

**AN ACT RELATIVE TO BACKGROUND CHECKS: CHAPTER 77 OF THE ACTS OF 2013 (AMENDING MASS. GEN. LAWS CHAPTER 71, SECTION 38R)**

Note: Sections included here relate only to the Department of Elementary and Secondary Education; the full text of Chapter 77 of the Acts of 2013 is available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2013/Chapter77>

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith children, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

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**SECTION 7.** Chapter 71 of the General Laws is hereby amended by striking out section 38R and inserting in place thereof the following section:-

**Section 38R.** In a manner prescribed by the board of elementary and secondary education, the school committee and superintendent of any city, town or regional school district and the principal or other administrator, by whatever title the position may be known, of a public or private school, including a special education school program approved pursuant to chapter 71B, shall obtain periodically, but not less frequently than every 3 years, from the department of criminal justice information services all available criminal offender record information for any current or prospective employee or volunteer within the school district who may have direct and unmonitored contact with children, including any individual who regularly provides school related transportation to children. Said school committee, superintendent or principal or other administrator shall also have access to and may obtain all criminal offender record information for any subcontractor or laborer commissioned by the school committee or school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children.

The school committee, superintendent of any city, town or regional school district or the principal or other administrator, by whatever title the position may be known, of a public or private school, including a special education school program approved pursuant to chapter 71B, shall also obtain a state and national fingerprint-based criminal background check, pursuant to 42 U.S.C. section 16962, to determine the suitability of current and prospective school employees who may have direct and unmonitored contact with children. For the purpose of this section, employees shall include any apprentice, intern or student teacher who may have direct and unmonitored contact with children. The school committee shall only obtain a state and national fingerprint-based criminal background check for current and prospective employees for whom the school committee has direct hiring authority. The superintendent, principal or other administrator shall also obtain a state and national fingerprint-based criminal background check

for any individual who regularly provides school related transportation to children. The school committee, superintendent or principal or other administrator may obtain a state and national fingerprint-based criminal background check pursuant to 42 U.S.C. section 16962, for any volunteer, subcontractor or laborer commissioned by the school committee or school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children. Fingerprints shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section and the department of criminal justice information services to assist employers authorized under this chapter to ensure the continued suitability of those individuals. The department of criminal justice information services may disseminate the results of the state and national criminal background checks to: (1) a school committee, superintendent, principal or the designee of the school committee, superintendent or principal, to determine the suitability of current and prospective employees of the school employer; and (2) to the department of elementary and secondary education to determine the suitability of applicants for license and licensed educators who may have direct and unmonitored contact with children. However, the department of criminal justice information services shall only disseminate to a school committee results for current and prospective employees for whom the school committee has direct hiring authority.

Entities that receive the results of national criminal background checks shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information. Notwithstanding subsections 9 and 9 ½ of section 4 of chapter 151B, if a school employer receives criminal record information from the state or national fingerprint-based criminal background checks that includes no disposition or is otherwise incomplete, the school employer may request that an individual provide additional information regarding the results of the criminal background checks to assist the school employer in determining the applicant's suitability for direct and unmonitored contact with children. The department of criminal justice information services shall only disseminate information under this section that would otherwise be available to requesting entities under sections 167 through 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information. The school committee, superintendent or principal shall notify the commissioner of any criminal record information relevant to the fitness for licensure of any holder of, or applicant for, an educator's license in the commonwealth.

The board of elementary and secondary education shall in a manner provided by law and in accordance with this section and sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder, promulgate regulations necessary to carry out this section. The regulations shall address the circumstances under which a school employer may rely on a suitability determination made by a previous Massachusetts school employer or the department of elementary and secondary education in lieu of obtaining a new state and national criminal history background check. The factors identified in the regulations shall include, but need not be limited to: (1) the date of the previous suitability determination; (2) the individual's employment history; and (3)

the individual's states of residence since the previous suitability determination. If an employer chooses to conduct a new state and national finger-print based criminal history background check, rather than rely on a previous suitability determination, the employer shall pay the fees for the new check. The regulations shall provide for the confidentiality of criminal offender record information and the results of fingerprint-based checks of the state and national criminal history databases, pursuant to 42 U.S.C. section 16962 and Public Law 92-544, obtained pursuant to this section. The regulations may reflect a phased-in schedule for the fingerprint-based background checks of individuals whose employment or service began prior to the 2013-2014 school year.

The applicant shall pay a fee, to be established by the secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$55 for employees who are certified pursuant to section 38G and shall not exceed \$35 for employees who are not certified pursuant to section 38G. The secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner, may increase the fee accordingly if the Federal Bureau of Investigation increases the fee for its fingerprint background check service. The school committee, superintendent or principal may reimburse applicants all or part of the fee on the grounds of financial hardship. Any fees collected from fingerprinting activity pursuant to this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund established by section 2HHHH of chapter 29.

SECTION 8. Sections 8C and 9 of chapter 459 of the acts of 2012 are hereby repealed.

SECTION 9. For the purposes of this section, "conditional employee" shall mean an individual who may have direct and unmonitored contact with children who a school employer hires without first obtaining the results of a state and national fingerprint-based criminal history check because the employer determines that hiring the individual is necessary.

Until the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to school employers, school employers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check if the school employer has obtained from the Massachusetts department of criminal justice information services all available criminal offender record information on such individuals.

Once the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to school employers school employers shall require employees hired for the 2013-2014 school year or thereafter without the results of a state and national fingerprint-based criminal history check to submit fingerprints for a state and national criminal history check within a reasonable period of time.

School employers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check in limited circumstances. The board of elementary and

secondary education shall in a manner provided by law and in accordance with this section, promulgate regulations necessary to carry out this section. These regulations shall address the circumstances under which a school employer may hire a conditional employee.

Notwithstanding subsections 9 and 9 ½ of section 4 of chapter 151B of the General Laws, if a school employer seeks to hire a conditional employee, the school employer may request that an individual provide additional information regarding the individual's history of criminal convictions to assist the school employer in determining the applicant's suitability for direct and unmonitored contact with children; provided, however, that the information shall not include juvenile or sealed convictions.

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SECTION 12. Section 38R of chapter 71 of the General Laws and section 9 of this act shall apply to all individuals working in kindergarten through twelfth grade education whose employment or service for a school or district begins during or after the 2013-2014 school year. Individuals working in kindergarten through twelfth grade education whose employment or service began before the 2013-2014 school year shall submit fingerprints for state and national criminal history checks on a phased-in basis prior to the beginning of the 2016-2017 school year.

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Approved, September 3, 2013.