

# ASSEMBLY, No. 5838

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED DECEMBER 7, 2023

**Sponsored by:**

**Assemblyman JAY WEBBER**

**District 26 (Essex, Morris and Passaic)**

**Co-Sponsored by:**

**Assemblywomen Dunn and Sawyer**

**SYNOPSIS**

Requires institutions of higher education to review employment history of prospective employees who will have regular contact with students to ascertain allegations of child abuse or sexual misconduct.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/14/2023)**

1 AN ACT concerning employees of institutions of higher education  
2 and supplementing chapter 3B of Title 18A of the New Jersey  
3 Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Child abuse" means any conduct that falls under the purview and  
10 reporting requirements of P.L.1971, c.437 (C.9:6-8.8 et seq.) and is  
11 directed toward or against a child or student, regardless of the age of  
12 the child or student.

13 "School" means any public or private school as defined in  
14 N.J.S.18A:1-1 and any substantially equivalent school under the laws  
15 of another state.

16 "Sexual misconduct" means any verbal, nonverbal, written, or  
17 electronic communication, or any other act directed toward or with a  
18 student that is designed to establish a sexual relationship with the  
19 student, including a sexual invitation, dating or soliciting a date,  
20 engaging in sexual dialogue, making sexually suggestive comments,  
21 self-disclosure or physical exposure of a sexual or erotic nature, and  
22 any other sexual, indecent, or erotic contact with a student.

23 "Student" means any person enrolled in a school that includes  
24 grades kindergarten through 12, or any combination thereof, or any  
25 person enrolled in one or more courses or programs of an institution  
26 of higher education and includes students employed by the institution  
27 to assist with teaching, administrative, or research duties as a  
28 teaching assistant, graduate assistant, or similar position.

29  
30 2. The governing body of an institution of higher education shall  
31 not employ for pay or contract for the paid services of any person  
32 serving in a position which involves regular contact with students  
33 unless the institution:

34 a. requires the applicant to provide:

35 (1) a list, including the name, address, telephone number and  
36 other relevant contact information of:

37 (a) the applicant's current employer;

38 (b) all former employers of the applicant within the last 20 years  
39 that were institutions of higher education or schools; and

40 (c) all former employers of the applicant within the last 20 years  
41 where the applicant was employed in a position that involved direct  
42 contact with children or students;

43 (2) a written authorization that consents to and authorizes  
44 disclosure of the information requested under subsection b. of this  
45 section and the release of related records by the applicant's employers  
46 listed under paragraph (1) of this subsection, and that releases those  
47 employers from liability that may arise from the disclosure or release  
48 of records; and

1 (3) a written statement as to whether the applicant:

2 (a) has been the subject of any child abuse or sexual misconduct  
3 investigation by any employer, State licensing agency, law  
4 enforcement agency, or the Department of Children and Families,  
5 unless the investigation resulted in a finding that the allegations were  
6 false or the alleged incident of child abuse or sexual misconduct was  
7 not substantiated;

8 (b) has ever been disciplined, discharged, nonrenewed, asked to  
9 resign from employment, resigned from or otherwise separated from  
10 any employment while allegations of child abuse or sexual  
11 misconduct were pending or under investigation, or due to an  
12 adjudication or finding of child abuse or sexual misconduct; or

13 (c) has ever had a license, professional license, or certificate  
14 suspended, surrendered, or revoked while allegations of child abuse  
15 or sexual misconduct were pending or under investigation, or due to  
16 an adjudication or finding of child abuse or sexual misconduct;  
17 and

18 b. conducts a review of the employment history of the applicant  
19 by contacting those employers listed by the applicant pursuant to the  
20 provisions of paragraph (1) of subsection a. of this section and  
21 requesting the following information:

22 (1) the dates of employment of the applicant; and

23 (2) a statement as to whether the applicant:

24 (a) was the subject of any child abuse or sexual misconduct  
25 investigation by any employer, State licensing agency, law  
26 enforcement agency, or the Department of Children and Families,  
27 unless the investigation resulted in a finding that the allegations were  
28 false or the alleged incident of child abuse or sexual misconduct was  
29 not substantiated;

30 (b) was disciplined, discharged, nonrenewed, asked to resign  
31 from employment, resigned from or otherwise separated from any  
32 employment while allegations of child abuse or sexual misconduct  
33 were pending or under investigation, or due to an adjudication or  
34 finding of child abuse or sexual misconduct; or

35 (c) has ever had a license, professional license, or certificate  
36 suspended, surrendered, or revoked while allegations of child abuse  
37 or sexual misconduct were pending or under investigation, or due to  
38 an adjudication or finding of child abuse or sexual misconduct.

39 The review of the employment history may be conducted through  
40 telephonic, electronic, or written communications. If the review is  
41 conducted by telephone, the results of the review shall be  
42 documented in writing by the prospective employer.

43  
44 3. a. An applicant who willfully provides false information or  
45 willfully fails to disclose information required pursuant to subsection  
46 a. of section 2 of this act:

47 (1) shall be subject to discipline up to, and including, termination  
48 or denial of employment;

1 (2) may be deemed in violation of subsection a. of N.J.S.2C:28-  
2 3; and

3 (3) may be subject to a civil penalty of not more than \$500 which  
4 shall be collected in proceedings in accordance with the "Penalty  
5 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

6 b. An institution of higher education shall include a notification  
7 of the penalties set forth in this section on all applications for  
8 employment for positions which involve regular contact with  
9 students.

10

11 4. a. No later than 20 days after receiving a request for  
12 information pursuant to subsection b. of section 2 of this act, an  
13 employer that has or had an employment relationship within the last  
14 20 years with the applicant shall disclose the information requested.

15 b. The prospective employer, in conducting the review of the  
16 employment history of an out-of-State applicant, shall make, and  
17 document with specificity, diligent efforts to:

18 (1) verify the information provided by the applicant pursuant to  
19 subsection a. of section 2 of this act; and

20 (2) obtain from any out-of-State employers listed by the applicant  
21 the information requested pursuant to subsection b. of section 2 of  
22 this act.

23 c. The failure of an employer to provide the information  
24 requested pursuant to subsection b. of section 2 of this act within the  
25 20-day timeframe established pursuant to subsection a. of this section  
26 may be grounds for the automatic disqualification of an applicant  
27 from employment with an institution of higher education.

28 An institution of higher education shall not be liable for any claims  
29 brought by an applicant who is not offered employment or whose  
30 employment is terminated:

31 (1) because of any information received by an institution from an  
32 employer pursuant to section 2 of this act; or

33 (2) due to the inability of the institution to conduct a full review  
34 of the applicant's employment history pursuant to subsection b. of  
35 section 2 of this act.

36 d. The governing body of an institution of higher education shall  
37 have the right to immediately terminate an individual's employment  
38 or rescind an offer of employment if:

39 (1) the applicant is offered employment or commences  
40 employment with the institution following the effective date of this  
41 act; and

42 (2) information regarding the applicant's history of sexual  
43 misconduct or child abuse is subsequently discovered or obtained by  
44 the employer that the employer determines disqualifies the applicant  
45 or employee from employment with the institution.

46 The termination of employment pursuant to this subsection shall  
47 not be subject to any grievance or appeals procedures or tenure

1 proceedings pursuant to any collectively bargained or negotiated  
2 agreement or any law, rule, or regulation.

3  
4 5. a. After reviewing the information disclosed pursuant to  
5 subsection b. of section 2 of this act and finding an affirmative  
6 response to any of the inquiries in paragraph (2) of subsection b. of  
7 section 2 of this act, the prospective employer, prior to determining  
8 whether to continue with the applicant's job application process, shall  
9 make further inquiries of the applicant's current or former employer  
10 to ascertain additional details regarding the matter disclosed.

11 b. The governing body of an institution of higher education may  
12 employ or contract with an applicant on a provisional basis for a  
13 period not to exceed 90 days pending review by the institution of  
14 higher education of information received pursuant to section 2 of this  
15 act, provided that all of the following conditions are satisfied:

16 (1) the applicant has complied with subsection a. of section 2 of  
17 this act;

18 (2) the institution has no knowledge or information pertaining to  
19 the applicant that the applicant is required to disclose pursuant to  
20 paragraph (3) of subsection a. of section 2 of this act; and

21 (3) the institution determines that special or emergent  
22 circumstances exist that justify the temporary employment of the  
23 applicant.

24  
25 6. a. Information received by an institution of higher education  
26 pursuant to this act shall not be deemed a public record under  
27 P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning  
28 access to public records.

29 b. An employer that provides information or records about a  
30 current or former employee or applicant shall be immune from  
31 criminal and civil liability for the disclosure of the information,  
32 unless the information or records provided were knowingly false.  
33 The immunity shall be in addition to and not in limitation of any other  
34 immunity provided by law.

35  
36 7. a. On or after the effective date of this act, the governing body  
37 of an institution of higher education may not enter into a collectively  
38 bargained or negotiated agreement, an employment contract, an  
39 agreement for resignation or termination, a severance agreement, or  
40 any other contract or agreement or take any action that:

41 (1) has the effect of suppressing or destroying information  
42 relating to an investigation related to a report of suspected child  
43 abuse or sexual misconduct by a current or former employee;

44 (2) affects the ability of the institution to report suspected child  
45 abuse or sexual misconduct to the appropriate authorities; or

46 (3) requires the institution to expunge information about  
47 allegations or finding of suspected child abuse or sexual misconduct  
48 from any documents maintained by the institution, unless after

1 investigation the allegations are found to be false or the alleged  
2 incident of child abuse or sexual misconduct has not been  
3 substantiated.

4 b. Any provision of an employment contract or agreement for  
5 resignation or termination or a severance agreement that is executed,  
6 amended, or entered into after the effective date of this act and that  
7 is contrary to this section shall be void and unenforceable.

8  
9 8. a. The Secretary of Higher Education shall establish a public  
10 awareness campaign to publicize the provisions of this act and to  
11 ensure applicants and employers are aware of their respective rights  
12 and responsibilities under this act. The Office of the Secretary of  
13 Higher Education shall post on its Internet website guidance  
14 documents and any other informational materials that may assist  
15 applicants and employers in the implementation of and compliance  
16 with this act.

17 b. The secretary shall develop forms for applicants and employers  
18 that may be used to comply with the requirements of section 2 of this  
19 act, as well as any other forms necessary to carry out the provisions  
20 of this act.

21  
22 9. This act shall take effect on the first day of the second month  
23 following enactment.

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25

26

## STATEMENT

27

28 The sponsor of this bill intends it to extend the same protections  
29 from sexual predators offered to K-12 students by P.L.2018, c.5  
30 (C.18A:6-7.6 et seq.) to college and graduate students, whose  
31 positions of vulnerability in the academic setting also can be  
32 exploited by predatory members of faculties, athletic departments,  
33 and administrations. The bill prohibits the governing body of an  
34 institution of higher education from employing a person serving in a  
35 position which involves regular contact with students unless the  
36 institution conducts a review of the applicant's employment history  
37 by obtaining from former and current employers information  
38 regarding child abuse and sexual misconduct allegations. The  
39 applicant is required to list employers from the prior twenty years  
40 that were institutions of higher education, schools, or places where  
41 the employment involved direct contact with children. The  
42 institution is required to ask those employers for a statement as to  
43 whether the applicant:

44 • was the subject of any child abuse or sexual misconduct  
45 investigation by any employer, State licensing agency, law  
46 enforcement agency, or the Department of Children and  
47 Families;

- 1       • was disciplined, discharged, nonrenewed, asked to resign  
2       from employment, resigned from or otherwise separated from  
3       any employment while allegations of child abuse or sexual  
4       misconduct were pending or under investigation, or due to an  
5       adjudication or finding of child abuse or sexual misconduct;  
6       or
- 7       • has ever had a license, professional license or certificate  
8       suspended, surrendered, or revoked while allegations of child  
9       abuse or sexual misconduct were pending or under  
10      investigation, or due to an adjudication or finding of child  
11      abuse or sexual misconduct.

12      The applicant is required to also provide a written statement  
13      disclosing any of the same matters.

14      The applicant is required to provide a written authorization that  
15      consents to, and authorizes, disclosure of the information requested  
16      by the prospective employer and releases the applicant's former and  
17      current employers from any liability arising from the disclosure.

18      On or after the effective date of this bill, the governing body of an  
19      institution of higher education may not enter into a collectively  
20      bargained or negotiated agreement, an employment contract, an  
21      agreement for resignation or termination, a severance agreement, or  
22      any other contract or agreement or take any action that:

- 23       • has the effect of suppressing or destroying information  
24       relating to an investigation related to a report of suspected  
25       child abuse or sexual misconduct by a current or former  
26       employee;
- 27       • affects the ability of the institution to report suspected  
28       child abuse or sexual misconduct to the appropriate  
29       authorities; or
- 30       • requires the institution to expunge information about  
31       allegations or findings of suspected child abuse or sexual  
32       misconduct from any documents maintained by the  
33       institution, unless after investigation the allegations are  
34       found to be false or the alleged incident of child abuse or  
35       sexual misconduct has not been substantiated.

36      An applicant who gives false information or willfully fails to  
37      disclose information required to be provided under the bill will be  
38      subject to discipline, including termination or denial of employment.  
39      The applicant also may be subject to certain civil penalties. The  
40      prospective employer is required to provide notification of these  
41      possible penalties to prospective employees in the employment  
42      application.