

- SUBJECT:** Confidentiality of school employee personal information
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 8 ayes — Eissler, Hochberg, Allen, Aycock, Farias, Jackson, Patrick, Shelton
- 0 nays
- 3 absent — Dutton, Olivo, Weber
- WITNESSES:** For — Jennifer Canaday, Association of Texas Professional Educators (*Registered, but did not testify*); Portia Bosse, Texas State Teachers Association; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Lindsay Gustafson, Texas Classroom Teachers Association; Alejandra Martin, Texas Association of School Personnel Administrators; Casey McCreary, Texas Association of School Administrators; Julie Shields, Texas Association of School Boards; Amanda Thomas, Texas Charter School Association)
- Against — Ken Whalen, Texas Daily Newspaper Association, Texas Press Association; Michael Schneider, Texas Association of Broadcasters
- On — Ted Melina Raab, Texas AFT
- BACKGROUND:** Government Code, sec. 552.024 requires all state employees, within the first 14 calendar days of employment, to elect in writing whether personal information such as home address, phone number, date of birth, and driver's license number may be made available under the Public Information Act. After the first 14 calendar days of employment, the employee may not change this designation.
- The Texas Education Agency must acquire criminal history reports on charter school employees, certified and currently employed educators, substitutes, and non-certified employees hired after January 1, 2008.
- In 2008, several local media outlets requested, through the Public Information Act, documents from Austin Independent School District (AISD) detailing the results of the criminal background checks. The

school district wrote to the Open Records Division of the Attorney General's Office describing the ways in which complying with the media request would violate various statutes. The Open Records Division determined that the school district, if prompted under the Public Information Act, must disclose the campus, hire date, position, and alleged crime identified by the criminal history background check report. The division stated that the information already confidential by statute may not be revealed in the process of disclosing information related to a criminal history background check.

In June 2008, the Association of Texas Professional Educators (ATPE) filed suit against AISD and the Texas attorney general to prevent the release of a school district employee's criminal history and any identifying information linking the employee to their criminal history. The district court upheld the attorney general's interpretation of the law. The ATPE and co-plaintiffs have filed an appeal. Until the court case has been resolved, the court has a temporary restraining order prohibiting the release of any information.

DIGEST:

CSHB 2491 would prohibit a school district or open enrollment charter school from releasing as public information the following:

- home address;
- home telephone number;
- personal cellular phone number;
- date of birth;
- criminal history record information;
- driver's license number;
- personal electronic mail address;
- social security number;
- whether the applicant or employee has family members; or
- whether the district or charter school has obtained criminal history record information

The prohibition would apply to school district or open enrollment charter school employees, including former and current employees, substitute teachers, student teachers, an individual who worked on school property or at another location where students were regularly present, or any individual who applied for employment. An employee could provide

written authorization to release the information to the public, and such authorization would be revocable.

The bill would amend the Education Code and Government Code to exempt this information from public access via public information request, and would excuse the necessity of an attorney general's opinion in order to maintain the confidentiality of this information.

The bill would not exempt information filed with a county or district court clerk. It would not prohibit the State Board for Educator Certification, the Texas Education Agency, the Department of Public Safety, a private school, or a regional education service center from conducting a criminal history background check.

CSHB 2491 also would exempt past, current, and potential school district and open enrollment charter school employees from the 14-day deadline given to public employees to choose whether to permit the disclosure to the public information held by his or her employer.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 2491 would maintain the privacy of public school employees. Forgoing as a condition of employment a privacy enjoyed by every other member of society would discourage individuals from becoming or remaining educators or school employees.

This bill would prevent sensitive personal information from being available to criminals and scam artists. The current law allowing only a narrow time frame to protect the confidentiality of personal information creates a substantial personal risk to public employees, while providing little public benefit.

CSHB 2491 would not hinder the ability of journalists to verify the identity of an individual mentioned in their stories, nor would the bill prevent a journalist from providing complete and accurate information to the public. Journalists have many resources at their disposal. Employees of private companies need not release their private information, yet the media still is able to use other investigative techniques to verify identities.

CSHB 2491 would protect educators from undeserved and unnecessary public scrutiny. If released, criminal history information makes no distinction between serious and minor offenses or recent and long-past events. A criminal history background report flags anyone who has been arrested, no matter the reason or outcome of the arrest. An arrest is not proof of wrongdoing, because charges may have been dropped or the person may have been acquitted. Since the public is not privy to those details, they might assume that any individual indicated as having a criminal history is in fact a criminal. This information could ruin needlessly a person's reputation.

OPPONENTS
SAY:

CSHB 2491 would hinder journalists from fulfilling their duty to the general public. This bill would prevent the news media from accessing information to verify the identity of a public employee, particularly a birth date. If a crime is committed, without a birth date a journalist cannot correctly identify the correct "John Smith." This bill would violate the intent behind the Public Information Act.

There have been no proven cases of a criminal using information acquired through the Public Information Act to steal an individual's identity. Employees concerned about revelation of private information already are able to conceal that information within their first 14 days of employment, so this bill is not necessary.

NOTES:

The substitute added that an entity could not reveal whether the district or charter school has obtained criminal history record information, added explicit language in the Education Code and Government Code that would exempt the information from being accessible to the public through a public information request, and would excuse the necessity of an attorney general's opinion in order to maintain the confidentiality of this information.