

BILL ANALYSIS

Senate Research Center
80R9011 CAE-D

S.B. 9
By: Shapiro
Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law allows for educators certified prior to October 1, 2003, and non-certified school personnel to be subject to criminal background checks, but such checks are not always carried out. The criminal background information gathered by the check includes whether any in state crimes have been committed. In addition, fingerprints which are captured to perform national criminal history background checks are only linked to records for the submitting agency. In 2004-2005, the State Board for Educator Certification found 35 certified educators who were registered sex offenders.

As proposed, S.B. 9 requires criminal history background information reviews of all public school employees and provides for a national criminal history clearinghouse. Individuals who have been convicted or received deferred adjudication for a Title 5 felony offense or a sex offense when the victim of the crime was a child would be prohibited from employment with a public school district.

This bill also creates a clearinghouse at the Department of Public Safety for this information to be shared between school districts when an employee transfers to another employer to increase efficiency and reduce the costs associated with background checks. Additionally, the bill improves communication between state and local school officials and law enforcement authorities through the sharing of information in a timely manner.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 5 (Section 22.0831, Education Code) of this bill. Rulemaking authority previously granted to the Department of Public Safety is modified in SECTION 8 (Section 411.042, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.006, Education code, by adding Subsection (c-1), as follows:

(c-1) Requires the State Board for Educator Certification (board), on receipt of a report of an alleged incident of misconduct under Subsection (c), to place a notice regarding the alleged incident on the educator's public certification records. Requires the board to immediately remove the notice from the educator's public certification records, if it is determined that the educator has not engaged in the alleged incident of misconduct.

SECTION 2. Amends Sections 21.058(a) and (b), Education Code, as follows:

(a) Amends previous text to include conviction or deferred adjudication, rather than only conviction, of certain felony offenses as circumstances to which this section applies.

(b) Makes a conforming change.

SECTION 3. Amends Subchapter B, Chapter 21, Education Code, by adding Section 21.060, as follows:

Sec. 21.060. ELIGIBILITY OF PERSONS RECEIVING DEFERRED ADJUDICATION FOR OR CONVICTED OF CERTAIN OFFENSES. Authorizes the board to suspend or

revoke the certificate or permit held by a person under this subchapter, to impose other sanctions against the person, or to refuse to issue a certificate or permit to a person under this subchapter if the person has received deferred adjudication for or has been convicted of certain offenses. Sets forth the offenses to which this section applies.

SECTION 4. Amends Section 22.082, Education Code, as follows:

Sec. 22.082. ACCESS TO CRIMINAL HISTORY RECORDS BY STATE BOARD FOR EDUCATOR CERTIFICATION. Requires the board to obtain from any law enforcement or criminal justice agency all information and all records contained in any criminal investigation file that relate to an applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

SECTION 5. Amends Subchapter C, Chapter 22, Education Code, by adding Section 22.0831, as follows:

Sec. 22.0831. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW. (a) Defines "national criminal history record information."

(b) Provides that this section applies to a person who is an employee or an applicant for employment by a school district or open-enrollment charter school; a shared service arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present; or an entity that contracts with the district, school, or a shared services arrangement, if certain conditions exist.

(c) Requires a person to whom this section applies to submit to a national criminal history record information (information) review and investigation under this section before being employed or serving in a capacity described by Subsection (b).

(d) Requires, before or immediately after employing or securing the services of a person to whom this section applies, the school district, open-enrollment charter school, or shared services arrangement to provide to the Texas Education Agency (TEA) the person's fingerprints and any other information requested by TEA that is required for obtaining information.

(e) Requires TEA to review and investigate the person's information and report the results of the review and investigation to the school district, open-enrollment charter school, or shared service arrangement requesting the review.

(f) Authorizes TEA to obtain from any law enforcement agency or criminal justice agency all information that relates to a person to whom this section applies.

(g) Authorizes TEA, school district, or shared services arrangement to require a person to pay any costs related to obtaining information under this section.

(h) Authorizes TEA to coordinate with the board, school districts, and shared services arrangements as necessary to ensure that criminal history investigations authorized or required under this subchapter are not unnecessarily duplicated.

(i) Authorizes the commissioner of education (commissioner) to adopt rules necessary to implement this section.

SECTION 6. Amends Section 22.085, Education Code, as follows:

Sec. 22.085. New heading: EMPLOYEES AND APPLICANTS CONVICTED OF CERTAIN OFFENSES. (a) Requires a school district, open-enrollment charter school, or shared services arrangement to discharge or refuse to hire an employee or applicant for employment who is subject to an information review under Section 22.0831, if the

district, school, or shared services arrangement obtains certain information; including, a conviction or deferred adjudication for 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.

(b) Prohibits a school district, open-enrollment charter school, or shared services arrangement to allow a person who is an employee of or applicant for employment by an entity that contracts with the district, school, or shared services arrangement and who is subject to an information review under Section 22.0831 to serve at the district or school or for the shared services arrangement if information obtained includes information described by Subsection (a) concerning the employee or applicant.

(c) Creates this subsection from existing text.

SECTION 7. Amends Section 261.103, Family Code, by adding Subsection (d), as follows:

(d) Requires that in addition to the reports of neglect and abuse required to be made under Subsection (a), a report be made to the board if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child and that person holds or has applied for a certificate or permit under Subchapter B, Chapter 21, Education Code. Provides that the information provided under this subsection is confidential and not subject to discovery or public release under Chapter 552 (Public Information), Government Code.

SECTION 8. Amends Section 411.042, Government Code, by amending Subsections (b) and (g) and adding Subsection (h), as follows:

(b) Requires the bureau of identification and records to grant access to information in the manner authorized under Subchapter F.

(g) Authorizes the Department of Public Safety (DPS) to adopt reasonable rules under this section relating to a system for providing information through the criminal history clearinghouse under Section 411.0845.

(h) Authorizes DPS to contract with private vendors as necessary in implementing this section.

SECTION 9. Amends Sections 411.083(b) and (c), Government Code, as follows:

(b) Requires DPS to grant access to information to an individual or an agency that has a specific agreement with a noncriminal justice agency to provide services related to the use of the information disseminated under this subchapter, if the agreement specifically authorizes access to the information, limits the use of information, ensures the security and confidentiality of information, and provides sanctions for a violation of any agreement requirement. Makes conforming changes.

(c) Makes conforming changes.

SECTION 10. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.0845, as follows:

Sec. 411.0845. CRIMINAL HISTORY CLEARINGHOUSE. (a) Requires DPS to establish an electronic clearinghouse and subscription service to provide information to a person entitled to receive information under this subchapter.

(b) Requires DPS, on request for information by a person entitled to the information, to provide through the electronic clearinghouse the information reported to the department or the Federal Bureau of Investigation (FBI) relating to the individual who is the subject of the request, or a statement that the individual

who is the subject of the request does not have any information reported to the DPS or the FBI.

(c) Requires DPS to ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain information under this subchapter. Provides that information under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) Requires a person entitled to receive information under this subchapter to provide DPS with certain information regarding the person who is subject of the information requested.

(e) Requires DPS to maintain an Internet website for the administration of the clearinghouse and an electronic subscription service to provide notice of updates to a person entitled to receive the information. Requires DPS to update clearinghouse records, and within 48 hours of becoming aware that a person's information in a clearinghouse record has changed, to provide the updated information to each subscriber to that specific record.

(f) Requires that a person who is the subject of the requested information consent to the release of the information.

(g) Provides that information released which is maintained by the FBI is subject to federal law and regulations, federal executive orders, and federal policy.

(h) Authorizes DPS to charge a fee for subscription services to cover the costs of administering this section.

SECTION 11. Amends Section 411.090, Government Code, by adding Subsection (c) to require DPS to notify the board of the arrest of any educator, as defined by Section 5.001, Education Code, who has fingerprints on file with DPS.

SECTION 12. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.0901, as follows:

Sec. 411.0901. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS EDUCATION AGENCY. Entitles TEA to obtain information maintained by DPS about a person who is employed or an applicant for employment by a school district or open-enrollment charter school; a shared service arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present; or an entity that contracts with the district, school, or with a shared services arrangement, if certain conditions exist.

SECTION 13. Amends Section 411.097(b), Government Code, as follows:

(b) Deletes the limit of no more than twice each year, as previously set, for the number of times a school district, charter school, private school, regional education service center, or education shared services arrangement is entitled to obtain information from DPS, that the entity is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, as it relates to a person who is a volunteer or employee of the district, school, service center or shared service arrangement.

SECTION 14. Amends Section 730.007, Transportation Code, by adding Subsection (f), to authorize disclosure of personal information obtained by TEA under Section 411.0845 (Department of Public Safety of the State of Texas), Government Code, in connection to a motor vehicle record.

SECTION 15. Makes Section 21.006(c-1), Education Code, as added by this Act, prospective.

SECTION 16. Makes Section 21.058, Education Code, as amended by this Act, prospective.

SECTION 17. Requires TEA, as soon as practicable after the effective date of this Act, in the manner prescribed by Section 22.0831, Education Code, as added by this Act, to begin obtaining information for employees and applicants for employment who are subject to an information review under that section. Requires TEA to obtain information for each employee and applicant who is subject to information review not later than September 1, 2009.

SECTION 18. Requires DPS to establish the clearinghouse as required by Section 411.0845, Government code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 19. Effective date: upon passage or September 1, 2007.