

By: Wise

H.B. No. 78

A BILL TO BE ENTITLED

AN ACT

1
2 relating to criminal history records of and disclosure of certain
3 conduct by employees, volunteers, and prospective employees and
4 volunteers of certain educational entities.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 22.082, Education Code, is amended to
7 read as follows:

8 Sec. 22.082. ACCESS TO CRIMINAL HISTORY RECORDS BY STATE
9 BOARD FOR EDUCATOR CERTIFICATION. (a) The State Board for
10 Educator Certification shall obtain from the Federal Bureau of
11 Investigation and any other law enforcement or criminal justice
12 agency, as necessary, all national and state criminal history
13 record information that relates to an applicant for or holder of a
14 certificate issued under Subchapter B, Chapter 21.

15 (b) The board may collect a fee from the person whose
16 criminal history record information is obtained. The amount of the
17 fee may not exceed the cost to the board of obtaining that
18 information.

19 SECTION 2. Subchapter C, Chapter 22, Education Code, is
20 amended by adding Section 22.0821 to read as follows:

21 Sec. 22.0821. AFFIDAVIT BY POTENTIAL EMPLOYEE OR VOLUNTEER
22 CONCERNING CRIMINAL HISTORY AND OTHER CONDUCT. (a) A school
23 district, open-enrollment charter school, private school, regional
24 education service center, or shared services arrangement shall

1 require an affidavit that complies with this section from each
2 person who:

3 (1) has applied for employment in any capacity with
4 the district, school, service center, or shared services
5 arrangement; or

6 (2) has indicated, in writing, an intention to serve
7 as a volunteer with the district, school, service center, or shared
8 services arrangement.

9 (b) An affidavit under this section must be in the following
10 form:

11 AFFIDAVIT

12 I, _____, swear or affirm under oath and penalty of
13 perjury that, except as listed below, I have not at any time, either
14 as an adult or juvenile:

15 (1) been convicted of an offense posing a risk of harm
16 to children, including:

17 (A) a felony;

18 (B) rape or sexual assault;

19 (C) physical, sexual, or emotional abuse or
20 neglect of a minor;

21 (D) incest;

22 (E) exploitation, including sexual exploitation,
23 of a minor;

24 (F) sexual misconduct with a minor;

25 (G) molestation of a child;

26 (H) lewdness or indecent exposure;

27 (I) lewd or lascivious behavior;

1 (J) possession, distribution, or sale of obscene
2 or pornographic literature, photographs, or videotapes;

3 (K) assault, battery, or any violent offense
4 involving a minor;

5 (L) endangerment of a child;

6 (M) a misdemeanor or other offense involving a
7 minor or to which a minor was a witness;

8 (N) removing a child from a state or concealing a
9 child in violation of a court order; or

10 (O) any type of child abduction;

11 (2) pleaded guilty to an offense listed in item (1) of
12 this paragraph, regardless of whether the plea resulted in a
13 conviction;

14 (3) pleaded nolo contendere or no contest to an
15 offense listed in item (1) of this paragraph;

16 (4) admitted engaging in conduct constituting an
17 offense listed in item (1) of this paragraph;

18 (5) had any judgment or order entered against me, by
19 default or otherwise, in connection with:

20 (A) an offense listed in item (1) of this
21 paragraph;

22 (B) conduct constituting an offense listed in
23 item (1) of this paragraph;

24 (C) a finding of unfitness as a parent or
25 custodian; or

26 (D) a restriction or limitation on contact or
27 visitation with children or minors;

1 (6) entered into a settlement of an action or claim in
2 connection with an offense, conduct, or an order described by item
3 (5) of this paragraph;

4 (7) had a license or certification suspended or
5 revoked in connection with an offense, conduct, or an order
6 described by item (5) of this paragraph;

7 (8) had employment or a position as a volunteer
8 suspended, terminated, or adversely affected in connection with an
9 offense, conduct, or an order described by item (5) of this
10 paragraph;

11 (9) resigned under threat of termination of employment
12 or of a position as a volunteer in connection with an offense,
13 conduct, or an order described by item (5) of this paragraph;

14 (10) been diagnosed as having or been treated for any
15 mental or emotional condition in connection with an offense,
16 conduct, or an order described by item (5) of this paragraph; or

17 (11) had a report of child abuse or neglect made or
18 substantiated against me.

19 I further swear or affirm that, except as listed below, I do
20 not now have any pending criminal charges against me in this or any
21 other jurisdiction for an offense listed in item (1) of the
22 preceding paragraph.

23 EXCEPTIONS: (list each incident, including location,
24 description, and date; if none, write "None")

25 Signed _____ Date _____

26 Subscribed and sworn to or affirmed before me on the _____ day
27 of _____, _____.

1 (Signature and seal of notary public)

2 SECTION 3. Section 22.083, Education Code, is amended by
3 amending Subsection (a) and adding Subsection (d) to read as
4 follows:

5 (a) A school district, open-enrollment charter school,
6 private school, regional education service center, or shared
7 services arrangement shall [~~may~~] obtain from the Federal Bureau of
8 Investigation and any other law enforcement or criminal justice
9 agency, as necessary, all national and state criminal history
10 record information that relates to a person:

11 (1) whom the district, school, service center, or
12 shared services arrangement intends to employ in any capacity,
13 unless the person was initially certified by the State Board for
14 Educator Certification in the year preceding the initial date of
15 prospective employment; or

16 (2) who has indicated, in writing, an intention to
17 serve as a volunteer with the district, school, service center, or
18 shared services arrangement.

19 (d) A school district, open-enrollment charter school,
20 private school, regional education service center, or shared
21 services arrangement may collect a fee from the person whose
22 criminal history record information is obtained. The amount of the
23 fee may not exceed the cost of obtaining that information.

24 SECTION 4. (a) Beginning September 1, 2003, the State
25 Board for Educator Certification shall obtain, in compliance with
26 Section 22.082(a), Education Code, as amended by this Act, national
27 and state criminal history record information relating to each

1 person who submits an application for a certificate issued under
2 Subchapter B, Chapter 21, Education Code, on or after that date.

3 (b) Beginning September 1, 2003, a school district,
4 open-enrollment charter school, private school, regional education
5 service center, or shared services arrangement shall obtain, in
6 compliance with Section 22.0821, Education Code, as added by this
7 Act, an affidavit concerning criminal history and other conduct
8 from each prospective employee or volunteer.

9 (c) Not later than October 1, 2003, a school district,
10 open-enrollment charter school, private school, regional education
11 service center, or shared services arrangement shall obtain an
12 affidavit concerning criminal history and other conduct that
13 complies with Section 22.0821, Education Code, as added by this
14 Act, from each employee or volunteer serving the district, school,
15 service center, or shared services arrangement before September 1,
16 2001.

17 (d) Beginning September 1, 2003, a school district,
18 open-enrollment charter school, private school, regional education
19 service center, or shared services arrangement shall obtain, in
20 compliance with Section 22.083(a), Education Code, as amended by
21 this Act, national and state criminal history record information
22 relating to each prospective employee or volunteer.

23 (e) Not later than January 1, 2004, a school district shall
24 obtain national and state criminal history record information
25 relating to each person initially employed by the district on or
26 after May 15, 1999, and before September 1, 2003, and to each person
27 initially serving as a volunteer with the district before September

1 1, 2003. This subsection does not require a district to obtain:

2 (1) criminal history record information relating to a
3 person who will not be employed by or serving as a volunteer with
4 the district after January 1, 2004; or

5 (2) updated criminal history record information
6 relating to a person employed by the district if the district
7 obtained information at the time the person was initially employed
8 and the person has been continuously employed by the district.

9 SECTION 5. This Act takes effect September 1, 2003.