

HOUSE BILL 1140

F1

4lr2626
CF SB 883

By: **Delegate Smith**

Introduced and read first time: February 7, 2024

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 1, 2024

CHAPTER _____

1 AN ACT concerning

2 **Education – Virtual Tutoring Services – ~~Applicant Review~~ Background Checks**
3 **and Fingerprinting**

4 FOR the purpose of requiring ~~virtual tutoring services to require an applicant for a position~~
5 ~~involving direct contact with minors to submit certain information relating to child~~
6 ~~sexual abuse or sexual misconduct of the applicant; requiring certain former~~
7 ~~employers of an applicant to submit certain information to the virtual tutoring~~
8 ~~service; requiring a virtual tutoring service to review certain information submitted~~
9 ~~by an applicant before hiring the applicant; authorizing a virtual tutoring service to~~
10 ~~forward certain information gathered during an applicant review process to certain~~
11 ~~organizations; allowing virtual tutoring services to use a certain prior employment~~
12 ~~review by another virtual tutoring service~~ a virtual tutoring service that contracts
13 with a county board of education or a nonpublic school to conduct a criminal history
14 records check for any individual at the virtual tutoring service who engages with a
15 minor; exempting certain virtual tutoring services from collecting certain
16 information about its employees under certain circumstances; and generally relating
17 to applicants for employment with criminal history records checks and virtual
18 tutoring services.

19 BY repealing and reenacting, with amendments,
20 Article – Education
21 Section 6–113.2
22 Annotated Code of Maryland
23 (2022 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



BY repealing and reenacting, with amendments,
Article – Family Law
Section 5–550 and 5–551(a) and (g)
Annotated Code of Maryland
(2019 Replacement Volume and 2023 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Education

6–113.2.

(a) (1) In this section the following words have the meanings indicated.

(2) “Child sexual abuse” has the meaning stated in § 6–113.1 of this subtitle.

(3) (i) “Contracting agency” means an entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school.

(ii) “Contracting agency” includes an entity that provides transportation to and from a school using a vehicle other than a Type I or Type II school vehicle, in accordance with § 7–801 of this article.

(4) “Direct contact with minors” means the care, supervision, guidance, or control of, or routine interaction with, a minor.

(5) “Emergent employee” means an employee hired by a county board or nonpublic school without completing the employment history review required under this section.

(6) “School” means a public or nonpublic school.

(7) “Sexual misconduct” has the meaning stated in § 6–113.1 of this subtitle.

(8) **“VIRTUAL TUTORING SERVICE” MEANS AN ENTITY THAT HIRES TUTORS TO WORK WITH STUDENTS VIRTUALLY HAS THE MEANING STATED IN § 5–550 OF THE FAMILY LAW ARTICLE.**

(b) **THIS SECTION DOES NOT APPLY TO A VIRTUAL TUTORING SERVICE THAT CONDUCTS A CRIMINAL HISTORY RECORDS CHECK UNDER § 5–555 OF THE FAMILY LAW ARTICLE.**

1 **(C)** A county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or
2 contracting agency shall require an applicant for a position involving direct contact with
3 minors to submit:

4 (1) The contact information of the following employers:

5 (i) The current employer;

6 (ii) All former school employers, including employers for which the
7 applicant was an emergent employee; and

8 (iii) All former employers of the applicant in which the applicant was
9 employed in a position involving direct contact with minors within the previous 10 years;

10 (2) A written consent form, signed by the applicant, authorizing an
11 employer listed under item (1) of this subsection to release all records relating to child
12 sexual abuse or sexual misconduct; and

13 (3) A written statement of whether the applicant:

14 (i) Has been the subject of a child sexual abuse or sexual misconduct
15 investigation by any employer, arbitrator, county board, State licensing agency, law
16 enforcement agency, or child protective services agency, unless the investigation resulted
17 in a finding by:

18 1. The employer that allegations that the applicant engaged
19 in sexual misconduct lacked sufficient evidence according to the policies of the county board
20 or nonpublic school;

21 2. An arbitrator or a county board to reject any disciplinary
22 action in response to allegations that the applicant engaged in sexual misconduct;

23 3. A State licensing agency that allegations that the
24 applicant engaged in sexual misconduct lacked sufficient evidence according to:

25 A. State law; or

26 B. The policies of the county board or nonpublic school;

27 4. A law enforcement agency that allegations that the
28 applicant engaged in child sexual abuse were unfounded; or

29 5. A child protective services agency that allegations that the
30 applicant engaged in child sexual abuse were ruled out;

31 (ii) Has ever been disciplined, discharged, nonrenewed, or asked to
32 resign from employment, or has ever resigned from or otherwise separated from any

employment while allegations of child sexual abuse or sexual misconduct were pending or were under investigation, or due to an adjudication or findings of child sexual abuse or sexual misconduct; or

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

~~(e)~~ **(D)** Except as provided in subsection ~~(g)~~ **(H)** of this section, before hiring an applicant for a position involving direct contact with minors, the county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency shall:

(1) Review an applicant's employment history by contacting the employers listed by the applicant under subsection ~~(b)(1)~~ **(C)(1)** of this section and requesting the following information:

(i) The dates of employment of the applicant; and

(ii) Answers to the questions regarding child sexual abuse or sexual misconduct required under subsection ~~(b)(2)~~ **(C)(3)** of this section; and

(2) Request a report from the Department regarding the applicant's eligibility for employment or certification status to determine whether the applicant:

(i) Holds a valid and active certification appropriate for the position and is otherwise eligible for employment; and

(ii) Has been the subject of professional discipline related to child sexual abuse or sexual misconduct.

~~(d)~~ **(E)** (1) Not later than 20 days after receiving a request for information under subsection ~~(e)~~ **(D)** of this section, an employer shall send to the county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency the information requested on the form prescribed by the Department.

(2) If the information from an employer includes an affirmative response to the child sexual abuse or sexual misconduct questions under subsection ~~(b)(2)~~ **(C)(3)** of this section, and the county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency makes a determination to further consider the applicant for employment, the county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency shall request that the former employer provide additional information about the information provided, including all records related to child sexual abuse or sexual misconduct.

(3) An employer that receives a request for additional information under paragraph (1) of this subsection shall provide the additional information within 60 days of the date of the prospective employer's request to:

(i) The requesting county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency; and

(ii) The applicant who is under consideration for employment.

~~(e)~~ **(F)** (1) A county board or nonpublic school may hire an applicant as an emergent employee for a period not to exceed 60 days pending the review of information and records required under this section only if:

(i) The applicant has provided all the information and supporting documentation required under this section;

(ii) An employer has no knowledge of information regarding the applicant that would disqualify the applicant from employment;

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

(iv) The applicant is not authorized to work alone with minors unless the applicant:

1. Works in the immediate vicinity of a permanent employee;

or

2. If the applicant is a school vehicle driver, is subject to audio and video monitoring and recording, which is promptly reviewed by school administrators.

(2) Based on the employment history review required under subsection ~~(e)~~ **(D)** of this section, at any time within 60 days after hiring an applicant as an emergent employee, the county board or nonpublic school may:

(i) Rescind the offer of employment; or

(ii) Complete the emergent employee's hiring process, in accordance with the provisions of this title, with any executed contract reflecting the first day worked as an emergent employee.

(3) Within 60 days after hiring an applicant as an emergent employee, a county board's decision to dismiss the emergent employee, for any reason other than child sexual abuse or sexual misconduct, may be appealed:

(i) In accordance with § 4-205 of this article;

(ii) In accordance with the collective bargaining agreement applicable to the emergent employee; or

(iii) If applicable, in accordance with § 6–202 of this title.

~~(G)~~ **(G)** (1) A county board or nonpublic school is authorized to share an employment history review required under subsection ~~(e)~~ **(D)** of this section with other county boards and nonpublic schools.

(2) A contracting agency is authorized to share an employment history review required under subsection ~~(e)~~ **(D)** of this section with other contracting agencies.

~~(3) A VIRTUAL TUTORING SERVICE IS AUTHORIZED TO SHARE AN EMPLOYMENT HISTORY REVIEW REQUIRED UNDER SUBSECTION (C) OF THIS SECTION WITH OTHER VIRTUAL TUTORING SERVICES.~~

~~(e)~~ **(H)** (1) A county board or nonpublic school may use an employment history review completed by a current or former employer in the manner required under subsection ~~(e)~~ **(D)** of this section if the employer is a county board or nonpublic school and the applicant:

(i) Swears or affirms that the completed employment history review includes all prior employment required to be reported under this section; and

(ii) Provides information about any employment subsequent to the previous employment history review by the current or former county board or nonpublic school.

(2) A contracting agency may use an employment history review completed by a current or former employer in the manner required under subsection ~~(e)~~ **(D)** of this section if the employer is a contracting agency and the applicant:

(i) Swears or affirms that the completed employment history review includes all prior employment required to be reported under this section; and

(ii) Provides information about any employment subsequent to the previous employment history review by the contracting agency.

~~(3) A VIRTUAL TUTORING SERVICE MAY USE AN EMPLOYMENT HISTORY REVIEW COMPLETED BY A CURRENT OR FORMER EMPLOYER IN THE MANNER REQUIRED UNDER SUBSECTION (C) OF THIS SECTION IF THE EMPLOYER IS A VIRTUAL TUTORING SERVICE AND THE APPLICANT:~~

~~(i) SWEARS OR AFFIRMS THAT THE COMPLETED EMPLOYMENT HISTORY REVIEW INCLUDES ALL PRIOR EMPLOYMENT REQUIRED TO BE REPORTED UNDER THIS SECTION; AND~~

~~(H) PROVIDES INFORMATION ABOUT ANY EMPLOYMENT
SUBSEQUENT TO THE PREVIOUS EMPLOYMENT HISTORY REVIEW BY THE VIRTUAL
TUTORING SERVICE.~~

~~(H)~~ (I) (1) (i) A county board, nonpublic school, or contracting agency shall conduct an employment history review of an applicant for a substitute position involving direct contact with minors as required under subsection ~~(e)~~ (D) of this section before the initial hiring of the substitute employee or placement on the approved substitute employee list of the county board, nonpublic school, or contracting agency.

(ii) An employment history review of a substitute employee shall remain valid as long as the substitute employee continues to be employed by the same county board or remains on the approved substitute employee list of the nonpublic school or contracting agency.

(2) If a substitute employee is seeking to be added to the substitute employee list of another county board, nonpublic school, or contracting agency, a new employment history review in accordance with subsection ~~(e)~~ (D) of this section is required.

(3) The appearance of a substitute employee on the substitute employee list of one county board, nonpublic school, or contracting agency does not relieve another county board, nonpublic school, or contracting agency of the duty of compliance with this section.

(4) An employment history review conducted on the initial hiring of a substitute employee by a contracting agency, an intermediate unit, or any other entity that provides substitute staffing services to a county board or a nonpublic school shall satisfy the requirements of this section for all school entities using the services of that contracting agency, intermediate unit, or other entity.

(5) A contracting agency, an intermediate unit, or any other entity providing substitute staffing services to a school entity shall comply with the provisions of this section.

~~(H)~~ (J) (1) (i) A contracting agency shall conduct an employment history review of an applicant for employment with the contracting agency as required under subsection ~~(e)~~ (D) of this section:

1. At the time of the initial hiring of the employee; or
2. Before the employee is assigned to work for a school entity in a position involving direct contact with minors.

(ii) The employment history review under subparagraph (i) of this paragraph shall remain valid as long as the employee continues to be employed by the hiring contracting agency.

(iii) A contracting agency shall:

1. Maintain a record of each employee's employment history review required under this subsection; and

2. On request of the school entity to which an employee is assigned, provide access to the contracting agency's records of that employee.

(2) (i) Before assigning an employee to perform work for a school entity in a position involving direct contact with minors, a contracting agency shall provide notice to the school entity of any affirmative responses to the child sexual abuse or sexual misconduct questions required under subsection ~~(b)(2)~~ **(C)(3)** of this section.

(ii) A contracting agency may not assign an employee to perform work for a school entity in a position involving direct contact with minors if the school entity objects to the assignment after receiving the notice required under subparagraph (i) of this paragraph.

~~(i)~~ **(K)** (1) Information and records about an applicant received by a county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency under this section are not a public record for the purposes of the Maryland Public Information Act.

(2) A county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency that receives information and records from an employer about an applicant under this section may:

(i) Use the information and records for the purpose of evaluating the applicant's fitness to be hired or for continued employment; and

(ii) Report the information to the Department, a State licensing agency, a law enforcement agency, a child protective services agency, another school entity, or any other prospective employer, as appropriate.

~~(i)~~ **(L)** (1) A county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency 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 that:

(i) Has the effect of suppressing information relating to an investigation or disciplinary action in response to a report of suspected child sexual abuse or sexual misconduct by a current or former employee;

(ii) Affects the ability of the county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency to report suspected child sexual abuse or sexual misconduct to the appropriate authorities; or

(iii) Requires the county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency to expunge information about allegations or findings of suspected child sexual abuse or sexual misconduct from any document maintained by the employer unless the investigation resulted in a finding by:

1. The employer that allegations that the applicant engaged in sexual misconduct lacked sufficient evidence according to the policies of the county board or nonpublic school;

2. An arbitrator or a county board to reject any disciplinary action in response to allegations that the applicant engaged in sexual misconduct;

3. A State licensing agency that allegations that the applicant engaged in sexual misconduct lacked sufficient evidence according to:

A. State law; or

B. The policies of the county board or nonpublic school;

4. A law enforcement agency that allegations that the applicant engaged in child sexual abuse were unfounded; or

5. A child protective services agency that allegations that the applicant engaged in child sexual abuse were ruled out.

(2) A provision of an employment contract, an agreement for resignation or termination, or a severance agreement that is executed, amended, or entered into on or after July 1, 2019, and that is contrary to this section is void and unenforceable.

~~(M)~~ **(M)** If there is a lapse in the operation of or the Department suspends the use of a system or database that the Department uses to check an applicant's eligibility for employment or certification status, the Department shall notify the county boards, nonpublic schools, ~~VIRTUAL TUTORING SERVICES~~, and any contracting agencies within 48 hours of the lapse or the suspension of the use of the system or database.

~~(N)~~ **(N)** (1) A person acting in good faith may not be held liable for disclosing any information or records related to child sexual abuse or sexual misconduct about a current or former employee's professional conduct or reason for termination of employment to a county board, a nonpublic school, ~~A VIRTUAL TUTORING SERVICE~~, a contracting agency, the Department, or any other potential employer in accordance with this section unless the person:

(i) Acted with actual malice toward the employee or former employee; or

(ii) Intentionally or recklessly disclosed false information about the employee or former employee.

(2) The immunity from liability under paragraph (1) of this subsection shall be in addition to, and not a limitation of, any other immunity provided by law or any absolute or conditional privilege applicable to the disclosure of information or records or the applicant's consent to the disclosure.

~~(O)~~ (1) An applicant who provides false information or willfully fails to disclose material information required under this section shall be subject to professional discipline, including termination or denial of employment, and may be subject to professional discipline in accordance with the regulations of the Department.

(2) (i) Subject to subparagraph (ii) of this paragraph, the willful failure of an employer or former employer to respond to or provide the information and records requested by a county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency under this section may result in civil penalties or professional discipline, if appropriate.

(ii) An employer or a former employer may not be held liable for failure to respond to a request for information about an applicant under this section if:

1. The laws of the state in which the employer or former employer is located prohibit the release of the information or records requested; or

2. The disclosure of the information and records requested is restricted by the terms of a contract entered into on or before June 30, 2019.

(3) (i) Notwithstanding any other provision of law, the Department may initiate disciplinary action before a hearing officer in accordance with the Department's regulations against an applicant, an employee, a contracting agency, or a school administrator for willful violations of this section.

(ii) The Department may adopt regulations establishing procedures for disciplinary proceedings and the assessment of penalties in accordance with this section.

~~(P)~~ (P) Nothing in this section shall be construed:

(1) To prevent a county board, nonpublic school, ~~VIRTUAL TUTORING SERVICE~~, or contracting agency from:

(i) Conducting further investigations of prospective employees;

(ii) Requesting applicants to provide additional background information or authorizations beyond the information or authorizations required under this section; or

(iii) Requesting that an employer or a former employer provide more information than is required under this section;

(2) To relieve a county board, a nonpublic school, ~~A VIRTUAL TUTORING SERVICE~~, a contracting agency, or any other mandated reporter of the legal responsibility to report suspected incidents of child sexual abuse or sexual misconduct in accordance with State law or the reporting requirements of the Department; or

(3) To prohibit the right of an 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 section.

Article – Family Law

5–550.

(a) In this Part V of this subtitle the following words have the meanings indicated.

(b) “Authorized agency” means a State, county, or municipal government agency.

(c) “Central Repository” means the Criminal Justice Information System Central Repository of the Department.

(d) “Conviction” means a plea or verdict of guilty or a plea of nolo contendere.

(e) “Criminal history records check” means a records check of the criminal history record information maintained by the Central Repository or the Federal Bureau of Investigation.

(f) “Department” means the Department of Public Safety and Correctional Services.

(g) (1) “Employee” means a person that for compensation is employed to work in a facility identified in § 5–551 of this subtitle and who:

(i) cares for or supervises children in the facility; or

(ii) has access to children who are cared for or supervised in the facility.

(2) “Employee” includes:

(i) a person who:

1. participates in a pool described in subsection (h)(2) of this section;

2. for compensation will be employed on a substitute or temporary basis to work in a facility identified in § 5–551(a)(1) or (2) of this subtitle; and

3. will care for or supervise children in the facility or will have access to children who are cared for or supervised in the facility; and

(ii) a contractor or subcontractor who:

1. will have direct, unsupervised, and uncontrolled access to children in a facility identified in § 5–551(a) of this subtitle; OR

2. WILL HAVE VIRTUAL ACCESS TO CHILDREN AS PART OF A VIRTUAL TUTORING SERVICE IDENTIFIED IN § 5–551(A) OF THIS SUBTITLE.

(3) “Employee” does not include any person employed to work for compensation by the Department of Juvenile Services.

(h) (1) “Employer” means an owner, operator, proprietor, or manager of a facility identified in § 5–551 of this subtitle who has frequent contact with children who are cared for or supervised in the facility.

(2) For purposes of §§ 5–551(f), 5–554(1), 5–555(b) and (e), and 5–557 of this subtitle, “employer” includes a child care resource and referral center, an association of registered family child care providers, and an association of licensed child care centers to the extent that the center or association establishes and maintains a pool of individuals who are qualified to work as substitute or temporary employees in a facility identified in § 5–551(a)(1) or (2) of this subtitle.

(3) “Employer” does not include a State or local agency responsible for the temporary or permanent placement of children in a facility identified in § 5–551 of this subtitle.

(i) “Local department” has the meaning stated in § 1–101(h) of this article.

(j) “Private entity” means a nongovernmental agency, organization, or employer.

(k) “Secretary” means the Secretary of Public Safety and Correctional Services.

(L) “VIRTUAL TUTORING SERVICE” MEANS AN ENTITY THAT ENTERS INTO A CONTRACT WITH A COUNTY BOARD OF EDUCATION, INCLUDING THE BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS, OR A NONPUBLIC SCHOOL TO PROVIDE LIVE, VIRTUAL, VIDEO–BASED TUTORING TO STUDENTS.

1 5-551.

2 (a) The following facilities shall require employees and employers to obtain a
3 criminal history records check under this Part V of this subtitle:

4 (1) a child care center required to be licensed under Title 9.5, Subtitle 4 of
5 the Education Article;

6 (2) a family child care home or large family child care home required to be
7 registered under Title 9.5, Subtitle 3 of the Education Article;

8 (3) a child care home required to be licensed under this subtitle or under
9 Title 9 of the Human Services Article;

10 (4) a child care institution required to be licensed under this subtitle or
11 under Title 9 of the Human Services Article;

12 (5) a juvenile detention, correction, or treatment facility provided for in
13 Title 9 of the Human Services Article;

14 (6) a public school as defined in Title 1 of the Education Article;

15 (7) a private or nonpublic school required to report annually to the State
16 Board of Education under Title 2 of the Education Article;

17 (8) a foster care family home or group facility as defined under this subtitle;

18 (9) a recreation center or recreation program operated by the State, a local
19 government, or a private entity primarily serving minors;

20 (10) a day or residential camp, as defined in Title 10, Subtitle 16 of the Code
21 of Maryland Regulations, primarily serving minors; [or]

22 (11) a home health agency or residential service agency licensed by the
23 Maryland Department of Health and authorized under Title 19 of the Health – General
24 Article to provide home– or community–based health services for minors; OR

25 **(12) A VIRTUAL TUTORING SERVICE.**

26 (g) (1) Except as provided in paragraph (2) of this subsection, a person who is
27 required to have a criminal history records check under this Part V of this subtitle shall
28 pay for:

29 (i) the mandatory processing fee required by the Federal Bureau of
30 Investigation for a national criminal history records check;

(ii) reasonable administrative costs to the Department, not to exceed 10% of the processing fee; and

(iii) the fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to Maryland criminal history records.

(2) A volunteer under subsection (c), (d), or (e) of this section who volunteers for a program that is registered with the Maryland Mentoring Partnership OR A VIRTUAL TUTORING SERVICE is required to pay only the mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.