SPONSOR: Rep. Dorsey Walker & Sen. Gay
Reps. Heffernan, Lynn, Bush, Kowalko, K. Williams;
Sens. Ennis, Lockman

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 318
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO LICENSES FOR DEPLOYED ACTIVE DUTY, ACTIVATED RESERVE, AND NATIONAL GUARD MILITARY PERSONNEL.

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

Section 1. Amend Chapter 1, Subchapter II, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 121. General powers of the Department of Education

(b) The Department shall establish a voluntary licensure and certification system for nonpublic school teachers, ~~specialists~~ specialists, and administrators employed in this State, and is empowered to make rules and regulations to implement the same.

(4) The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may deny an applicant's application for a license for failure to meet the qualifications for a license. The Department may further deny a license to an applicant who otherwise meets the requirements of this subsection for any of the causes enumerated in § 1218(a) or (b) of this title. The Department shall not take action to deny a license under this subsection without providing the applicant with written notice of the reasons for denial and with an opportunity for a full and fair hearing before the Secretary of Education or the Secretary's designee. The burden of proof in a license denial action is on the applicant to show by a preponderance of the evidence that the applicant should not be denied a license because that applicant meets the qualifications for licensure pursuant to the applicable laws and regulations.

(5) a. Except as otherwise provided in paragraphs (b)(5)b. and c. of this section, the Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may suspend, revoke or limit a license issued under the provisions of this subsection for any of the causes set forth in § 1218(a) of this title.

b. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, shall revoke a license issued under the provisions of this subsection for any of the causes set forth in § 1218(b) of this title.

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c. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11. A suspension under this paragraph is effective on the date of the arrest or grand jury indictment. The provisions of § 1218(c) of this title shall apply to any automatic suspension under this subsection with the exception that the license holder may request an expedited hearing before the Secretary of Education within 20 calendar days from the date the notice of the Department's decision to temporarily suspend the license holder's license was mailed. In the event that the license holder requests an expedited hearing in a timely manner, the Secretary of Education or the Secretary's designee shall convene a hearing within 90 days of the receipt of such a request. An order of suspension under this subsection shall remain in effect until the final order of the Associate Secretary, ~~Administration and Innovation~~ Educator Support or the Secretary of Education becomes effective.

d. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may take an action under paragraph (b)(5)a., b., or c. of this section on the basis of substantially comparable conduct occurring in a jurisdiction outside this State or occurring before a person applies for or receives any license.

e. Any license holder who has pled guilty or nolo contendere to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, suspension or limitation of license under § 1218(a) or (b) of this title or has been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11, shall notify the Department of such action in writing within 20 days of such conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Department may limit, suspend, or revoke the holder's license.

f. Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, suspended, or limited in any jurisdiction or by any agency shall notify the Department of such action in writing within 30 days of such action. Failure to do so shall be grounds on which the Department may limit, suspend or revoke the holder's license.

g. The Department may investigate any information received about a person that reasonably appears to be the basis for action under paragraphs (b)(5)a. through c. of this section. The Department shall not investigate anonymous complaints. The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address. All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of

Information Act (Chapter 100 of Title 29). The Associate Secretary, ~~Administration and Innovation,~~ Educator Support, shall review the results of each investigation and shall determine whether the results warrant initiating action under paragraph (b)(5)a., b. or c. of this section.

h. Whenever the basis of for action under paragraph (b)(5)a. or b. of this section is a guilty plea, nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the clerk of the court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

i. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may enter a consent agreement with a person against whom action is being taken under paragraph (b)(5)a., b. or c. of this section.

j. The Associate Secretary, ~~Administration and Innovation,~~ Educator Support, shall not take action against a person under paragraph (b)(5)a. or b. of this section without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Secretary of Education. Notice shall be sent to the person's last known address. The license holder shall have 30 calendar days from the date the notice of the charges was mailed to make a written request for a hearing. Unless otherwise provided for in this subsection, the burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by paragraphs (b)(5)a. and b. of this section or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license. If no written request for a hearing is received by the Secretary of Education, the license holder's license shall be deemed to be revoked, suspended, or limited and the holder shall be so notified.

k. A license may be suspended for a period of time not to exceed 5 years. The license may be reinstated by the Department, upon written request, with verification that all requirements for license renewal have been satisfied. If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

l. If any of the causes listed in § 1218(a) or (b) of this title are determined, the Associate Secretary, ~~Administration and Innovation~~ Educator Support or the Secretary of Education after a hearing, may put limitations on a license that may ~~include but are not limited to:~~ include any of the following:

1. Restrictions on the ages of students with whom the license holder may ~~work;~~ work.

2. Additional supervision ~~requirements; or~~ requirements.

3. Education, counseling, or psychiatric examination requirements.

Section 2. Amend § 121(b) of title 14 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

(8) a. Notwithstanding any provision of Title 14 to the contrary, a license issued by the Department pursuant to § 121(b) does not expire for a qualifying person as defined in paragraph (8)d. of this subsection as follows:

1. If the qualifying person holds an initial license, for 180 days after the date the qualifying person returns from active deployment.

2. If the qualifying person holds a continuing or advanced license, for 270 days after the date the qualifying person returns from active deployment.

b. A qualifying person who held a valid continuing or advanced license at the time of deployment and who wishes to renew the continuing or advanced license shall submit to the Department an application for renewal within 180 days after the qualifying person has returned from active deployment.

c. The protection from license expiration provided under this subsection does not void or limit the obligations of the qualifying person to meet all requirements of licensure as established by this subsection and the regulations promulgated thereunder.

d. As used in this subsection, "qualifying person" means an individual who is a member of the active duty military, a member of the National Guard, a member of the military reserve, retired military, or a military veteran.

(9) Notwithstanding any provision of Title 14 to the contrary, a qualifying person, as defined in paragraph (8)d. of this subsection, or the spouse of a qualifying person, may apply for reinstatement of a license issued by the Department pursuant to § 121(b) within 2 years of the lapse or expiration of any such license. The qualifying person or the spouse of a qualifying person shall submit an application to reinstate the license together with a copy of official verification that the applicant is a qualifying person or the spouse of a qualifying person and the qualifying person is assigned to a duty station in this State. This subsection shall not apply to a license that was suspended or revoked.

Section 3. Amend § 121(c) of title 14 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

(c) The Department shall establish a licensure and certification system for public education employees in this State that applies to Department of Education employees, adult education employees, and prison education employees whose work responsibilities are directly related to curriculum and instruction, but does not apply to public school educators who shall be licensed and certified in accordance with subchapters II and III of Chapter 12 of this title. The Department shall be empowered to promulgate rules and regulations to implement such system.

(5) The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may deny an applicant's application for a license for failure to meet the qualifications for a license. The Department may further deny a license to an applicant who otherwise meets the requirements of this subsection for any of the causes enumerated in § 1218(a) or (b) of this title. The Department shall not take action to deny a license under this subsection without providing the applicant with written notice of the reasons for denial and with an opportunity for a full and fair hearing before the Secretary of Education or the Secretary's designee. The burden of proof in a license denial action is on the applicant to show by a preponderance of the evidence that the applicant should not be denied a license because that applicant meets the qualifications for licensure pursuant to the applicable laws and regulations.

(6) a. Except as otherwise provided in paragraphs (c)(6)b. and c., of this section the Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may suspend, revoke or limit a license issued under the provisions of this subsection for any of the causes set forth in § 1218(a) of this title.

b. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, shall revoke a license issued under the provisions of this subsection for any of the causes set forth in § 1218(b) of this title.

c. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11. A suspension under this paragraph is effective on the date of the arrest or grand jury indictment. The provisions of § 1218(c) of this title shall apply to any automatic suspension under this subsection with the exception that the license holder may request an expedited hearing before the Secretary of Education within 20 calendar days from the date the notice of the Department's decision to temporarily suspend the license holder's license was mailed. In the event that the license holder requests an expedited hearing in a timely manner, the Secretary of Education or the Secretary's designee shall convene a hearing within 90 days of the receipt of such a request. An order of suspension under this subsection shall remain in effect until the final order of the Associate Secretary, ~~Administration and Innovation~~ Educator Support or the Secretary of Education becomes effective.

d. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may take an action under paragraph (c)(6)a., b., or c. of this section on the basis of substantially comparable conduct occurring in a jurisdiction outside this State or occurring before a person applies for or receives any license.

e. Any license holder who has pled guilty or nolo contendere to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, suspension or limitation of license under § 1218(a) or (b) of this title or has been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11, shall notify the Department of such action in writing within 20 days of such conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Department may limit, suspend, or revoke the holder's license.

f. Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, suspended, or limited in any jurisdiction or by any agency shall notify the Department of such action in writing within 30 days of such action. Failure to do so shall be grounds on which the Department may limit, suspend or revoke the holder's license.

g. The Department may investigate any information received about a person that reasonably appears to be the basis for action under paragraphs (c)(6)a. through c. of this section. The Department shall not investigate anonymous complaints. The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address. All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of Information Act (Chapter 100 of Title 29). The Associate Secretary, ~~Administration and Innovation,~~ Educator Support, shall review the results of each investigation and shall determine whether the results warrant initiating action under paragraph (c)(6)a., b. or c. of this section.

h. Whenever the basis of for action under paragraph (c)(6)a. or b. of this section is a guilty plea, nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the clerk of the court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

i. The Department, through the Associate Secretary, ~~Administration and Innovation,~~ Educator Support, may enter a consent agreement with a person against whom action is being taken under paragraph (c)(6)a., b. or c. of this section.

j. The Associate Secretary, ~~Administration and Innovation,~~ Educator Support, shall not take action against a person under paragraph (c)(6)a. or b. of this section without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Secretary of Education. Notice shall be sent to the person's last known address. The license holder shall have 30 calendar days from the date the notice of the charges was mailed to make a written request for a hearing. Unless otherwise provided for in this subsection, the

burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by paragraphs (c)(6)a. and b. of this section or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license. If no written request for a hearing is received by the Secretary of Education, the license holder's license shall be deemed to be revoked, suspended, or limited and the holder shall be so notified.

k. A license may be suspended for a period of time not to exceed 5 years. The license may be reinstated by the Department, upon written request, with verification that all requirements for license renewal have been satisfied. If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

l. If any of the causes listed in § 1218(a) or (b) of this title are determined, the Associate Secretary, ~~Administration and Innovation~~ Educator Support or the Secretary of Education after a hearing, may put limitations on a license that may include ~~but are not limited to:~~ any of the following:

1. Restrictions on the ages of students with whom the license holder may ~~work;~~ work.

2. Additional supervision ~~requirements; or~~ requirements.

3. Education, counseling, or psychiatric examination requirements.

m. If a decision of license limitation, suspension or revocation is based on § 1218(a)(4), (a)(5), or (b)(1) of this title, and if the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction, the individual whose license is limited, suspended or revoked may file a written request for reinstatement, including documentation of the final status of the judicial proceeding, and the license shall be reinstated.

n. An individual whose license has been revoked under paragraph (c)(6)a. of this section may petition the Department for reinstatement of the license not sooner than 5 years from the date of revocation. The individual shall submit to the Department a written petition showing credible evidence, by affidavit or otherwise, of the factors set forth in paragraph (c)(6)n.1. of this section.

1. The Department shall consider all of the following criteria in evaluating a petition for reinstatement and shall only grant such a petition if it is in the best interest of the public schools of the State:

A. The nature and circumstances of the individual's original ~~misconduct;~~ misconduct.

B. The individual's subsequent conduct and ~~rehabilitation;~~ rehabilitation.

C. The individual's present ~~character; and~~ character.

D. The individual's present qualifications and competence to engage in the practice of instruction, administration or other related professional support services.

Section 4. Amend § 121(c) of Title 14 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

(7) a. Notwithstanding any provision of Title 14 to the contrary, a license issued by the Department pursuant (7)a. Notwithstanding any provision of Title 14 to the contrary, a license issued by the Department pursuant to § 121(c) does not expire for a qualifying person as defined in paragraph (7)d. of this subsection as follows.

1. If the qualifying person holds an initial license, for 180 days after the date the qualifying person returns from active deployment.

2. If the qualifying person holds a continuing or advanced license, for 270 days after the date the qualifying person returns from active deployment.

b. A qualifying person who held a valid continuing or advanced license at the time of deployment and who wishes to renew the continuing or advanced license shall submit to the Department an application for renewal within 180 days after the qualifying person has returned from active deployment.

c. The protection from license expiration provided under this subsection does not void or limit the obligations of the qualifying person to meet all requirements of licensure as established by this subsection and the regulations promulgated thereunder.

d. As used in this subsection, "qualifying person" means an individual who is a member of the active duty military, a member of the National Guard, a member of the military reserve, retired military, or a military veteran.

(8) Notwithstanding any provision of Title 14 to the contrary, a qualifying person, as defined in paragraph (7)d. of this subsection, or the spouse of a qualifying person, may apply for reinstatement of a license issued by the Department pursuant to § 121(c) within 2 years of the lapse or expiration of any such license. The qualifying person or the spouse of a qualifying person shall submit an application to reinstate the license together with a copy of official verification that the applicant is a qualifying person or the spouse of a qualifying person and the qualifying person is assigned to a duty station in this State. This subsection shall not apply to a license that was suspended or revoked.

Section 5. Amend Chapter 12, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1216. License extension; license freeze.

(e)(1) Notwithstanding any provision of Title 14 to the contrary, a license issued by the Department pursuant to Chapter 12 does not expire for a qualifying person as defined in paragraph (e)(4) of this section as follows:

a. If the qualifying person holds an initial license, for 180 days after the date the qualifying person returns from active deployment.

b. If the qualifying person holds a continuing or advanced license, for 270 days after the date the qualifying person returns from active deployment.

(2) A qualifying person who held a valid continuing or advanced license at the time of deployment and who wishes to renew the continuing or advanced license must submit to the Department an application for renewal within 180 days after the qualifying person has returned from active deployment. Applicants for renewal of a continuing license must meet the requirements set forth in § 1212 of this title. Applicants for renewal of an advanced license must meet the requirements set forth in § 1214 of this title.

(3) The protection from license expiration provided under this subsection does not void or limit the obligations of the qualifying person to meet all requirements of licensure as established by Chapter 12 of this title and the regulations promulgated thereunder.

(4) As used in this section, "qualifying person" means an individual who is a member of the active duty military, a member of the National Guard, a member of the military reserve, retired military, or a military veteran.

(f) Notwithstanding any provision of Title 14 to the contrary, a qualifying person, as defined in paragraph (e)(4) of this section, or the spouse of a qualifying person, may apply for reinstatement of a license issued by the Department pursuant to Chapter 12 of this title within 2 years of the lapse or expiration of the license. The qualifying person or the spouse of a qualifying person must submit an application to reinstate the license together with a copy of official verification that the applicant is a qualifying person or the spouse of a qualifying person and the qualifying person is assigned to a duty station in this State. This subsection does not apply to a license that was suspended or revoked.