

By: King of Hemphill

H.B. No. 3769

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to improper relationships between educators and students;  
3 creating a criminal offense and expanding the applicability of an  
4 existing offense.

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

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

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

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

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

20 or deviate sexual intercourse with a person the employee knows is:

21 (A) enrolled in a public or private primary or  
22 secondary school, other than a school described by Subdivision (1)

23 [in the same school district as the school at which the employee  
24 works]; or

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

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

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

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

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

15 (a) This article applies only:

16 (1) to conviction or deferred adjudication granted on  
17 the basis of[+]

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

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

21 [~~(2)~~] if the victim of the offense is under 18 years of  
22 age; or

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

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

1 (b) In addition to the reporting requirement under Section  
2 261.101, Family Code, the superintendent or director of a school  
3 district, open-enrollment charter school, regional education  
4 service center, or shared services arrangement shall notify the  
5 State Board for Educator Certification if:

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

13 (2) an educator's employment at the district, school,  
14 service center, or shared services arrangement was terminated and  
15 there is ~~based on~~ evidence that the educator:

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

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

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

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

27 (D) attempted by fraudulent or unauthorized

1 means to obtain or alter a professional certificate or license for  
2 the purpose of promotion or additional compensation; or

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

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

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

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

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

23 (c) The superintendent or director must notify the State  
24 Board for Educator Certification by filing a report with the board  
25 not later than the seventh day after the date the superintendent or  
26 director knew or should have known about an educator's [~~employee's~~]  
27 criminal record under Subsection (b)(1) or a termination of

1 employment or resignation following an alleged incident of  
2 misconduct described by Subsection (b). The report must be:

3 (1) in writing; and

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

5 (i) A superintendent or director required to file a report  
6 under Subsection (c) commits an offense if the superintendent or  
7 director knowingly fails to file the report by the date required by  
8 that subsection. A principal required to notify a superintendent  
9 or director about an educator's criminal record or alleged incident  
10 of misconduct under Subsection (b-2) commits an offense if the  
11 principal knowingly fails to provide the notice by the date  
12 required by that subsection. An offense under this subsection is a  
13 Class A misdemeanor, except that the offense is a state jail felony  
14 if it is shown on the trial of the offense that the superintendent,  
15 director, or principal intended to conceal an educator's criminal  
16 record or alleged incident of misconduct.

17 SECTION 4. Sections 21.054(d) and (e), Education Code, are  
18 amended to read as follows:

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

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

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

26 (3) integrating technology into classroom  
27 instruction; ~~and~~

- 1 (4) educating diverse student populations, including:  
2 (A) students with disabilities, including mental  
3 health disorders;  
4 (B) students who are educationally  
5 disadvantaged;  
6 (C) students of limited English proficiency; and  
7 (D) students at risk of dropping out of school;

8 and

9 (5) understanding appropriate relationships,  
10 boundaries, and communications between educators and students.

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

- 14 (1) effective and efficient management, including:  
15 (A) collecting and analyzing information;  
16 (B) making decisions and managing time; and  
17 (C) supervising student discipline and managing  
18 behavior;

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

21 (3) integrating technology into campus curriculum and  
22 instruction; ~~and~~

- 23 (4) educating diverse student populations, including:  
24 (A) students with disabilities, including mental  
25 health disorders;  
26 (B) students who are educationally  
27 disadvantaged;

(C) students of limited English proficiency; and

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

and

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

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.

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

1 employment at a school district or open-enrollment charter school,  
2 other than by the routine transmission of administrative and  
3 personnel files; and

4 (2) the person knew or should have known that the other  
5 person has previously engaged in sexual misconduct with a minor or  
6 student in violation of the law.

7 (b) The board may require a school district to revoke or  
8 decline to issue a school district teaching permit under Section  
9 21.055 issued to or requested by a person subject to board action  
10 under Subsection (a).

11 SECTION 7. Section 21.062(a), Education Code, is amended to  
12 read as follows:

13 (a) During an investigation by the commissioner of an  
14 educator for an alleged incident of misconduct, the commissioner  
15 may issue a subpoena to compel:

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

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

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

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

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

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

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

9       Sec. 38.027. ELECTRONIC COMMUNICATION POLICY. (a) In this  
10 section, "electronic communication" means any communication  
11 facilitated by the use of any electronic device, including a  
12 telephone, cellular telephone, computer, computer network,  
13 personal data assistant, or pager. The term includes e-mails, text  
14 messages, instant messages, and any communications made through an  
15 Internet website, including a social media website or a social  
16 networking website.

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

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

23       SECTION 10. Section 39.057(a), Education Code, is amended  
24 to read as follows:

25       (a) The commissioner may authorize special accreditation  
26 investigations to be conducted:

27           (1) when excessive numbers of absences of students

1 eligible to be tested on state assessment instruments are  
2 determined;

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

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

8 (4) in response to established compliance reviews of  
9 the district's financial accounting practices and state and federal  
10 program requirements;

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

14 (6) in response to an allegation involving a conflict  
15 between members of the board of trustees or between the board and  
16 the district administration if it appears that the conflict  
17 involves a violation of a role or duty of the board members or the  
18 administration clearly defined by this code;

19 (7) when excessive numbers of students in special  
20 education programs under Subchapter A, Chapter 29, are assessed  
21 through assessment instruments developed or adopted under Section  
22 39.023(b);

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

1           (9) when a significant pattern of decreased academic  
2 performance has developed as a result of the promotion in the  
3 preceding two school years of students who did not perform  
4 satisfactorily as determined by the commissioner under Section  
5 39.0241(a) on assessment instruments administered under Section  
6 39.023(a), (c), or (l);

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

10          (11) when resource allocation practices as evaluated  
11 under Section 39.0821 indicate a potential for significant  
12 improvement in resource allocation;

13          (12) when a disproportionate number of students of a  
14 particular demographic group is graduating with a particular  
15 endorsement under Section 28.025(c-1);

16          (13) when an excessive number of students is  
17 graduating with a particular endorsement under Section  
18 28.025(c-1);

19          (14) in response to a complaint submitted to the  
20 agency with respect to alleged inaccurate data that is reported  
21 through the Public Education Information Management System (PEIMS)  
22 or through other reports required by state or federal law or rule or  
23 court order and that is used by the agency to make a determination  
24 relating to public school accountability, including accreditation,  
25 under this chapter; [~~or~~]

26          (15) when a school district for any reason fails to  
27 produce, at the request of the agency, evidence or an investigation

1 report relating to an educator who is under investigation by the  
2 State Board for Educator Certification; or  
3 (16) as the commissioner otherwise determines  
4 necessary.

5 SECTION 11. The change in law made by this Act to Section  
6 21.12, Penal Code, applies only to an offense committed on or after  
7 the effective date of this Act. An offense committed before the  
8 effective date of this Act is governed by the law in effect on the  
9 date the offense was committed, and the former law is continued in  
10 effect for that purpose. For purposes of this section, an offense  
11 was committed before the effective date of this Act if any element  
12 of the offense was committed before that date.

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