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HOUSE OF REPRESENTATIVES  
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 47

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO BACKGROUND CHECKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 309, Title 31 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 309. Background checks for child-serving entities and other organizations.

4 (b) *Definitions.* — For purposes of this section:

5 (4) “Child-serving entity” means:

6 c. ~~Public and private schools, including employees of schools and~~ the Department of Education.

7 d. ~~Child-care providers as defined in § 3002A facilities required to be licensed under Chapter 30A of~~  
8 ~~Title 14. The requirements of this section are in addition to, and not a substitute for, any other requirements~~  
9 ~~relating to child-care facilities that exist in federal or state law.~~

10 e. Youth camps or summer schools that are exempt from child-care licensing requirements.

11 (14) ~~“Private school” means a school having any or all of grades kindergarten through 12, operating under a~~  
12 ~~board of trustees and maintaining a faculty and plant which are properly supervised.~~

13 (19) “Youth camp” means a child-serving entity having custody or control of 1 or more school-age children,  
14 unattended by parent or guardian, for the purpose of providing a program of recreational, athletic, educational and/or  
15 religious instruction or guidance and operates for up to 12 weeks for 3 or more hours per day, during the months of  
16 May through September or some portion thereof, or during holiday breaks in the course of a school year and is  
17 operated in a space or at a location other than a space or location subject to licensing pursuant to ~~§ 3004A~~ under  
18 Chapter 30A of Title 14.

19 (c) ~~Except as provided in paragraph (c)(4) of this section, all~~ All child-serving entities are required to obtain  
20 criminal and Child Protection Registry checks for prospective employees, volunteers, and contractors. Members of school  
21 boards must obtain criminal and Child Protection Registry checks under § 209 or § 511 of Title 14.

22 (3) Notwithstanding paragraph (c)(1) of this section, private schools and youth camps may choose to perform  
23 a name-based Delaware criminal background check for prospective employees, volunteers and contractors through the  
24 Delaware Justice Information System (DELJIS) and an out-of-state criminal record check using private, third-party  
25 providers of such checks, provided that any out-of-state criminal record check shall include a Social Security trace  
26 search and county-based criminal record search in the counties in which the individual has resided within the past 10  
27 years. Such check shall be valid for a 5-year period. [Repealed.]

28 (4) Any private school, including youth camps directly operated by a private school, may choose not to  
29 perform the background checks and Child Protection Registry checks described in paragraphs (c)(1) and (c)(2) of this  
30 section, provided that the private school or youth camp that is directly operated by the private school informs parents or  
31 guardians of the youth in attendance that the school or youth camp is not meeting minimum background check safety  
32 requirements for its staff members. The school or camp must obtain and retain for at least 1 year a signed  
33 acknowledgement of same from the parents or guardians. [Repealed.]

34 (5) Costs associated with obtaining said criminal history information and Child Protection Registry  
35 information are borne by the applicant, except as follows: for applicants designated in paragraph (b)(4)d. of this  
36 section, whose costs are borne by the State. Notwithstanding the foregoing:

37 c. The Department of Education and DSCYF may pay for background check costs for prospective or  
38 current employees.

39 d. The State shall bear the costs of background checks for applicants to child-care facilities required to be  
40 licensed under Chapter 30A of Title 14.

41 (9) The Superintendent of State Police may promulgate regulations governing the circumstances under which  
42 a background check may be re-used upon written authorization of the individual upon whom a background check was  
43 conducted. The regulations permitting re-use must be limited in scope and address the relationship between the original  
44 purpose for which the background check was requested, the agency or agencies requesting re-use, the type of license,  
45 position of employment, or benefit upon which re-use is predicated and the application process.

46 (e) Upon completion of the criminal background and Child Protection Registry checks:

47 (1) Where the child-serving entity is a public or private school, a contractor with a school district or the  
48 Department of Education, or an employee of a contractor who is an early intervention service provider:

49 d. In the case of an employee or contractor of the Department of Education, SBI may release all  
50 subsequent criminal history to the Department of Education.

51           (4) ~~Where the child-serving entity is a private school or youth camp that chooses to perform background~~  
52 ~~checks using the method permitted in paragraph (c)(3) of this section, DELJIS shall perform a name-based criminal~~  
53 ~~check based on the identifying information provided by the private school or youth camp. If the individual is found to~~  
54 ~~have a criminal background that would make them prohibited for employment, DELJIS shall so inform the employer.~~  
55 ~~If the individual's background would not make them prohibited from employment, then DELJIS shall forward the~~  
56 ~~information to DSCYF, which shall perform a check of the Child Protection Registry. DSCYF shall determine whether~~  
57 ~~or not the individual is prohibited based on the results of the Child Protection Registry check. [Repealed.]~~

58           (6) The SBI and DELJIS shall provide all subsequent Delaware criminal history of any employee or  
59 contractor subject to a background check under this section to the entity designated to receive the original criminal  
60 history information under paragraphs (e)(1) through (5) of this section. If the "Rap Back System" as defined by § 8502  
61 of Title 11 is available to SBI, SBI shall provide all subsequent criminal history record information available through  
62 the Rap Back System to the entity designated to receive the original criminal history information under paragraphs  
63 (e)(1) through (5) of this section.

64           Section 2. Amend Chapter 3, Title 31 of the Delaware Code by making deletions as shown by strike through and  
65 insertions as shown by underline as follows:

66           § 309A. Background checks for private schools.

67           (a) A background check is required for all employees, contractors, and volunteers of private schools. The  
68 prohibitions set forth in § 309(d) of this title apply to employees, contractors, and volunteers of private schools.

69           (b) For purposes of this section:

70           (1) "Background check" means a fingerprint-based Delaware and national background check completed by  
71 the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI) as well as a Child Protection  
72 Registry check completed by the Department of Services for Children, Youth and Their Families (DSCYF).

73           (2) "Child Protection Registry" means as defined in § 309 of this title.

74           (3) "Contractor" means a person, not an employee, providing services or seeking a contract to provide  
75 services within a private school who has regular direct access to children or provides services directly to a child or  
76 children.

77           (4) "Direct access" means as defined in § 309 of this title.

78           (5) "Employee" means any individual employed or seeking employment for compensation with a private  
79 school and includes student teachers or any employee of the school or an employee of a related or parent organization  
80 of the private school who for any reason has regular direct access to children in a private school.

81 (6) “Private school” means a school having any or all of grades kindergarten through 12, operating under a  
82 board of trustees, which is not a public school as that term is defined in § 309 of this title. “Private school” includes a  
83 summer school operated by a private school and a youth camp directly operated by a private school.

84 (7) “Volunteer” means an individual providing volunteer services within a private school who has regular  
85 direct access to children.

86 (8) “Youth camp” means as defined in § 309 of this title.

87 (c) (1) SBI shall furnish information pertaining to the identification and criminal history record of prospective  
88 employees, volunteers, and contractors of private schools, except as otherwise allowed or required, provided that the  
89 prospective employee, volunteer, or contractor submits to a reasonable procedure established by standards set forth by the  
90 Superintendent of State Police to identify the person whose record is sought. This procedure must include the fingerprinting  
91 of the individual subject to a criminal background check and the provision of such other information as may be necessary to  
92 obtain a report of the individual’s entire criminal history record from SBI and a report of the individual’s entire federal  
93 criminal history record under the authorization of the Adam Walsh Child Protection and Safety Act or any other applicable  
94 federal law. Notwithstanding any provision to the contrary, the information to be furnished by SBI shall include child sex  
95 abuser information. The Division of State Police shall be the intermediary for purposes of this section.

96 (2) A private school must obtain a statement signed by a prospective employee, contractor, or volunteer that  
97 authorizes a full release to the private school to obtain information provided as a result of the Child Protection Registry  
98 check. The DSCYF will process a Child Protection Registry check of the individual upon receipt of the signed  
99 statement, which must be attached to the request from the private school for the Child Protection Registry check.

100 (d) (1) Upon completion of a criminal background and Child Protection Registry check the SBI shall provide the  
101 criminal history background check and DSCYF shall provide the Child Protection Registry check information to the head  
102 of the private school or the head of school’s designee. The private school shall determine whether the individual is  
103 prohibited from employment, contractual services, or volunteering at the private school according to the prohibitions set  
104 forth in § 309(d) of this title.

105 (2) Criminal history and Child Protection Registry check information is confidential and may only be  
106 disclosed to the private school’s head of school or the head of school’s designee.

107 Section 3. This Act takes effect on July 1, 2025 and child-serving entities and private schools must comply with its  
108 requirements by September 1, 2025.

#### SYNOPSIS

This Act incorporates changes made by HS1 for HB204, which was passed by both chambers during the 151st General Assembly, but never enacted into law. It removes the exemption for private schools and youth camps that allows

them to use a name-based, rather than a fingerprint-based, background check or choose not to do background checks at all for employees, contractors and volunteers. This Act also authorizes the Superintendent of State Police to promulgate regulations relating to re-use of a criminal background check. The State Bureau of Identification is also required to provide subsequent criminal history information to the agency receiving background check information. Authority is given to the Department of Education to pay the costs of background checks for its employees.

The Act also creates a new § 309A in Title 31, in response to a request from the federal government that the statutory authorization/requirement for private school background checks be separated from the statutory authorization for state and local government authorities.

The Act also makes some technical and clarifying changes to existing statutory language.

The Act takes effect on July 1, 2025 and child-serving entities and private schools must comply with the requirements by September 1, 2025.