

## **BILL ANALYSIS**

Senate Research Center

S.B. 7  
By: Bettencourt  
Education  
5/29/2017  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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 then moves and obtains employment in another school district without the new school district ever receiving notice of the inappropriate relationship. The goal of 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.

S.B. 7 amends current law relating to improper relationships between educators and students and reporting of educator misconduct, creates a criminal offense and expands the applicability of an existing offense, and authorizes an administrative penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Teacher Retirement System of Texas (TRS) in SECTION 17 (Section 824.009, Government Code) of this bill.

Rulemaking authority is expressly granted to the board of trustees of TRS in SECTION 17 (Section 824.009, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 21.12(a), Penal Code, to redefine an offense committed by an employee of a public or private primary or secondary school.

SECTION 2. Amends Article 42.01, Code of Criminal Procedure, by adding Section 12, to provide that, in addition to the information described by Section 1 (relating to requiring a judgment to reflect certain information), the judgment should reflect affirmative findings entered pursuant to Article 42.0192, which is added by this Act.

SECTION 3. Amends Article 42.018(a), Code of Criminal Procedure, as follows:

(a) Provides that this article applies only to 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 (Sex Offender Registration Program) or conviction of an offense under Title 5 (Offenses Against the Person), Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed, rather than this article applies only to conviction or deferred adjudication granted on the basis of an 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; and if the victim of the offense is under 18 years of age.

SECTION 4. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0192, as follows:

Art. 42.0192. FINDING REGARDING OFFENSE RELATED TO PERFORMANCE OF PUBLIC SERVICE. (a) Requires the judge, in the trial of an offense described by Section

824.009, Government Code, which is added by this Act, to 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 (TRS).

(b) Requires a judge who makes the affirmative finding described by this article to make the determination and provide the notice required by Section 824.009(1), Government Code, as applicable.

SECTION 5. Amends Section 21.006, Education Code, by amending Subsections (b), (b-1), (c), (e), and (f) and adding Subsections (b-2), (c-1), (i), and (j), as follows:

(b) Requires the superintendent or director of a school district, district of innovation, open enrollment charter school (charter school), regional education service center (RESC), or shared services arrangement (SSA) to notify the State Board for Educator Certification (SBEC) if:

(1) an educator employed by or seeking employment by the school district, district of innovation, charter school, RESC, or SSA has a criminal record and the school district, district of innovation, charter school, RESC, or SSA obtained information about the educator's criminal record in a certain manner;

(2) an educator's employment was terminated and there is evidence that the educator committed certain violations, rather than the educator's employment was terminated based on evidence that the educator committed certain violations. Makes conforming changes;

(3) and (4) makes no changes to these subdivisions.

(b-1) Requires a superintendent or director of a school district, district of innovation, charter school, RESC, or SSA to complete an investigation of an educator that involves, rather than is based on, evidence that the educator may have engaged in misconduct, despite the educator's resignation from employment before completion of the investigation. Makes conforming and nonsubstantive changes.

(b-2) Requires the principal of a school district, district of innovation, or charter school campus to notify the superintendent or director of the school district, district of innovation, or charter school not later than the seventh business day after a certain date.

(c) Requires the superintendent or director to notify SBEC by filing a report with SBEC 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 knew about an educator's 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), rather than requires the superintendent or director to notify SBEC by filing a report with SBEC not later than the seventh day after the date the superintendent or director knew about an 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).

(c-1) Requires that the report under Subsection (c) be in writing and in a form prescribed by SBEC.

(e) Provides that a superintendent, director, or principal of a school district, district of innovation, charter school, RESC, or SSA who in good faith and while acting in an official capacity files a report with SBEC under this section (Requirement to Report Misconduct) 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, rather than

provides that a superintendent or director who in good faith and while acting in an official capacity files a report with SBEC under this section is immune from civil or criminal liability that might otherwise be incurred or imposed.

(f) Requires SBEC to 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), rather than requires SBEC to determine whether to impose sanctions against a superintendent or director who fails to file a report in violation of Subsection (c).

(i) Authorizes SBEC, if an educator serving as a superintendent or director fails to take certain required actions, to impose on the educator an administrative penalty of not less than \$500 and not more than \$10,000. Prohibits SBEC from renewing the certification of an educator against whom an administrative penalty is imposed under this subsection until the penalty is paid.

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

SECTION 6. Amends Subchapter A, Chapter 21, Education Code, by adding Section 21.0061, as follows:

Sec. 21.0061. NOTICE TO PARENT OR GUARDIAN ABOUT EDUCATOR MISCONDUCT. (a) Requires the board of trustees (board) or governing body of a school district, district of innovation, charter school, RESC, or SSA to adopt a policy under which notice is provided to the parent or guardian of a student with whom an educator is alleged to have engaged in misconduct described by Section 21.006(b)(2)(A) (relating to abuse or unlawful acts with a student or minor by an educator) or (A-1) (relating to an educator's involvement in a romantic relationship or solicitation or engagement in sexual contact with a student or minor) informing the parent or guardian of certain information.

(b) Requires that the required policy require that information specified by Subsection (a)(1) (relating to informing the parent or guardian that the alleged misconduct occurred) be provided as soon as feasible after the employing entity becomes aware that alleged misconduct may have occurred.

SECTION 7. Amends Subchapter A, Chapter 21, Education Code, by adding Section 21.009, as follows:

Sec. 21.009. PRE-EMPLOYMENT AFFIDAVIT. (a) Requires that an applicant for a certain position with a school district, district of innovation, charter school, RESC, or SSA submit, using a form adopted by the Texas Education Agency (TEA), a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

(b) Requires that an applicant who answers affirmatively concerning an inappropriate relationship with a minor disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, whether the charge was determined to be true or false.

(c) Provides that an applicant is not precluded from being employed based on a disclosed charge if the employing entity determines based on the information disclosed in the affidavit that the charge was false.

(d) Provides that a determination that an employee failed to disclose information required to be disclosed by an affidavit is grounds for termination of employment.

(e) Authorizes SBEC to revoke the certificate of an administrator if SBEC determines it is reasonable to believe that the administrator employed an applicant for a certain position despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

SECTION 8. Amends Section 21.044(g), Education Code, as follows:

(g) Requires that each educator preparation program provide information regarding, among certain other topics, appropriate relationships, boundaries, and communications between educators and students. Makes nonsubstantive changes.

SECTION 9. Amends Sections 21.054(d) and (e), Education Code, as follows:

(d) Requires that the continuing education requirements for a classroom teacher include instruction regarding, among certain other topics, understanding appropriate relationships, boundaries, and communications between educators and students.

(e) Requires that the continuing education requirements for a principal include instruction regarding, among certain other topics, preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Section 21.12 (Improper Relationship Between Educator and Student), Penal Code, or for which reporting is required under Section 21.006 of this code.

SECTION 10. Amends the heading to Section 21.058, Education Code, to read 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 11. Amends Sections 21.058(a), (b), (c), (c-1), and (c-2), Education Code, as follows:

(a) Provides that certain procedures apply only 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 to conviction of a felony offense under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed. Deletes existing text providing that certain procedures apply only 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 if the victim of the offense is under 18 years of age. Makes nonsubstantive changes.

(b) Requires SBEC, notwithstanding Section 21.041(b)(7) (relating to rules that provide for certain disciplinary proceedings) and not later than the fifth day after the date SBEC receives notice under Article 42.018 (Notice Provided by Clerk of Court), Code of Criminal Procedure, of the conviction or placement on deferred adjudication community supervision of a person who holds a certificate under this subchapter (Certification of Educators), to revoke the certificate held by the person and provide to the person, to TEA, and to any school district or charter school employing the person at the time of revocation written notice of the revocation and the basis for the revocation.

(c) Requires a school district or charter school that receives notice under Subsection (b) of the revocation of a certificate issued under this subchapter to take certain actions against an employed person if the person is employed under a probationary, continuing, or term contract under this chapter (Educators), with the approval of the board or governing body or a designee of the board or governing body.

(c-1) Authorizes a district or charter school to take certain actions against an employed person under certain circumstances and with the approval of the board or governing body or a designee of the board or governing body.

(c-2) Provides that a person's probationary, continuing, or term contract is void if, with the approval of the board or governing body or a designee of the board or governing body, the school district or charter school takes certain action.

SECTION 12. Amends Subchapter B, Chapter 21, Education Code, by adding Section 21.0581, as follows:

Sec. 21.0581. REVOCATION FOR ASSISTING PERSON WHO ENGAGED IN SEXUAL MISCONDUCT OBTAIN EMPLOYMENT. (a) Authorizes SBEC to 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 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 violation of the law.

(b) Authorizes the commissioner of education (commissioner) to require a school district to revoke or decline to issue a school district teaching permit under Section 21.055 (School District Teaching Permit) issued to or requested by a person subject to SBEC action under Subsection (a).

SECTION 13. Amends Section 21.062(a), Education Code, to include the attendance of a relevant witness among certain items the commissioner is authorized to compel by subpoena during an investigation of an educator for an alleged incident of misconduct.

SECTION 14. Amends Section 21.355, Education Code, by amending Subsection (a) and adding Subsections (d), (e), and (f), as follows:

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

(d) 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.

(e) Authorizes a document provided to TEA, notwithstanding Subsection (a) and except as otherwise provided by a court order prohibiting disclosure, to be used in a disciplinary proceeding against a teacher or administrator if the document is authorized to be admitted under rules of evidence applicable to a contested case, as provided by Section 2001.081 (Rules of Evidence), Government Code.

(f) Provides that a document provided to TEA under Subsection (d) remains confidential unless the document becomes part of the record in a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 15. Amends Subchapter A, Chapter 38, Education Code, by adding Section 38.027, as follows:

Sec. 38.027. ELECTRONIC COMMUNICATION POLICY. (a) Defines "electronic communication."

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

(c) Requires that the adopted policy:

(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 16. Amends Section 39.057(a), Education Code, as follows:

(a) Authorizes the commissioner to authorize special accreditation investigations to be conducted when, among certain other conditions, a school district for any reason fails to produce, at the request of TEA, evidence or an investigation report relating to an educator who is under investigation by SBEC. Makes a nonsubstantive change. Redesignates existing Subdivision (15) as Subdivision (16).

SECTION 17. Amends Subchapter A, Chapter 824, Government Code, by adding Section 824.009, as follows:

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

(a) Defines "qualifying felony."

(a-1) Provides that 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) Provides that this section applies only to a person who is a member or an annuitant of TRS and is or was an employee of the public school system.

(c) Provides that, except as provided by Subsection (e), a person is not eligible to receive a service retirement annuity (annuity) from TRS if the person is convicted of a qualifying felony the victim of which is a student.

(d) Requires TRS to suspend payments of an annuity to a person who is not eligible to receive an annuity under Subsection (c), as determined by TRS, on receipt by TRS of certain information.

(e) Provides that a person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2) (relating to providing that a person is entitled to compensation if the person meets certain criteria), 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) is authorized to resume receipt of annuity payments on payment to TRS of an amount equal to the contributions refunded to the person under Subsection (g).

(f) Requires the school at which a person convicted of a qualifying felony was employed, not later than a certain date, to provide written notice of the conviction to TRS. Requires that the notice comply with rules adopted by the board of TRS under Subsection (k).

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

(h) Provides that benefits payable to an alternate payee under Chapter 804 (Domestic Relations Orders and Spousal Consent) who is recognized by a domestic relations order established before September 1, 2017, are not affected by a person's ineligibility to receive an annuity under Subsection (c).

(i) Authorizes a court, on conviction of a person for a qualifying felony, to award, in the interest of justice and in the same manner as in a divorce proceeding, any portion or all of the 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 (Marital Property Agreement), Chapter 4 (Prenuptial and Marital Property Agreements), Family Code. Prohibits the amount awarded to the innocent spouse from being converted to community property.

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

(k) Requires the board of TRS to adopt rules and procedures to implement this section.

(l) Requires a court to notify TRS of the terms of a person's conviction of a qualifying felony.

SECTION 18. Makes application of Section 21.12, Penal Code, as amended by this Act, prospective.

SECTION 19. Provides that 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 20. Requires the board of TRS, not later than December 31, 2017, to adopt the rules necessary to implement Section 824.009, Government Code, as added by this Act.

SECTION 21. Makes application of Section 824.009, Government Code, as added by this Act, prospective.

SECTION 22. Effective date: September 1, 2017.