

BILL ANALYSIS

C.S.S.B. 7
By: Bettencourt
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that there have been too many cases involving an educator who has an inappropriate relationship with a student in one school district and who then moves and obtains employment in another school district without the new school district ever receiving notice of the inappropriate relationship. The goal of C.S.S.B. 7 is to reduce the risks faced by school districts and students by closing loopholes and providing penalties for conduct relating to an inappropriate relationship between an educator and a student.

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.S.B. 7 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.S.B. 7 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.S.B. 7 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.S.B. 7 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.S.B. 7 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.S.B. 7 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.S.B. 7 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.S.B. 7 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.S.B. 7 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.S.B. 7 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 SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 7 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 engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

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

SECTION 2. Article 42.01, Code of Criminal Procedure, is amended by adding Section 12 to read as follows:

Sec. 12. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0192.

SECTION 3. Article 42.018(a), Code of Criminal Procedure, is amended.

SECTION 4. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0192 to read as follows:

Art. 42.0192. FINDING REGARDING OFFENSE RELATED TO PERFORMANCE OF PUBLIC SERVICE.

(a) In the trial of an offense described by Section 824.009, Government Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the offense committed was related to the defendant's employment described by Section 824.009(b), Government Code, while a member of the Teacher Retirement System of Texas.

(b) A judge who makes the affirmative finding described by this article shall make the determination and provide the notice required by Section 824.009(l), Government Code, as applicable.

SECTION 5. Section 21.006, Education Code, is amended by amending Subsections (b), (b-1), and (c) and adding Subsections (b-2), (c-1), 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, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement shall notify the State Board for

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

No equivalent provision.

SECTION 2. Same as engrossed version.

No equivalent provision.

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) Same as engrossed version.

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 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

(b-1) Same as engrossed version.

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 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 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.

No equivalent provision.

No equivalent provision.

(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 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) Same as engrossed version.

(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

No equivalent provision.

(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.

SECTION 6. Section 21.044(g), Education Code, is amended.

SECTION 7. Sections 21.054(d) and (e), Education Code, are amended.

85R 24095

Substitute Document Number: 85R 21677

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.

(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. Same as engrossed version.

SECTION 5. Same as engrossed version.

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SECTION 8. The heading to Section 21.058, Education Code, is amended.

SECTION 6. Same as engrossed version.

SECTION 9. Sections 21.058(a), (b), (c), (c-1), and (c-2), Education Code, are amended.

SECTION 7. Same as engrossed version.

SECTION 10. Subchapter B, Chapter 21, Education Code, is amended.

SECTION 8. Same as engrossed version.

SECTION 11. Section 21.062(a), Education Code, is amended to read.

SECTION 9. Same as engrossed version.

SECTION 12. Section 21.355, Education Code, is amended.

SECTION 10. Same as engrossed version.

SECTION 13. Subchapter A, Chapter 38, Education Code, is amended.

SECTION 11. Same as engrossed version.

SECTION 14. Section 39.057(a), Education Code, is amended.

SECTION 12. Same as engrossed version.

SECTION 15. Subchapter A, Chapter 824, Government Code, is amended by adding Section 824.009 to read as follows:

No equivalent provision.

Sec. 824.009. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY.

(a) In this section, "qualifying felony" means an offense that is punishable as a felony under the following sections of the Penal Code:

(1) Section 21.02 (continuous sexual abuse of young child or children);

(2) Section 21.12 (improper relationship between educator and student); or

(3) Section 22.011 (sexual assault) or Section 22.021 (aggravated sexual assault).

(a-1) In this section, a "qualifying felony" includes any federal offense that contains elements that are substantially similar to the elements of a felony offense described in Subsection (a).

(b) This section applies only to a person who is a member or an annuitant of the retirement system.

(c) Except as provided by Subsection (e), a

person is not eligible to receive a service retirement annuity from the retirement system if the person is convicted of a qualifying felony the victim of which is a student.

(d) The retirement system shall suspend payments of an annuity to a person who is not eligible to receive a service retirement annuity under Subsection (c), as determined by the retirement system, on receipt by the retirement system of:

(1) notice of a conviction for a qualifying felony under Subsection (f) or (l);

(2) notice of a conviction for a qualifying felony from a district court or district attorney; or

(3) any other information the retirement system determines by rule is sufficient to establish a conviction for a qualifying felony.

(e) A person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (g).

(f) Not later than the 30th day after the date of a person's conviction for a qualifying felony, the school at which the person was employed shall provide written notice of the conviction to the retirement system. The notice must comply with rules adopted by the board of trustees under Subsection (k).

(g) A person who is not eligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the person's retirement annuity contributions, including interest earned on those contributions.

(h) Benefits payable to an alternate payee under Chapter 804 who is recognized by a domestic relations order established before September 1, 2017, are not affected by a person's ineligibility to receive a retirement annuity under Subsection (c).

(i) On conviction of a person for a qualifying felony, a court may, in the interest of justice and in the same manner as in a divorce proceeding, award half of the service retirement annuity forfeited by the

person as the separate property of an innocent spouse if the annuity is partitioned or exchanged by written agreement of the spouses as provided by Subchapter B, Chapter 4, Family Code. The amount awarded to the innocent spouse may not be converted to community property.

(j) Ineligibility for a retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(k) The board of trustees of the retirement system shall adopt rules and procedures to implement this section.

(l) A court shall notify the retirement system of the terms of a person's conviction of a qualifying felony.

SECTION 16. 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 17. Section 12, Article 42.01, Code of Criminal Procedure, and Article 42.0192, Code of Criminal Procedure, as added by this Act, apply only to a judgment of conviction entered on or after the effective date of this Act.

SECTION 18. Not later than December 31, 2017, the board of trustees of the Teacher Retirement System of Texas shall adopt the rules necessary to implement Section 824.009, Government Code, as added by this Act.

SECTION 19. Section 824.009, Government Code, as added by this Act, applies only to an offense committed on or after the effective date of rules adopted in accordance with that section. An offense committed before that date is governed by the law in effect on the date the offense was

SECTION 13. Same as engrossed version.

No equivalent provision.

No equivalent provision.

No equivalent provision.

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 rules adopted in accordance with 824.009, Government Code, as added by this Act, if any element of the offense occurred before that date.

SECTION 20. This Act takes effect September 1, 2017.

SECTION 14. Same as engrossed version.