

By: Bettencourt

S.B. No. 1891

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a general employment review of persons who apply to
3 school districts, open-enrollment charter schools, and certain
4 independent contractors for employment involving direct contact
5 with students or children; providing a civil penalty.

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

7 SECTION 1. Subchapter B, Chapter 21, Education Code, is
8 amended by adding Section 21.0605 to read as follows:

9 Sec. 21.0605. ELIGIBILITY OF PERSONS FOUND IN VIOLATION OF
10 EMPLOYMENT REVIEW REQUIREMENTS. The board may suspend or revoke
11 the certificate or permit held by a person under this subchapter,
12 impose other sanctions against the person, or refuse to issue a
13 certificate or permit to a person under this subchapter if the
14 person has been assessed a civil penalty under Section 22.074.

15 SECTION 2. Chapter 22, Education Code, is amended by adding
16 Subchapter B-1 to read as follows:

17 SUBCHAPTER B-1. GENERAL EMPLOYMENT REVIEW

18 Sec. 22.061. DEFINITIONS. In this subchapter:

19 (1) "Independent contractor" means any entity that
20 contracts with a school district, open-enrollment charter school,
21 or shared services arrangement to provide services.

22 (2) "Sexual misconduct involving a student or child"
23 includes:

24 (A) any verbal, nonverbal, written, or

1 electronic communication that is designed to establish a romantic
2 or sexual relationship with a student or child;

3 (B) dating a student or child or soliciting dates
4 with a student or child;

5 (C) engaging in sexualized or romantic dialogue
6 with a student or child;

7 (D) making sexually suggestive comments to a
8 student or child;

9 (E) self-disclosure to a student or child or
10 physical exposure to a student or child of a sexual, romantic, or
11 erotic nature; and

12 (F) any other sexual, indecent, romantic, or
13 erotic contact with a student or child.

14 Sec. 22.062. APPLICABILITY. This subchapter applies only
15 to an applicant who applies for a position with a school district,
16 open-enrollment charter school, or independent contractor that
17 involves direct contact with students.

18 Sec. 22.063. APPLICANT REVIEW REQUIRED. (a) Except as
19 provided by Section 22.067, a school district, open-enrollment
20 charter school, or independent contractor may not hire an applicant
21 unless:

22 (1) the applicant provides to the district, charter
23 school, or contractor a completed employment history review
24 application as required under Section 22.064; and

25 (2) the district, charter school, or contractor
26 conducts a review of the applicant as required under Section
27 22.066.

1 (b) The requirement under this section for a school
2 district, open-enrollment charter school, and independent
3 contractor to obtain and review employment history information is
4 in addition to complying with the applicable requirements of
5 Subchapter C relating to obtaining and reviewing criminal history
6 record information.

7 Sec. 22.064. EMPLOYMENT HISTORY REVIEW APPLICATION
8 REQUIRED. A school district, open-enrollment charter school, or
9 independent contractor shall require an applicant subject to this
10 subchapter to provide to the district, charter school, or
11 contractor a completed employment history review application on a
12 form prescribed by the agency that includes:

13 (1) a list that includes the name of and the address,
14 telephone number, and other relevant contact information for:

15 (A) any current employer of the applicant;

16 (B) any former employer of the applicant that is
17 a school district, open-enrollment charter school, or independent
18 contractor; and

19 (C) any former employer of the applicant not
20 included under Paragraph (B) at which the applicant was employed in
21 a position that involved direct contact with children;

22 (2) a statement signed by the applicant disclosing
23 information regarding:

24 (A) whether the applicant has been the subject of
25 an investigation by an employer listed under Subdivision (1), state
26 licensing agency, law enforcement agency, or child protective
27 services agency involving an allegation that the applicant engaged

1 in conduct that constitutes child abuse or sexual misconduct
2 involving a student or child, unless the results of the
3 investigation resulted in a finding that the allegation was false;

4 (B) whether the applicant has been disciplined,
5 discharged, or denied a renewal of an employment contract or has
6 resigned or otherwise discontinued employment with the employer:

7 (i) during the period an allegation
8 described by Paragraph (A) is pending or under investigation; or

9 (ii) on the basis of a finding or
10 adjudication that the applicant did engage in child abuse or sexual
11 misconduct with a student or child; and

12 (C) whether the applicant has ever had a license,
13 certificate, or permit suspended or revoked or has surrendered a
14 license, certificate, or permit:

15 (i) during the period an allegation
16 described by Paragraph (A) is pending or under investigation; or

17 (ii) on the basis of a finding or
18 adjudication that the applicant did engage in child abuse or sexual
19 misconduct with a student or child; and

20 (3) an authorization signed by the applicant
21 consenting to the disclosure of the information described by
22 Subdivision (2) and the release of related records by each employer
23 listed under Subdivision (1).

24 Sec. 22.065. REQUEST FOR EMPLOYER INFORMATION. (a) A
25 school district, open-enrollment charter school, or independent
26 contractor shall submit to each employer listed on an applicant's
27 employee history review application under Section 22.064:

1 (1) a copy of the information the applicant is
2 required to disclose in the statement under Section 22.064(2);

3 (2) a copy of the authorization provided by the
4 applicant under Section 22.064(3); and

5 (3) a request that the employer provide to the
6 district, charter school, or contractor, on a form prescribed by
7 the agency:

8 (A) the dates of the applicant's employment with
9 the employer; and

10 (B) any information the employer possesses
11 regarding the applicant that the applicant is required to disclose
12 in the statement under Section 22.064(2).

13 (b) Notwithstanding any other law, an employer that
14 receives a request for information under Subsection (a) shall
15 provide the information, including confidential information,
16 requested on the form prescribed by the agency not later than the
17 20th day after the date the employer receives the request.

18 Sec. 22.066. REVIEW OF APPLICANT. (a) A school district,
19 open-enrollment charter school, or independent contractor shall,
20 for each applicant subject to this subchapter, conduct a review of:

21 (1) all materials obtained under Sections 22.064 and
22 22.065; and

23 (2) if the applicant is an educator:

24 (A) the status of the applicant's certificate or
25 permit; and

26 (B) any notice of alleged misconduct placed on
27 the educator's public certification records under Section 21.007.

1 (b) In addition to conducting the review under Subsection
2 (a), a school district, open-enrollment charter school, or
3 independent contractor shall inquire whether the agency has
4 received notice of any pending criminal charges against the
5 applicant.

6 (c) If a school district, open-enrollment charter school,
7 or independent contractor receives information from an applicant or
8 employer of an applicant that indicates an affirmative response to
9 information required to be disclosed in the statement under Section
10 22.064(2) and the district, charter school, or contractor continues
11 to consider offering employment to the applicant, the district,
12 charter school, or contractor shall contact the applicable employer
13 and request additional information and any related records
14 concerning the affirmative response.

15 (d) Notwithstanding any other law, an employer that
16 receives a request for additional information and related records
17 under Subsection (c) shall provide the additional information or
18 related records, including confidential information, not later
19 than the 60th day after the date the employer receives the request.

20 (e) If an applicant is hired by a school district,
21 open-enrollment charter school, or independent contractor, the
22 review conducted under this section is sufficient provided that the
23 person remains continuously employed by the district, charter
24 school, or contractor.

25 Sec. 22.067. PROVISIONAL EMPLOYMENT. (a) A school
26 district, open-enrollment charter school, or independent
27 contractor may hire an applicant on a provisional basis for a period

1 not to exceed 90 days pending the review of the applicant conducted
2 under Section 22.066 if:

3 (1) the applicant has provided a completed employment
4 history review application, as required under Section 22.064;

5 (2) the applicant swears or affirms that the applicant
6 is not disqualified from employment for the position sought; and

7 (3) the district, charter school, or contractor:

8 (A) has no knowledge of information regarding the
9 applicant that would disqualify the applicant from employment for
10 the position sought; and

11 (B) requires the applicant to work in the
12 immediate vicinity of a permanent employee of the district, charter
13 school, or contractor when in direct contact with students.

14 Sec. 22.068. SUBSTITUTE EMPLOYEE. (a) In this section,
15 "substitute employee" does not include a bus driver.

16 (b) A school district or open-enrollment charter school is
17 required to conduct a review under Section 22.066 for an applicant
18 seeking employment as a substitute employee only before the
19 applicant is initially hired by the district or charter school or
20 before the applicant is initially placed on the list of approved
21 substitute employees of the district or charter school. The
22 initial review under this subsection is sufficient provided that
23 the substitute employee continues employment with the district or
24 charter school or remains on the list of approved substitute
25 employees of the district or charter school.

26 (c) Each school district or open-enrollment charter school
27 must independently conduct the review required under Section 22.066

1 before offering employment to an applicant or before placing an
2 applicant on the district's or charter school's list of approved
3 substitute employees. A school district or open-enrollment charter
4 school may not rely on a review conducted by another school district
5 or open-enrollment charter school.

6 (d) An independent contractor that provides staffing of
7 substitute employees is responsible for conducting the review
8 required under Section 22.066. A school district or
9 open-enrollment charter school that contracts for staffing of
10 substitute employees is not responsible for conducting the review
11 of a substitute employee employed by an independent contractor.

12 Sec. 22.069. SPECIFIC REQUIREMENTS REGARDING INDEPENDENT
13 CONTRACTORS. (a) If an independent contractor intends to assign an
14 existing employee to a position at a school district or
15 open-enrollment charter school that involves direct contact with
16 students, the contractor shall conduct the review required under
17 Section 22.066 before assigning the employee to the position, and
18 the employee is considered an applicant subject to this subchapter.

19 (b) A review conducted by an independent contractor of an
20 applicant or existing employee is sufficient provided that the
21 person remains continuously employed by the contractor and
22 regardless of whether the person is assigned to a position at more
23 than one school district or open-enrollment charter school.

24 (c) An independent contractor must maintain a record of each
25 review conducted under Section 22.066.

26 (d) At the request of a school district or open-enrollment
27 charter school receiving services from an independent contractor,

1 the contractor shall provide the record of the review of any
2 employee who provides services at the district or charter school.

3 (e) If an independent contractor employs a person whose
4 review indicated an affirmative response to information required to
5 be disclosed in the statement under Section 22.064(2), the
6 contractor must provide the record of that review to a school
7 district or open-enrollment charter school before assigning that
8 person to a position that involves direct contact with students at
9 the district or charter school.

10 (f) An independent contractor may not assign an employee to
11 a school district or open-enrollment charter school if the board of
12 trustees of the district or governing body of the charter school
13 objects to the assignment based on the record of the review of the
14 employee provided under this section.

15 Sec. 22.070. SUPPRESSION OF INFORMATION PROHIBITED. (a) A
16 school district, open-enrollment charter school, or independent
17 contractor may not, after September 1, 2017, enter into an
18 agreement or contract or take any action regarding information
19 concerning an allegation, finding, or adjudication of conduct by a
20 current or former employee that constitutes child abuse or sexual
21 misconduct involving a student or child that would:

22 (1) have the effect of suppressing the information;
23 (2) require the district, charter school, or
24 contractor to expunge the information from employment records
25 unless after investigation the information is found to be false; or

26 (3) prevent the district, charter school, or
27 contractor from complying with a provision of this subchapter that

1 requires the disclosure of the information.

2 (b) A provision in a contract or agreement that violates
3 this section is void.

4 Sec. 22.071. EXEMPTION FROM PUBLIC INFORMATION LAW;
5 AUTHORITY TO REPORT. (a) Information obtained under Section
6 22.064, 22.065, or 22.066 regarding an applicant subject to this
7 subchapter is confidential and not subject to disclosure under
8 Chapter 552, Government Code.

9 (b) A school district, open-enrollment charter school, or
10 independent contractor may report information obtained under
11 Section 22.064, 22.065, or 22.066 regarding an applicant subject to
12 this subchapter to:

13 (1) the agency;

14 (2) the State Board for Educator Certification or
15 another applicable state licensing or certifying agency or board;

16 (3) a law enforcement agency;

17 (4) a child protective services agency; and

18 (5) another school district, open-enrollment charter
19 school, or independent contractor.

20 Sec. 22.072. IMMUNITY FROM PROSECUTION. A person may not be
21 prosecuted for obtaining or disclosing information regarding an
22 applicant subject to this subchapter in a manner authorized or
23 required under this subchapter.

24 Sec. 22.073. IMMUNITY FROM CIVIL LIABILITY. (a) A person
25 who obtains or discloses information regarding an applicant subject
26 to this subchapter in a manner authorized or required under this
27 subchapter is immune from civil liability for obtaining or

1 disclosing the information.

2 (b) This section does not apply to a person who knowingly
3 provides false information or records.

4 Sec. 22.074. CIVIL PENALTY; CONTRACTS WITH VIOLATORS
5 PROHIBITED. (a) A person who wilfully violates this subchapter is
6 liable for a civil penalty of not less than \$500 or more than
7 \$10,000 for each violation. Each day a violation occurs or
8 continues may be considered a separate violation for purposes of a
9 civil penalty assessment.

10 (b) The attorney general shall, on request of the agency, or
11 may, on the attorney general's own initiative, file suit to collect
12 the penalty.

13 (c) A civil penalty collected under this section shall be
14 deposited in the state treasury to the credit of the general revenue
15 fund.

16 (d) The attorney general shall maintain and make publicly
17 available on the attorney general's Internet website a list of each
18 independent contractor assessed a civil penalty under this section.
19 A school district or open-enrollment charter school may not
20 contract for services with an independent contractor included on
21 the list under this section.

22 Sec. 22.075. RULES. The commissioner shall adopt rules as
23 necessary to administer this subchapter.

24 Sec. 22.076. EFFECT ON CONDUCTING ADDITIONAL INVESTIGATION
25 OR DUTY TO REPORT. This subchapter may not be construed to:

26 (1) prevent a school district, open-enrollment
27 charter school, or independent contractor from:

1 (A) conducting any authorized investigation of
2 an applicant in addition to the review required under Section
3 22.066; or

4 (B) requiring an applicant to provide any
5 additional information or authorizations in connection with a
6 review required under Section 22.066;

7 (2) prevent an employer from disclosing information in
8 addition to information required to be disclosed under Sections
9 22.065 and 22.066; or

10 (3) relieve a school district or open-enrollment
11 charter school, a school administrator of a district or charter
12 school, or an independent contractor of the legal responsibility to
13 report:

14 (A) any suspected incidents of child abuse as
15 provided by law; or

16 (B) any suspected incidents of professional
17 misconduct as provided by law.

18 SECTION 3. As soon as practicable after the effective date
19 of this Act:

20 (1) the Texas Education Agency shall prescribe
21 standardized forms for applicants to use under Section 22.064,
22 Education Code, as added by this Act, and for employers to use under
23 Section 22.065, Education Code, as added by this Act; and

24 (2) school districts, open-enrollment charter
25 schools, and independent contractors shall begin conducting
26 employment reviews as required by Subchapter B-1, Education Code,
27 as added by this Act.

1 SECTION 4. This Act takes effect September 1, 2017.