employment decisions affecting the
11 specific applicant. The applicant for [~~initial~~] licensure
12 shall pay for the cost of obtaining the federal bureau of
13 investigation record.

14 B. An applicant for a renewal license who has
15 submitted to a fingerprint-based background check within the
16 immediately preceding twenty-four months is not required to
17 provide new fingerprint cards or their electronic equivalent
18 with the renewal application.

19 [~~B.—Local~~] C. School [~~boards and~~] districts,
20 regional education cooperatives and charter schools shall
21 develop policies and procedures to require background checks on
22 [~~an applicant~~] applicants who [~~has~~] have been offered
23 employment [~~a contractor or a contractor's employee~~] and on
24 other persons, including contractors and their employees, with
25 unsupervised access to students at a public school.

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1 [~~C-~~] D. An applicant for employment who has been
2 [initially] licensed within twenty-four months of applying for
3 employment with a [~~local~~] school [~~board~~] district, regional
4 education cooperative or a charter school shall not be required
5 to submit to another background check if the department has
6 copies of [~~his~~] the applicant's federal bureau of investigation
7 records on file. An applicant who has been offered employment
8 or another person, including a contractor or a contractor's
9 employee, with unsupervised access to students at a public
10 school shall provide two fingerprint cards or the equivalent
11 electronic fingerprints to the [~~local~~] school [~~board~~] district,
12 regional education cooperative or charter school to obtain
13 [~~his~~] the applicant's federal bureau of investigation record.
14 The applicant [~~contractor or contractor's employee who has been~~
15 ~~offered employment by a regional education cooperative or at a~~
16 ~~public school~~] or other person may be required to pay for the
17 cost of obtaining a background check. At the request of a
18 [~~local~~] school [~~board~~] district, regional education cooperative
19 or charter school, the department is authorized to release
20 copies of federal bureau of investigation records that are on
21 file with the department and that are not more than twenty-four
22 months old. Convictions of felonies or misdemeanors contained
23 in the federal bureau of investigation record shall be used in
24 accordance with the Criminal Offender Employment Act; provided
25 that other information contained in the federal bureau of

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1 investigation record, if supported by independent evidence, may
2 form the basis for the employment decisions for good and just
3 cause. Records and related information shall be privileged and
4 shall not be disclosed to a person not directly involved in the
5 employment decision affecting the specific applicant who has
6 been offered employment or another person, including a
7 contractor or a contractor's employee, with unsupervised access
8 to students at a public school; provided that, pursuant to
9 policy, a school district, regional education cooperative or
10 charter school may review records and related information
11 pertaining to a contractor's employee.

12 ~~[D-]~~ E. A local superintendent shall report to the
13 department any known conviction of a felony or misdemeanor
14 involving moral turpitude of a licensed school employee that
15 results in any type of action against the licensed school
16 employee.

17 ~~[E-]~~ F. The ~~[state board]~~ department may suspend or
18 revoke the license of a local superintendent who fails to
19 report a criminal conviction involving moral turpitude of a
20 licensed school employee.

21 ~~[F-]~~ G. A person who in good faith reports any
22 known conviction of a felony or misdemeanor involving moral
23 turpitude of a licensed school employee shall not be held
24 liable for civil damages as a result of the report; provided
25 that the person being accused shall have the right to sue for

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1 any damages sustained as a result of negligent or intentional
2 reporting of inaccurate information or the disclosure of any
3 information to an unauthorized person. "

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