

## **BILL ANALYSIS**

H.B. 1799  
By: Dale  
Public Education  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties have raised concerns regarding situations in which teachers caught in inappropriate relationships with students resign, move, and obtain employment in other school districts. H.B. 1799 seeks to avoid such an occurrence by creating a registry of persons who are ineligible due to certain conduct to be employed by a public school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Education Agency and the commissioner of education in SECTION 16 of this bill.

### **ANALYSIS**

H.B. 1799 amends the Code of Criminal Procedure to expand the applicability of the requirement that the clerk of the court in which a person who holds a state educator certificate is convicted or granted deferred adjudication on the basis of certain offenses provide written notice to the State Board for Educator Certification (SBEC) of the person's conviction or deferred adjudication by replacing the limitation of the applicable offenses against a person to an offense against a victim who is under 18 years of age with a limitation to an offense against a victim who was under 18 years of age at the time the offense was committed and by removing the limitation relating to the age of the victim altogether for an offense for which a conviction or grant of deferred adjudication requires the person to register as a sex offender.

H.B. 1799 amends the Education Code to require the Texas Education Agency (TEA) to maintain and make available to appropriate hiring entities a registry of persons who are not eligible to be employed by a public school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement and requires a school district, district of innovation, charter school, regional education service center, or shared services arrangement to discharge or refuse to hire a person listed on that registry. The bill requires the registry to list the following persons as not eligible to be employed by public schools:

- a person who is employed by or serves as a teacher, librarian, educational aide, administrator, or school counselor for an open-enrollment charter school and whom TEA determines, based on information contained in the person's national criminal record

information, would not be eligible for educator certification;

- a person who is not eligible for employment based on the person's criminal history record information review because the person has been convicted of certain sexual offenses and offenses against the person;
- a person who is not eligible for employment based on criminal history record information received by TEA in the form of notification from the court in which the person is convicted or granted deferred adjudication on the basis of certain sexual offenses and offenses against the person;
- a person whose educator certification or permit is revoked by the SBEC on a finding that the person engaged in misconduct by abusing or otherwise committing an unlawful act with a student or minor or by being involved in a romantic relationship with or soliciting or engaging in sexual contact with a student or minor; and
- a person who, as a result of proceedings under the bill's provisions relating to misconduct by an employee who does not hold an educator certification or permit, is determined by the commissioner of education to have engaged in misconduct by abusing or otherwise committing an unlawful act with a student or minor or by being involved in a romantic relationship with or soliciting or engaging in sexual contact with a student or minor.

The bill requires TEA to establish the registry not later than January 1, 2018, and to adopt rules as necessary to implement the bill's provisions relating to establishment of the registry.

H.B. 1799 requires the SBEC to promptly notify TEA for purposes of the registry if the SBEC revokes a certificate or permit of a person on a finding that the person engaged in the applicable misconduct. The bill requires a school district, district of innovation, charter school, or shared services arrangement to promptly notify TEA for purposes of the registry that the applicable entity discharged or refused to hire an employee or applicant for employment because of information obtained through a criminal history record information review. The bill exempts an applicable entity from this notification requirement if the entity was notified by TEA that the person must be discharged or may not be hired pursuant to a review of the person's criminal history record information by TEA.

H.B. 1799 makes statutory provisions relating to the required reporting of misconduct by certain certified educators and relating to the criminal history record information review of certain employees of a school district, charter school, or shared services arrangement, including noncertified employees and substitute teachers, explicitly applicable to a district of innovation. The bill includes the principal of a school district, district of innovation, or charter school campus among the authorities responsible for reporting and investigating evidence of educator misconduct. The bill changes the deadline for reporting misconduct to the SBEC from a deadline that is not later than the seventh day after the date the superintendent, director, or principal knew about an educator's criminal record or an educator's termination of employment or resignation following an alleged incident of misconduct to a deadline that is not later than the seventh day after the date the superintendent, director, or principal knew or should have known about the criminal record, termination, or resignation. The bill requires a principal who files a report concerning such a criminal record, termination, or resignation to notify the applicable superintendent or director about the filing of the report and exempts a superintendent or director who is so notified from the requirement to file a report concerning the criminal record or alleged incident of misconduct addressed in the principal's report. The bill creates a Class A misdemeanor offense for a superintendent, director, or principal required to file such a report who knowingly fails to file the report by the required date and enhances the penalty for that offense to a state jail felony if it is shown on the trial of the offense that the superintendent, director, or principal intended to conceal an educator's criminal record or alleged incident of misconduct. The bill authorizes the commissioner to review the records of a school district, district of innovation, charter school, regional education service center, or shared services arrangement to ensure compliance with these misconduct reporting requirements.

H.B. 1799 expands the applicability of statutory provisions concerning the revocation of an educator certificate and termination of an educator based on conviction of certain offenses and the circumstances under which a school district, district of innovation, open-enrollment charter school, or shared services arrangement is required to discharge or refuse to hire an employee or applicant for employment based on conviction for the same offenses by making the following changes:

- replacing the limitation of applicable felony offenses against a person to an offense against a victim who is under 18 years of age with a limitation to such an offense against a victim who was under 18 years of age at the time the offense was committed;
- removing the limitation relating to the age of the victim altogether for an offense on conviction of which a defendant is required to register as a sex offender; and
- including placement on deferred adjudication community supervision for either such offense as an alternative to conviction of such an offense as well as, with regard to the circumstances under which an employee or applicant for employment must be discharged or refused to be hired, an offense under the laws of another state or federal law that is equivalent to either such offense.

The bill includes an employee or applicant for employment having successfully completed the period of deferred adjudication community supervision among the conditions making the requirement that a school district, district of innovation, charter school, or shared services arrangement discharge or refuse to hire the employee or applicant for employment inapplicable, provided the date of the commission of the applicable offense is more than 30 years before certain dates.

H.B. 1799 includes TEA among the entities to whom the SBEC is required to provide written notice of the revocation of an educator certificate and the basis for the revocation at the time of revocation if the SBEC receives notice of the conviction or placement on deferred adjudication community supervision of a person who holds an educator certificate.

H.B. 1799 requires the superintendent or director of a school district, district of innovation, charter school, regional education service center, or shared services arrangement or the principal of a school district, district of innovation, or charter school campus to notify the commissioner if the employment of an employee who does not hold an educator certification or permit was terminated or the employee resigned and there is evidence in both cases that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. The bill provides for the meaning of "abuse" by reference to the meaning assigned by Family Code provisions relating to the investigation of a report of child abuse or neglect and includes in the term any sexual conduct involving a student or minor.

H.B. 1799 requires the superintendent, director, or principal to complete an investigation of an employee that involves evidence that the employee may have engaged in such misconduct despite the employee's resignation from employment before completion of the investigation. The bill requires the superintendent, director, or principal to notify the commissioner by filing a report in writing and in a form prescribed by the commissioner not later than the seventh day after the date the superintendent, director, or principal knew or should have known about an employee's termination of employment or resignation following an alleged incident of the applicable misconduct. The bill requires a principal who files such a report to notify the applicable superintendent or director about the filing of the report and exempts a superintendent or director who is so notified from the requirement to file a report concerning the alleged incident addressed in the principal's report. The bill requires the superintendent or director to notify the employee and the board of trustees or governing body of the school district, district of innovation, charter school, regional education service center, or shared services arrangement of the filing of the report.

H.B. 1799 grants immunity from civil or criminal liability that might otherwise be incurred or imposed to a superintendent, director, or principal who in good faith and while acting in an official capacity files the required report with the commissioner concerning a noncertified employee's termination of employment or resignation following an alleged incident of applicable misconduct. The bill requires the commissioner to refer an educator who fails to file such a report to the SBEC and requires the SBEC to determine whether to impose sanctions against the educator. The bill requires the name of a student or minor who is the victim of abuse or unlawful conduct by an employee to be included in such a report but establishes that the name is not public information under state public information law. The bill creates a Class A misdemeanor offense for a superintendent, director, or principal required to file such a report who knowingly fails to file the report by the required date and enhances the penalty for that offense to a state jail felony if it is shown on the trial of the offense that the superintendent, director, or principal intended to conceal an employee's alleged incident of misconduct. The bill requires the commissioner to adopt rules as necessary to implement the bill's provisions relating to reporting requirements for applicable misconduct by a noncertified employee and authorizes the commissioner to review the records of a school district, district of innovation, charter school, regional education service center, or shared services arrangement to ensure compliance with these reporting requirements.

H.B. 1799 entitles an employee of a school district, district of innovation, charter school, regional education service center, or shared services arrangement who does not hold an educator certification or permit and who is the subject of a report that alleges applicable misconduct under the bill's provisions to a hearing under the procedures provided by the Administrative Procedure Act to contest the allegation in the report. The bill requires the commissioner, on receiving such a report, to promptly send a notice to the person who is the subject of the report and prescribes the required contents of that notice. The bill requires a person entitled to a hearing to request a hearing and submit a response to show cause why the commissioner should not pursue an investigation not later than the 10th day after the date the person receives the notice of the report from the commissioner. The bill requires the commissioner, if the person who receives notice does not timely submit a response to show cause, to instruct TEA to provide information indicating the person is under investigation for alleged misconduct to a school district, district of innovation, charter school, or shared services arrangement that makes an inquiry to TEA with respect to a certain national criminal history record information review of the person. The bill requires the commissioner, if the person does not request a hearing within the period prescribed by the bill, to make a determination based on the report whether the person engaged in the applicable misconduct and, if the commissioner determines that the person engaged in the misconduct, to instruct TEA to add the person's name to the registry established by the bill. The bill requires the commissioner to instruct TEA to take one of the following actions if the person requests a hearing: if the final decision in the hearing determines that the person engaged in the applicable misconduct, to add the person's name to the registry or, if the final decision determines that the person did not engage in the applicable misconduct, to immediately discontinue providing information indicating that the person is under investigation for alleged misconduct to a school district, district of innovation, charter school, or shared services arrangement that makes an inquiry regarding a national criminal history record information review. The bill requires the commissioner to adopt rules as necessary to implement the bill's provisions relating to an investigation and hearing of a report of applicable alleged employee misconduct.

H.B. 1799 requires TEA to periodically conduct site visits and review the records of school districts, districts of innovation, charter schools, and shared services arrangements to ensure compliance with the bill's requirement that those entities discharge or refuse to hire a person listed on the registry established by the bill. The bill exempts from certain statutory limitations on TEA compliance monitoring authority the compliance reviews authorized by the bill's provisions relating to discharging or refusing to hire a person listed on the registry and relating to requirements for reporting educator and noncertified employee misconduct. The bill expands the commissioner's authority to issue a subpoena during certain investigations or audits to include

such compliance reviews.

H.B. 1799 subjects a campus or program under a campus or campus program charter to a prohibition, restriction, or requirement imposed by state public education law or a rule adopted under that law relating to reporting educator and applicable noncertified employee misconduct and relating to the duty to discharge or refuse to hire certain employees or applicants for employment who fail to pass a required national criminal history record information review or are listed on the TEA registry of ineligible persons. The bill establishes that it is a material violation of the charter of an open-enrollment charter school if the school fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment who fail to pass a required national criminal history record information review or are listed on the TEA registry of ineligible persons and includes such a violation among the grounds on which the commissioner is required to revoke the charter or reconstitute the governing body of the charter holder. The bill authorizes the commissioner to terminate a district's designation as a district of innovation if the district fails to comply with the duty to discharge or refuse to hire such employees or applicants for employment and establishes that the failure of a district of innovation to provide any information requested by TEA to enable TEA to complete a review of the national criminal history record information of certain employees for whom TEA approval is required may result in termination of the district's designation as a district of innovation.

**EFFECTIVE DATE**

September 1, 2017.