

## **BILL ANALYSIS**

Senate Research Center  
82R1019 VOO-F

H.B. 398  
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Education  
5/20/2011  
Engrossed

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

In 2007, the 80th Legislature passed S.B. 9, which among other things, required background checks for teachers, administrators, other school employees, and employees, and employees of businesses that contract with school districts. One unintended consequence of this portion of the bill was that subcontractors were not required to check the background of their own employees, but general contractors were responsible for checking the background of both their own employees and the various subcontractors' employees. This created practical problems and also legal problems, with one employer being responsible for, and having access to, another employer's employee criminal background information.

In 2009, an amendment meant to correct the problem was added to the Department of Public Safety of Texas (DPS) Sunset bill (H.B. 2730). The Senate passed the DPS Sunset bill with this amendment.

Due to a drafting error, the amendment created an unintended consequence by referencing the wrong section of the Education Code for the background check criteria. The section referenced was Section 21.060 (Eligibility of Persons Convicted of Certain Offenses), Education Code, which applies to teachers. The section that should have been referenced was Section 22.085 (Employees and Applicants Convicted of Certain Offenses), Education Code, which applies to non-teacher employees and contractor employees.

H.B. 398 corrects that drafting error by correcting the section number reference, thereby requiring subcontractors and contractors to submit to the same background check as other similarly situated non-teacher employees, rather than the background check used for teachers.

H.B. 398 amends current law relating to the eligibility of employees convicted of certain offenses to provide services under a contract with a public school.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 22.0834(o), Education Code, as follows:

(o) Prohibits a contracting or subcontracting entity to permit an employee to whom Subsection (a) (relating to criminal record history of certain employees) applies to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Section 22.085(a) (relating to employees and applicants convicted of certain offenses), rather than from obtaining certification as an educator under Section 21.060 (Eligibility of Persons Convicted of Certain Offenses).

SECTION 2. Provides that Section 22.0834(o), Education Code, as amended by this Act, applies to the provision of services at a public school by an employee of a contracting or subcontracting

entity without regard to whether the contract or subcontract under which the person is employed was entered into before, on, or after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2011.