

By: Shapiro

S.B. No. 119

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the certification and employment of educators and other
3 public school employees who engage in certain misconduct.

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

5 SECTION 1. Section 21.006, Education Code, is amended by
6 adding Subsection (c-1) to read as follows:

7 (c-1) On receipt of a report of an alleged incident of
8 misconduct under Subsection (c), the State Board for Educator
9 Certification shall place a notice regarding the alleged incident
10 on the educator's public certification records. If it is
11 determined that the educator has not engaged in the alleged
12 incident of misconduct, the board shall immediately remove the
13 notice from the educator's public certification records.

14 SECTION 2. Sections 21.058(a) and (b), Education Code, are
15 amended to read as follows:

16 (a) This section applies only:

17 (1) to conviction or deferred adjudication of a felony
18 offense under Title 5, Penal Code, or an offense on conviction of
19 which a defendant is required to register as a sex offender under
20 Chapter 62, Code of Criminal Procedure; and

21 (2) if the victim of the offense is under 18 years of
22 age.

23 (b) Notwithstanding Section 21.041(b)(7), not later than
24 the fifth day after the date the board receives notice under Article

1 42.018, Code of Criminal Procedure, of the conviction or deferred
2 adjudication of a person who holds a certificate under this
3 subchapter, the board shall:

- 4 (1) revoke the certificate held by the person; and
5 (2) provide to the person and to any school district or
6 open-enrollment charter school employing the person at the time of
7 revocation written notice of:

- 8 (A) the revocation; and
9 (B) the basis for the revocation.

10 SECTION 3. Subchapter B, Chapter 21, Education Code, is
11 amended by adding Section 21.060 to read as follows:

12 Sec. 21.060. ELIGIBILITY OF PERSONS RECEIVING DEFERRED
13 ADJUDICATION FOR OR CONVICTED OF CERTAIN OFFENSES. The board may
14 suspend or revoke the certificate or permit held by a person under
15 this subchapter, impose other sanctions against the person, or
16 refuse to issue a certificate or permit to a person under this
17 subchapter if the person has received deferred adjudication for or
18 has been convicted of a felony or misdemeanor offense relating to
19 the duties and responsibilities of the education profession,
20 including:

- 21 (1) an offense involving moral turpitude;
22 (2) an offense involving a form of sexual or physical
23 abuse of a minor or student or other illegal conduct with a minor or
24 student;
25 (3) a felony offense involving the possession,
26 transfer, sale, distribution, or conspiracy to possess, transfer,
27 sell, or distribute a controlled substance, as defined by Chapter

1 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

2 (4) an offense involving the illegal transfer,
3 appropriation, or use of school district funds or other district
4 property;

5 (5) an offense involving an attempt by fraudulent or
6 unauthorized means to obtain or alter a professional certificate or
7 license issued under this subchapter;

8 (6) an offense in which any part of the offense occurs
9 on school district property or at a school-sponsored event; or

10 (7) two or more offenses committed during a 12-month
11 period that involve public intoxication, operating a motor vehicle
12 while under the influence of alcohol, or disorderly conduct.

13 SECTION 4. Section 22.082, Education Code, is amended to
14 read as follows:

15 Sec. 22.082. ACCESS TO CRIMINAL HISTORY RECORDS BY STATE
16 BOARD FOR EDUCATOR CERTIFICATION. The State Board for Educator
17 Certification shall obtain from any law enforcement or criminal
18 justice agency all criminal history record information and all
19 records contained in any criminal investigation file that relate
20 [relates] to an applicant for or holder of a certificate issued
21 under Subchapter B, Chapter 21.

22 SECTION 5. Subchapter C, Chapter 22, Education Code, is
23 amended by adding Section 22.0831 to read as follows:

24 Sec. 22.0831. NATIONAL CRIMINAL HISTORY RECORD INFORMATION
25 REVIEW. (a) In this section, "national criminal history record
26 information" means criminal history record information obtained
27 from the Department of Public Safety under Subchapter F, Chapter

1 411, Government Code, and from the Federal Bureau of Investigation
2 under Section 411.087, Government Code.

3 (b) This section applies to a person who is an employee of or
4 applicant for employment by:

5 (1) a school district or open-enrollment charter
6 school;

7 (2) a shared services arrangement, if the employee's
8 or applicant's duties are or will be performed on school property or
9 at another location where students are regularly present; or

10 (3) an entity that contracts with the district,
11 school, or shared services arrangement to provide services, if:

12 (A) the employee or applicant has or will have
13 continuing duties related to the contracted services; and

14 (B) the duties are or will be performed on school
15 property or at another location where students are regularly
16 present.

17 (c) A person to whom this section applies must submit to a
18 national criminal history record information review and
19 investigation under this section before being employed or serving
20 in a capacity described by Subsection (b).

21 (d) Before or immediately after employing or securing the
22 services of a person to whom this section applies, a school
23 district, open-enrollment charter school, or shared services
24 arrangement shall send to the agency the person's fingerprints and
25 any other information requested by the agency that is required for
26 obtaining national criminal history record information.

27 (e) The agency shall review and investigate the person's

1 national criminal history record information and report the results
2 of the review and investigation to the school district,
3 open-enrollment charter school, or shared services arrangement
4 requesting the review.

5 (f) The agency may obtain from any law enforcement agency or
6 criminal justice agency all criminal history record information
7 that relates to a person to whom this section applies.

8 (g) The agency, school district, or shared services
9 arrangement may require a person to pay any costs related to
10 obtaining criminal history record information under this section.

11 (h) The agency may coordinate with the State Board for
12 Educator Certification, school districts, and shared services
13 arrangements as necessary to ensure that criminal history
14 investigations authorized or required under this subchapter are not
15 unnecessarily duplicated.

16 (i) The commissioner may adopt rules necessary to implement
17 this section.

18 SECTION 6. Section 22.085, Education Code, is amended to
19 read as follows:

20 Sec. 22.085. [~~DISCHARGE OF~~] EMPLOYEES AND APPLICANTS
21 CONVICTED OF CERTAIN OFFENSES. (a) A school district,
22 open-enrollment charter school, or shared services arrangement
23 shall discharge or refuse to hire an employee or applicant for
24 employment who is subject to a national criminal history record
25 information review under Section 22.0831 if the district, school,
26 or shared services arrangement obtains information that:

27 (1) the employee or applicant has been convicted of or

1 received deferred adjudication for a felony offense under Title 5,
2 Penal Code, or an offense on conviction of which a defendant is
3 required to register as a sex offender under Chapter 62, Code of
4 Criminal Procedure; and

5 (2) the victim of the offense described by Subdivision
6 (1) is under 18 years of age.

7 (b) A school district, open-enrollment charter school, or
8 shared services arrangement may not allow a person who is an
9 employee of or applicant for employment by an entity that contracts
10 with the district, school, or shared services arrangement and who
11 is subject to a national criminal history record information review
12 under Section 22.0831 to serve at the district or school or for the
13 shared services arrangement if the district, school, or shared
14 services arrangement obtains information described by Subsection
15 (a) concerning the employee or applicant.

16 (c) A school district, open-enrollment charter school,
17 private school, regional education service center, or shared
18 services arrangement may discharge an employee if the district or
19 school obtains information of the employee's conviction of a felony
20 or of a misdemeanor involving moral turpitude that the employee did
21 not disclose to the State Board for Educator Certification or the
22 district, school, service center, or shared services arrangement.
23 An employee discharged under this section is considered to have
24 been discharged for misconduct for purposes of Section 207.044,
25 Labor Code.

26 SECTION 7. Section 261.103, Family Code, is amended by
27 adding Subsection (d) to read as follows:

1 (d) In addition to the reports required under Subsection
2 (a), a report shall be made to the State Board for Educator
3 Certification if the alleged or suspected abuse or neglect involves
4 a person responsible for the care, custody, or welfare of the child
5 and that person holds or has applied for a certificate or permit
6 under Subchapter B, Chapter 21, Education Code. The information
7 provided under this subsection is confidential and not subject to
8 discovery or public release under Chapter 552, Government Code.

9 SECTION 8. Section 411.090, Government Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) The department shall notify the board of the arrest of
12 any educator, as defined by Section 5.001, Education Code, who has
13 fingerprints on file with the department.

14 SECTION 9. Subchapter F, Chapter 411, Government Code, is
15 amended by adding Section 411.0901 to read as follows:

16 Sec. 411.0901. ACCESS TO CRIMINAL HISTORY RECORD
17 INFORMATION: TEXAS EDUCATION AGENCY. The Texas Education Agency
18 is entitled to obtain criminal history record information
19 maintained by the department about a person who:

20 (1) is employed or is an applicant for employment by a
21 school district or open-enrollment charter school;

22 (2) is employed or is an applicant for employment by a
23 shared services arrangement, if the employee's or applicant's
24 duties are or will be performed on school property or at another
25 location where students are regularly present; or

26 (3) is employed or is an applicant for employment by an
27 entity that contracts with a school district, open-enrollment

1 charter school, or shared services arrangement if:

2 (A) the employee or applicant has or will have
3 continuing duties relating to the contracted services; and

4 (B) the duties are or will be performed on school
5 property or at another location where students are regularly
6 present.

7 SECTION 10. Section 411.097(b), Government Code, is amended
8 to read as follows:

9 (b) A school district, charter school, private school,
10 regional education service center, or education shared services
11 arrangement is entitled to obtain from the department [~~, no more~~
12 ~~than twice each year,~~] criminal history record information
13 maintained by the department that the district, school, service
14 center, or shared services arrangement is required or authorized to
15 obtain under Subchapter C, Chapter 22, Education Code, that relates
16 to a person who is a volunteer or employee of the district, school,
17 service center, or shared services arrangement.

18 SECTION 11. Section 21.006(c-1), Education Code, as added
19 by this Act, applies only to a report for misconduct filed with the
20 State Board for Educator Certification on or after September 1,
21 2007, regardless of whether the conduct or act that is the subject
22 of the report occurred or was committed before, on, or after that
23 date.

24 SECTION 12. Section 21.058, Education Code, as amended by
25 this Act, applies only to an offense for which a person receives
26 deferred adjudication on or after the effective date of this Act. An
27 offense for which a person receives deferred adjudication before

1 the effective date of this Act is governed by the law in effect at
2 the time the person received deferred adjudication, and the former
3 law is continued in effect for that purpose.

4 SECTION 13. As soon as practicable after the effective date
5 of this Act, the Texas Education Agency shall, in the manner
6 prescribed by Section 22.0831, Education Code, as added by this
7 Act, begin obtaining national criminal history record information
8 for employees and applicants for employment who are subject to a
9 national criminal history record information review under that
10 section. Not later than September 1, 2009, the agency shall, in the
11 manner prescribed by Section 22.0831, Education Code, as added by
12 this Act, obtain national criminal history record information for
13 each employee and applicant for employment who is subject to a
14 national criminal history record information review under that
15 section.

16 SECTION 14. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2007.