

By: King of Hemphill, et al.

H.B. No. 3769

Substitute the following for H.B. No. 3769:

By: Bohac

C.S.H.B. No. 3769

A BILL TO BE ENTITLED

AN ACT

1
2 relating to improper relationships between educators and students
3 and reporting of educator misconduct; creating a criminal offense
4 and expanding the applicability of an existing offense; authorizing
5 an administrative penalty.

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

7 SECTION 1. Section 21.12(a), Penal Code, is amended to read
8 as follows:

9 (a) An employee of a public or private primary or secondary
10 school commits an offense if the employee:

11 (1) engages in sexual contact, sexual intercourse, or
12 deviate sexual intercourse with a person who is enrolled in a public
13 or private primary or secondary school at which the employee works;

14 (2) holds a position described by Section 21.003(a) or
15 (b), Education Code, regardless of whether the employee holds the
16 appropriate certificate, permit, license, or credential for the
17 position, [a certificate or permit issued as provided by Subchapter
18 B, Chapter 21, Education Code, or is a person who is required to be
19 licensed by a state agency as provided by Section 21.003(b),
20 Education Code,] and engages in sexual contact, sexual intercourse,
21 or deviate sexual intercourse with a person the employee knows is:

22 (A) enrolled in a public or private primary or
23 secondary school, other than a school described by Subdivision (1)
24 [in the same school district as the school at which the employee

1 ~~works~~]; or

2 (B) a student participant in an educational
3 activity that is sponsored by a school district or a public or
4 private primary or secondary school, if[+]

5 [~~(i)~~] students enrolled in a public or
6 private primary or secondary school are the primary participants in
7 the activity; [~~and~~

8 [~~(ii) the employee provides education~~
9 ~~services to those participants,~~] or

10 (3) engages in conduct described by Section 33.021,
11 with a person described by Subdivision (1), or a person the employee
12 knows is a person described by Subdivision (2)(A) or (B),
13 regardless of the age of that person.

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

16 (a) This article applies only to:

17 (1) [~~to~~] conviction or deferred adjudication
18 community supervision granted on the basis of an offense for which a
19 conviction or grant of deferred adjudication community supervision
20 requires the defendant to register as a sex offender under Chapter
21 62; or

22 (2) conviction of[+]

23 [~~(A)~~] an offense under Title 5, Penal Code, [~~or~~

24 [~~(B) an offense on conviction of which a~~
25 ~~defendant is required to register as a sex offender under Chapter~~
26 ~~62, and~~

27 [~~(2)~~] if the victim of the offense was [~~is~~] under 18

1 years of age at the time the offense was committed.

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

5 (b) In addition to the reporting requirement under Section
6 261.101, Family Code, the superintendent or director of a school
7 district, district of innovation, open-enrollment charter school,
8 regional education service center, or shared services arrangement
9 shall notify the State Board for Educator Certification if:

10 (1) an educator employed by or seeking employment by
11 the school district, district of innovation, charter school,
12 service center, or shared services arrangement has a criminal
13 record and the school district, district of innovation, charter
14 school, service center, or shared services arrangement obtained
15 information about the educator's criminal record by a means other
16 than the criminal history clearinghouse established under Section
17 411.0845, Government Code;

18 (2) an educator's employment at the school district,
19 district of innovation, charter school, service center, or shared
20 services arrangement was terminated and there is ~~[based on]~~
21 evidence that the educator:

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

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

27 (B) possessed, transferred, sold, or distributed

1 a controlled substance, as defined by Chapter 481, Health and
2 Safety Code, or by 21 U.S.C. Section 801 et seq.;

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

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

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

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

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

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

25 (b-2) The principal of a school district, district of
26 innovation, or open-enrollment charter school campus must notify
27 the superintendent or director of the school district, district of

1 innovation, or charter school not later than the seventh business
2 day after the date:

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

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

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

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

18 (1) in writing; and

19 (2) in a form prescribed by the board.

20 (e) A superintendent, [~~or~~] director, or principal of a
21 school district, district of innovation, open-enrollment charter
22 school, regional education service center, or shared services
23 arrangement who in good faith and while acting in an official
24 capacity files a report with the State Board for Educator
25 Certification under this section or communicates with another
26 superintendent, director, or principal concerning an educator's
27 criminal record or alleged incident of misconduct is immune from

1 civil or criminal liability that might otherwise be incurred or
2 imposed.

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

9 (i) If an educator serving as a superintendent or director
10 is required to file a report under Subsection (c) and fails to file
11 the report by the date required by that subsection, or if an
12 educator serving as a principal is required to notify a
13 superintendent or director about an educator's criminal record or
14 alleged incident of misconduct under Subsection (b-2) and fails to
15 provide the notice by the date required by that subsection, the
16 State Board for Educator Certification may impose on the educator
17 an administrative penalty of not less than \$500 and not more than
18 \$10,000. The State Board for Educator Certification may not renew
19 the certification of an educator against whom an administrative
20 penalty is imposed under this subsection until the penalty is paid.

21 (j) A superintendent or director required to file a report
22 under Subsection (c) commits an offense if the superintendent or
23 director fails to file the report by the date required by that
24 subsection with intent to conceal an educator's criminal record or
25 alleged incident of misconduct. A principal required to notify a
26 superintendent or director about an educator's criminal record or
27 alleged incident of misconduct under Subsection (b-2) commits an

1 offense if the principal fails to provide the notice by the date
2 required by that subsection with intent to conceal an educator's
3 criminal record or alleged incident of misconduct. An offense
4 under this subsection is a state jail felony.

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

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

9 (1) the skills that educators are required to possess,
10 the responsibilities that educators are required to accept, and the
11 high expectations for students in this state;

12 (2) the effect of supply and demand forces on the
13 educator workforce in this state;

14 (3) the performance over time of the educator
15 preparation program;

16 (4) the importance of building strong classroom
17 management skills; ~~and~~

18 (5) the framework in this state for teacher and
19 principal evaluation, including the procedures followed in
20 accordance with Subchapter H; and

21 (6) appropriate relationships, boundaries, and
22 communications between educators and students.

23 SECTION 5. Sections 21.054(d) and (e), Education Code, are
24 amended to read as follows:

25 (d) Continuing education requirements for a classroom
26 teacher must provide that not more than 25 percent of the training
27 required every five years include instruction regarding:

1 (1) collecting and analyzing information that will
2 improve effectiveness in the classroom;

3 (2) recognizing early warning indicators that a
4 student may be at risk of dropping out of school;

5 (3) integrating technology into classroom
6 instruction; ~~and~~

7 (4) educating diverse student populations, including:

8 (A) students with disabilities, including mental
9 health disorders;

10 (B) students who are educationally
11 disadvantaged;

12 (C) students of limited English proficiency; and

13 (D) students at risk of dropping out of school;

14 and

15 (5) understanding appropriate relationships,
16 boundaries, and communications between educators and students.

17 (e) Continuing education requirements for a principal must
18 provide that not more than 25 percent of the training required every
19 five years include instruction regarding:

20 (1) effective and efficient management, including:

21 (A) collecting and analyzing information;

22 (B) making decisions and managing time; and

23 (C) supervising student discipline and managing
24 behavior;

25 (2) recognizing early warning indicators that a
26 student may be at risk of dropping out of school;

27 (3) integrating technology into campus curriculum and

1 instruction; [~~and~~]

2 (4) educating diverse student populations, including:

3 (A) students with disabilities, including mental
4 health disorders;

5 (B) students who are educationally
6 disadvantaged;

7 (C) students of limited English proficiency; and

8 (D) students at risk of dropping out of school;

9 and

10 (5) preventing, recognizing, and reporting any sexual
11 conduct between an educator and student that is prohibited under
12 Section 21.12, Penal Code, or for which reporting is required under
13 Section 21.006 of this code.

14 SECTION 6. The heading to Section 21.058, Education Code,
15 is amended to read as follows:

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

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

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

23 (1) to conviction of or placement on deferred
24 adjudication community supervision for an offense for which a
25 defendant is required to register as a sex offender under Chapter
26 62, Code of Criminal Procedure; or

27 (2) to conviction of a felony offense under Title 5,

1 Penal Code, [~~or an offense on conviction of which a defendant is~~
2 ~~required to register as a sex offender under Chapter 62, Code of~~
3 ~~Criminal Procedure; and~~

4 [~~(2)~~] if the victim of the offense was [~~is~~] under 18
5 years of age at the time the offense was committed.

6 (b) Notwithstanding Section 21.041(b)(7), not later than
7 the fifth day after the date the board receives notice under Article
8 42.018, Code of Criminal Procedure, of the conviction or placement
9 on deferred adjudication community supervision of a person who
10 holds a certificate under this subchapter, the board shall:

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

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

15 (A) the revocation; and

16 (B) the basis for the revocation.

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

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

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

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

6 (c-1) If a school district or open-enrollment charter

7 school becomes aware that a person employed by the district or

8 school under a probationary, continuing, or term contract under

9 this chapter has been convicted of or received deferred

10 adjudication for a felony offense, and the person is not subject to

11 Subsection (c), the district or school may, with the approval of the

12 board of trustees or governing body or a designee of the board of

13 trustees or governing body:

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

19 (c-2) A person's probationary, continuing, or term contract

20 is void if, with the approval of the board of trustees or governing

21 body or a designee of the board or governing body, the school

22 district or open-enrollment charter school takes action under

23 Subsection (c)(2)(B) or (c-1)(2).

24 SECTION 8. Subchapter B, Chapter 21, Education Code, is

25 amended by adding Section 21.0581 to read as follows:

26 Sec. 21.0581. REVOCATION FOR ASSISTING PERSON WHO ENGAGED

27 IN SEXUAL MISCONDUCT OBTAIN EMPLOYMENT. (a) The board may suspend

1 or revoke a certificate held by a person under this subchapter,
2 impose other sanctions against the person, or refuse to issue a
3 certificate to the person under this subchapter if:

4 (1) the person assists another person in obtaining
5 employment at a school district or open-enrollment charter school,
6 other than by the routine transmission of administrative and
7 personnel files; and

8 (2) the person knew that the other person has
9 previously engaged in sexual misconduct with a minor or student in
10 violation of the law.

11 (b) The commissioner may require a school district to revoke
12 or decline to issue a school district teaching permit under Section
13 21.055 issued to or requested by a person subject to board action
14 under Subsection (a).

15 SECTION 9. Section 21.062(a), Education Code, is amended to
16 read as follows:

17 (a) During an investigation by the commissioner of an
18 educator for an alleged incident of misconduct, the commissioner
19 may issue a subpoena to compel:

20 (1) the attendance of a relevant witness; or

21 (2) the production, for inspection or copying, of
22 relevant evidence that is located in this state.

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

26 (a) A document evaluating the performance of a teacher or
27 administrator is confidential and is not subject to disclosure

1 under Chapter 552, Government Code.

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

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

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

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

19 Sec. 38.027. ELECTRONIC COMMUNICATION POLICY. (a) In this
20 section, "electronic communication" means any communication
21 facilitated by the use of any electronic device, including a
22 telephone, cellular telephone, computer, computer network,
23 personal data assistant, or pager. The term includes e-mails, text
24 messages, instant messages, and any communications made through an
25 Internet website, including a social media website or a social
26 networking website.

27 (b) A school district shall adopt a written policy

1 concerning electronic communications between a school employee and
2 a student enrolled in the district.

3 (c) The policy adopted under this section must:

4 (1) include provisions designed to prevent improper
5 electronic communications between a school employee and a student;

6 (2) allow a school employee to elect to not disclose to
7 students the employee's personal telephone number or e-mail
8 address; and

9 (3) include provisions instructing a school employee
10 about the proper method for notifying appropriate local
11 administrators about an incident in which a student engages in
12 improper communications with the school employee.

13 SECTION 12. Section 39.057(a), Education Code, is amended
14 to read as follows:

15 (a) The commissioner may authorize special accreditation
16 investigations to be conducted:

17 (1) when excessive numbers of absences of students
18 eligible to be tested on state assessment instruments are
19 determined;

20 (2) when excessive numbers of allowable exemptions
21 from the required state assessment instruments are determined;

22 (3) in response to complaints submitted to the agency
23 with respect to alleged violations of civil rights or other
24 requirements imposed on the state by federal law or court order;

25 (4) in response to established compliance reviews of
26 the district's financial accounting practices and state and federal
27 program requirements;

1 (5) when extraordinary numbers of student placements
2 in disciplinary alternative education programs, other than
3 placements under Sections 37.006 and 37.007, are determined;

4 (6) in response to an allegation involving a conflict
5 between members of the board of trustees or between the board and
6 the district administration if it appears that the conflict
7 involves a violation of a role or duty of the board members or the
8 administration clearly defined by this code;

9 (7) when excessive numbers of students in special
10 education programs under Subchapter A, Chapter 29, are assessed
11 through assessment instruments developed or adopted under Section
12 39.023(b);

13 (8) in response to an allegation regarding or an
14 analysis using a statistical method result indicating a possible
15 violation of an assessment instrument security procedure
16 established under Section 39.0301, including for the purpose of
17 investigating or auditing a school district under that section;

18 (9) when a significant pattern of decreased academic
19 performance has developed as a result of the promotion in the
20 preceding two school years of students who did not perform
21 satisfactorily as determined by the commissioner under Section
22 39.0241(a) on assessment instruments administered under Section
23 39.023(a), (c), or (l);

24 (10) when excessive numbers of students eligible to
25 enroll fail to complete an Algebra II course or any other advanced
26 course as determined by the commissioner;

27 (11) when resource allocation practices as evaluated

1 under Section 39.0821 indicate a potential for significant
2 improvement in resource allocation;

3 (12) when a disproportionate number of students of a
4 particular demographic group is graduating with a particular
5 endorsement under Section 28.025(c-1);

6 (13) when an excessive number of students is
7 graduating with a particular endorsement under Section
8 28.025(c-1);

9 (14) in response to a complaint submitted to the
10 agency with respect to alleged inaccurate data that is reported
11 through the Public Education Information Management System (PEIMS)
12 or through other reports required by state or federal law or rule or
13 court order and that is used by the agency to make a determination
14 relating to public school accountability, including accreditation,
15 under this chapter; ~~or~~

16 (15) when a school district for any reason fails to
17 produce, at the request of the agency, evidence or an investigation
18 report relating to an educator who is under investigation by the
19 State Board for Educator Certification; or

20 (16) as the commissioner otherwise determines
21 necessary.

22 SECTION 13. The change in law made by this Act to Section
23 21.12, Penal Code, applies only to an offense committed on or after
24 the effective date of this Act. An offense committed before the
25 effective date of this Act is governed by the law in effect on the
26 date the offense was committed, and the former law is continued in
27 effect for that purpose. For purposes of this section, an offense

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1 was committed before the effective date of this Act if any element
2 of the offense was committed before that date.

3 SECTION 14. This Act takes effect September 1, 2017.