

## **BILL ANALYSIS**

C.S.H.B. 3769  
By: King, Ken  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note reports indicating an increase in the number of educators investigated for having an inappropriate relationship with a student. The parties express concern regarding the extent of disciplinary actions taken by some school districts against such educators. C.S.H.B. 3769 seeks to address these issues by providing penalties for misconduct and revising procedures applicable to educators who have inappropriate relationships with students.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3769 amends the Penal Code to remove the condition that a public or private primary or secondary school employee who engages in certain sexual conduct with a student who is not enrolled in the school at which the employee works hold a certificate or permit issued by the State Board for Educator Certification (SBEC) or be required for school district employment to be licensed by a state agency in order to commit the offense of improper relationship between educator and student. The bill instead makes it an offense for such an employee to engage in that conduct with such a student if the employee holds any position that requires certification for school district employment by the SBEC or applicable state agency, regardless of whether the employee holds the appropriate certificate, permit, license, or credential for the position. The bill expands the types of students against whom such an employee commits the offense by engaging in that conduct with the student to include a student the employee knows is enrolled in a public or private primary or secondary school other than a student enrolled in a school at which the employee works. The bill removes from the conduct constituting that offense for such an employee who engages in the conduct with a person the employee knows is a student participant in a certain district-sponsored or school-sponsored educational activity the condition that the employee provides education services to the activity participants.

C.S.H.B. 3769 amends the Code of Criminal Procedure to change the types of offenders to whom the requirement that the applicable court clerk notify the SBEC regarding an offense committed by an offender who is certified by the SBEC applies from an offender who commits an offense against a victim who is under 18 years of age and who is convicted or granted deferred adjudication on the basis of an offense against the person or an offense on conviction of which the offender is required to register as a sex offender to an offender who is convicted or granted deferred adjudication community supervision on the basis of an offense for which a conviction or grant of deferred adjudication community supervision requires the defendant to

register as a sex offender or who is convicted of an offense against the person involving a victim who was under 18 years of age at the time of the offense.

C.S.H.B. 3769 amends the Education Code to include the superintendent of a school district of innovation among the administrators required to notify the SBEC of certain instances of educator misconduct. The bill changes a condition that, among other conditions, triggers the requirement that an administrator notify the SBEC regarding the misconduct of an educator whose employment at the applicable school district, school, regional education service center, or shared services arrangement was terminated from a condition under which the termination was based on evidence that the educator engaged in certain prohibited or illegal conduct to a condition under which the educator is terminated and there is evidence that the educator engaged in such conduct. The bill extends to the superintendent of a district of innovation and director of a regional education service center or shared services arrangement the duty to complete an investigation of an educator that involves evidence that the educator may have abused or otherwise committed an unlawful act with a student or minor or may have been involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. The bill requires the principal of a school district, district of innovation, or open-enrollment charter school campus to notify the superintendent or director of the district or school not later than the seventh business day after the date of an educator's termination of employment or resignation following an alleged incident of certain misconduct or the date the principal knew about an educator's criminal record. The bill changes the deadline for a superintendent or director to file a report with the SBEC regarding an educator's criminal record or a termination of employment or resignation following an alleged incident of misconduct from the seventh day after the date the superintendent or director knew about the educator's criminal record, termination, or resignation to the seventh business day after the date the superintendent or director receives such notification from a principal or otherwise learns about the educator's criminal record, termination, or resignation.

C.S.H.B. 3769 extends the immunity from civil or criminal liability of a superintendent or director who in good faith and while acting in an official capacity files such a report with the SBEC to a principal of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement and includes as a good faith action for which the person is immune communicating with another superintendent, director, or principal concerning an educator's criminal record or alleged incident of misconduct. The bill requires the SBEC to determine whether to impose sanctions against a principal who fails to provide the required notification to a superintendent or director. The bill authorizes the SBEC to impose on an educator an administrative penalty of not less than \$500 and not more than \$10,000 if the educator serves as a superintendent or director who is required to file a report with the SBEC and fails to file the report by the required date or if the educator serves as a principal who is required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct and fails to provide the notice by the required date. The bill prohibits the SBEC from renewing the certification of an educator against whom such an administrative penalty is imposed until the penalty is paid.

C.S.H.B. 3769 creates a state jail felony offense for a superintendent or director required to file a report with the SBEC or a principal required to notify a superintendent or director to fail to file the report or provide the notice, as applicable, by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct.

C.S.H.B. 3769 includes among the information each educator preparation program is required to provide information regarding appropriate relationships, boundaries, and communications between educators and students. The bill includes among the continuing education requirements for a classroom teacher instruction regarding understanding appropriate relationships, boundaries, and communications between educators and students and includes among the continuing education requirements for a principal instruction regarding preventing, recognizing, and reporting any sexual conduct between an educator and student that constitutes the offense of improper relationship between an educator and student or for which reporting is required under statutory provisions relating to the misconduct of educators.

C.S.H.B. 3769 changes the persons to whom requirements relating to the revocation of the educator certificate of a person who committed an offense and the termination of the person's employment apply from a person who commits an offense against a victim who is under 18 years of age and who is convicted of a felony offense against the person or an offense on conviction of which a defendant is required to register as a sex offender to a person who is convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender or who is convicted of a felony offense against the person involving a victim who was under 18 years of age at the time of the offense. The bill includes the Texas Education Agency (TEA) among the required recipients of the SBEC notice of the revocation of such a person's certificate and the basis for the revocation. The bill conditions the authority of a school district or charter school that receives such notice, or becomes aware of a conviction or deferred adjudication, regarding a person who is employed under a probationary, continuing, or term contract to take certain action against the person on the action being approved by the board of trustees or governing body of the district or school or a designee of the board or governing body.

C.S.H.B. 3769 authorizes the SBEC to suspend or revoke a certificate held by an educator, impose other sanctions against the person, or refuse to issue an educator certificate to the person if the person assists another person in obtaining employment at a public school district or charter school, other than by the routine transmission of administrative and personnel files, and the educator knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law. The bill authorizes the commissioner of education to require a school district to revoke or decline to issue a school district teaching permit issued to or requested by a person subject to such SBEC action.

C.S.H.B. 3769 authorizes the commissioner, during an investigation by the commissioner for an alleged incident of misconduct, to issue a subpoena to compel the attendance of a relevant witness. The bill exempts a document evaluating the performance of a teacher or administrator from disclosure under state public information law. The bill authorizes a school district or charter school to give TEA a document evaluating the performance of a teacher or administrator employed by the district or school for purposes of an investigation conducted by TEA. The bill authorizes the use of such a document in a disciplinary proceeding against a teacher or administrator based on a submitted report concerning an alleged incident of misconduct, except as otherwise provided by a court order prohibiting disclosure, if permissible under rules of evidence applicable to a contested case under the Administrative Procedure Act. The bill establishes that a document so provided to TEA remains confidential unless the document becomes part of the record in a contested case.

C.S.H.B. 3769 requires a school district to adopt a written policy concerning electronic communications between a school employee and a student enrolled in the district and sets out the required contents of such a policy. The bill includes among the authorized grounds on which the commissioner may authorize special accreditation investigations the failure of a school district for any reason to produce, at TEA request, evidence or an investigation report relating to an educator who is under investigation by the SBEC.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3769 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 21.12(a), Penal Code, is amended.

SECTION 2. Article 42.018(a), Code of Criminal Procedure, is amended to read as follows:

(a) This article applies only:  
(1) to conviction or deferred adjudication granted on the basis of[=

~~[(A)]~~ an offense under Title 5, Penal Code,<sup>1</sup> ~~or~~  
~~[(B) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62; and~~  
~~[(2)]~~ if the victim of the offense ~~is~~ under 18 years of age; or

(2) to an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62.

SECTION 3. Section 21.006, Education Code, is amended by amending Subsections (b), (b-1), and (c) and adding Subsections (b-2) and (i) to read as follows:

(b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, open-enrollment charter school, regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if:

(1) an educator employed by or seeking employment by the district, school, service center, or shared services arrangement has a criminal record and the district, school, service center, or shared services arrangement obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code;

(2) an educator's employment at the district, school, service center, or shared services

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Article 42.018(a), Code of Criminal Procedure, is amended to read as follows:

(a) This article applies only to:  
(1) ~~[(A)]~~ conviction or deferred adjudication community supervision granted on the basis of an offense for which a conviction or grant of deferred adjudication community supervision requires the defendant to register as a sex offender under Chapter 62; ~~or~~  
(2) conviction of[=

~~[(A)]~~ an offense under Title 5, Penal Code,<sup>1</sup> ~~or~~  
~~[(B) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62; and~~  
~~[(2)]~~ if the victim of the offense was [is] under 18 years of age at the time the offense was committed.

SECTION 3. Section 21.006, Education Code, is amended by amending Subsections (b), (b-1), (c), (e), and (f) and adding Subsections (b-2), (c-1), (i), and (j) to read as follows:

(b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if:

(1) an educator employed by or seeking employment by the school district, district of innovation, charter school, service center, or shared services arrangement has a criminal record and the school district, district of innovation, charter school, service center, or shared services arrangement obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code;

(2) an educator's employment at the school district, district of innovation, charter

arrangement was terminated and there is ~~[based on]~~ evidence that the educator:

(A) abused or otherwise committed an unlawful act with a student or minor;

(A-1) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(C) illegally transferred, appropriated, or expended funds or other property of the district, school, service center, or shared services arrangement;

(D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or

(E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;

(3) the educator resigned and there is evidence that the educator engaged in misconduct described by Subdivision (2); or

(4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.

(b-1) A superintendent or director of a school district or open-enrollment charter school shall complete an investigation of an educator that involves ~~[is based on]~~ evidence that the educator may have engaged in misconduct described by Subsection (b)(2)(A) or (A-1), despite the educator's resignation from district or school employment before completion of the investigation.

(b-2) The principal of a school district or open-enrollment charter school campus must notify the superintendent or director of the district or school not later than the seventh day after the date the principal knew or should have known about an educator's criminal record under Subsection (b)(1) or a termination of employment or resignation following an alleged incident of misconduct described by Subsection (b).

school, service center, or shared services arrangement was terminated and there is ~~[based on]~~ evidence that the educator:

(A) abused or otherwise committed an unlawful act with a student or minor;

(A-1) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(C) illegally transferred, appropriated, or expended funds or other property of the school district, district of innovation, charter school, service center, or shared services arrangement;

(D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or

(E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;

(3) the educator resigned and there is evidence that the educator engaged in misconduct described by Subdivision (2); or

(4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.

(b-1) A superintendent or director of a school district, district of innovation, ~~[or]~~ open-enrollment charter school, regional education service center, or shared services arrangement shall complete an investigation of an educator that involves ~~[is based on]~~ evidence that the educator may have engaged in misconduct described by Subsection (b)(2)(A) or (A-1), despite the educator's resignation from ~~[district or school]~~ employment before completion of the investigation.

(b-2) The principal of a school district, district of innovation, or open-enrollment charter school campus must notify the superintendent or director of the school district, district of innovation, or charter school not later than the seventh business day after the date:

(1) of an educator's termination of employment or resignation following an alleged incident of misconduct described by Subsection (b); or

(2) the principal knew about an educator's criminal record under Subsection (b)(1).

(c) The superintendent or director must notify the State Board for Educator Certification by filing a report with the board not later than the seventh day after the date the superintendent or director knew or should have known about an educator's [employee's] criminal record under Subsection (b)(1) or a termination of employment or resignation following an alleged incident of misconduct described by Subsection (b).

The report must be:

- (1) in writing; and
- (2) in a form prescribed by the board.

No equivalent provision.

No equivalent provision.

No equivalent provision.

(c) The superintendent or director must notify the State Board for Educator Certification by filing a report with the board not later than the seventh business day after the date the superintendent or director receives a report from a principal under Subsection (b-2) or otherwise learns [knew] about an educator's [employee's criminal record under Subsection (b)(1) or a] termination of employment or resignation following an alleged incident of misconduct described by Subsection (b) or an employee's criminal record under Subsection (b)(1).

(c-1) The report under Subsection (c) must be:

- (1) in writing; and
- (2) in a form prescribed by the board.

(e) A superintendent, [or] director, or principal of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement who in good faith and while acting in an official capacity files a report with the State Board for Educator Certification under this section or communicates with another superintendent, director, or principal concerning an educator's criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed.

(f) The State Board for Educator Certification shall determine whether to impose sanctions, including an administrative penalty under Subsection (i), against a principal who fails to provide notification to a superintendent or director in violation of Subsection (b-2) or against a superintendent or director who fails to file a report in violation of Subsection (c).

(i) If an educator serving as a superintendent or director is required to file a report under Subsection (c) and fails to file the report by the date required by that subsection, or if an educator serving as a principal is required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct under Subsection (b-2) and fails to provide the notice by the date required by that subsection, the State Board for Educator Certification may impose on the educator an administrative penalty of not less than \$500 and not more than \$10,000. The State Board for Educator Certification

may not renew the certification of an educator against whom an administrative penalty is imposed under this subsection until the penalty is paid.

(i) A superintendent or director required to file a report under Subsection (c) commits an offense if the superintendent or director knowingly fails to file the report by the date required by that subsection.

A principal required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct under Subsection (b-2) commits an offense if the principal knowingly fails to provide the notice by the date required by that subsection. An offense under this subsection is a Class A misdemeanor, except that the offense is 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.

No equivalent provision.

SECTION 4. Sections 21.054(d) and (e), Education Code, are amended.

No equivalent provision.

85R 24094

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(j) A superintendent or director required to file a report under Subsection (c) commits an offense if the superintendent or director fails to file the report by the date required by that subsection with intent to conceal an educator's criminal record or alleged incident of misconduct.

A principal required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct under Subsection (b-2) commits an offense if the principal fails to provide the notice by the date required by that subsection with intent to conceal an educator's criminal record or alleged incident of misconduct. An offense under this subsection is a state jail felony.

SECTION 4. Section 21.044(g), Education Code, is amended to read as follows:

(g) Each educator preparation program must provide information regarding:

- (1) the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for students in this state;
- (2) the effect of supply and demand forces on the educator workforce in this state;
- (3) the performance over time of the educator preparation program;
- (4) the importance of building strong classroom management skills; ~~and~~
- (5) the framework in this state for teacher and principal evaluation, including the procedures followed in accordance with Subchapter H; ~~and~~
- (6) appropriate relationships, boundaries, and communications between educators and students.

SECTION 5. Same as introduced version.

SECTION 6. The heading to Section 21.058, Education Code, is amended to read

17.108.531

as follows:

Sec. 21.058. REVOCATION OF CERTIFICATE AND TERMINATION OF EMPLOYMENT BASED ON CONVICTION OF OR PLACEMENT ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION FOR CERTAIN OFFENSES.

SECTION 5. Section 21.058(a), Education Code, is amended to read as follows:

(a) The procedures described by Subsections (b) and (c) apply only to a person who is:

(1) registered as a sex offender under Chapter 62, Code of Criminal Procedure; or

(2) convicted [to conviction] of a felony offense under Title 5, Penal Code, committed against a [or an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and [(2) if the] victim younger than [of the offense is under] 18 years of age.

No equivalent provision.

No equivalent provision.

SECTION 7. Sections 21.058(a), (b), (c), (c-1), and (c-2), Education Code, are amended to read as follows:

(a) The procedures described by Subsections (b) and (c) apply only:

(1) to conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(2) to conviction of a felony offense under Title 5, Penal Code, [or an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and [(2) if the victim of the offense was [is] under 18 years of age at the time the offense was committed.

(b) Notwithstanding Section 21.041(b)(7), not later than the fifth day after the date the board receives notice under Article 42.018, Code of Criminal Procedure, of the conviction or placement on deferred adjudication community supervision of a person who holds a certificate under this subchapter, the board shall:

(1) revoke the certificate held by the person; and

(2) provide to the person, to the agency, and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of:

(A) the revocation; and

(B) the basis for the revocation.

(c) A school district or open-enrollment charter school that receives notice under Subsection (b) of the revocation of a certificate issued under this subchapter shall:

(1) immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and

No equivalent provision.

No equivalent provision.

SECTION 6. Subchapter B, Chapter 21, Education Code, is amended by adding Section 21.0581 to read as follows:

Sec. 21.0581. REVOCATION FOR ASSISTING PERSON WHO ENGAGED IN SEXUAL MISCONDUCT OBTAIN EMPLOYMENT. (a) The board may suspend or revoke a certificate held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate to the person under this subchapter if:

- (1) the person assists another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and
- (2) the person knew or should have known that the other person has previously engaged in sexual misconduct with a minor or

(2) if the person is employed under a probationary, continuing, or term contract under this chapter, with the approval of the board of trustees or governing body or a designee of the board or governing body:

- (A) suspend the person without pay;
- (B) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and
- (C) terminate the employment of the person as soon as practicable.

(c-1) If a school district or open-enrollment charter school becomes aware that a person employed by the district or school under a probationary, continuing, or term contract under this chapter has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to Subsection (c), the district or school may, with the approval of the board of trustees or governing body or a designee of the board of trustees or governing body:

- (1) suspend the person without pay;
- (2) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and
- (3) terminate the employment of the person as soon as practicable.

(c-2) A person's probationary, continuing, or term contract is void if, with the approval of the board of trustees or governing body or a designee of the board or governing body, the school district or open-enrollment charter school takes action under Subsection (c)(2)(B) or (c-1)(2).

SECTION 8. Subchapter B, Chapter 21, Education Code, is amended by adding Section 21.0581 to read as follows:

Sec. 21.0581. REVOCATION FOR ASSISTING PERSON WHO ENGAGED IN SEXUAL MISCONDUCT OBTAIN EMPLOYMENT. (a) The board may suspend or revoke a certificate held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate to the person under this subchapter if:

- (1) the person assists another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and
- (2) the person knew that the other person has previously engaged in sexual misconduct with a minor or student in

student in violation of the law.

(b) The board may require a school district to revoke or decline to issue a school district teaching permit under Section 21.055 issued to or requested by a person subject to board action under Subsection (a).

SECTION 7. Section 21.062(a), Education Code, is amended.

SECTION 8. Section 21.355, Education Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) A document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under Chapter 552, Government Code.

(d) A school district or open-enrollment charter school may give the agency a document evaluating the performance of a teacher or administrator employed by the district or school.

(e) Notwithstanding Subsection (a) and except as otherwise provided by a court order prohibiting disclosure, a document provided to the agency under Subsection (d) may be used in a disciplinary proceeding against a teacher or administrator based on a report submitted under Section 21.006 concerning an alleged incident of misconduct.

No equivalent provision.

SECTION 9. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.027 to read as follows:

Sec. 38.027. ELECTRONIC COMMUNICATION POLICY.

(a) In this section, "electronic communication" means any communication facilitated by the use of any electronic device, including a telephone, cellular telephone, computer, computer network,

violation of the law.

(b) The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Section 21.055 issued to or requested by a person subject to board action under Subsection (a).

SECTION 9. Same as introduced version.

SECTION 10. Section 21.355, Education Code, is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) to read as follows:

(a) A document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under Chapter 552, Government Code.

(d) A school district or open-enrollment charter school may give the agency a document evaluating the performance of a teacher or administrator employed by the district or school for purposes of an investigation conducted by the agency.

(e) Notwithstanding Subsection (a) and except as otherwise provided by a court order prohibiting disclosure, a document provided to the agency under Subsection (d) may be used in a disciplinary proceeding against a teacher or administrator based on a report submitted under Section 21.006 concerning an alleged incident of misconduct, if permissible under rules of evidence applicable to a contested case, as provided by Section 2001.081, Government Code.

(f) A document provided to the agency under Subsection (d) remains confidential unless the document becomes part of the record in a contested case under Chapter 2001, Government Code.

SECTION 11. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.027 to read as follows:

Sec. 38.027. ELECTRONIC COMMUNICATION POLICY.

(a) Same as introduced version.

personal data assistant, or pager. The term includes e-mails, text messages, instant messages, and any communications made through an Internet website, including a social media website or a social networking website.

(b) A school district shall adopt a written policy concerning electronic communications between a school employee and a student enrolled in the district.

(c) The policy adopted under this section must include provisions designed to prevent improper electronic communications between a school employee and a student.

SECTION 10. Section 39.057(a), Education Code, is amended.

SECTION 11. The change in law made by this Act to Section 21.12, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 12. This Act takes effect September 1, 2017.

(b) Same as introduced version.

(c) The policy adopted under this section must:  
(1) include provisions designed to prevent improper electronic communications between a school employee and a student;  
(2) allow a school employee to elect to not disclose to students the employee's personal telephone number or e-mail address; and  
(3) include provisions instructing a school employee about the proper method for notifying appropriate local administrators about an incident in which a student engages in improper communications with the school employee.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.