

## BILL ANALYSIS

Senate Research Center  
85R13715 GCB-F

C.S.S.B. 7  
By: Bettencourt  
Education  
2/28/2017  
Committee Report (Substituted)

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

The number of educators investigated for having an inappropriate relationship with a student has increased each year since 2009 when the Texas Education Agency (TEA) began collecting this data. In fiscal year 2015-2016, there were 222 reported cases.

Teachers who currently face accusations of sexual misconduct or other serious allegations remain in the profession because school districts allow them to resign instead of firing them to avoid potential legal battles.

Districts sometimes rid themselves of problem teachers by agreeing to pay them through the end of the school year and remove incriminating documentation from their personnel files and place it in a separate confidential file. Districts also provide them with a neutral reference when a potential employer calls.

Currently, the statutes only pertain to intra-district relationships. C.S.S.B. 7 will encompass inter-district relationships as well.

Under C.S.S.B. 7, an educator's certificate will be revoked if they receive deferred adjudication or have to be on the sex offender registry for any sex crime.

Currently, reporting is required to be done by the school superintendent. C.S.S.B. 7 will expand reporting obligations to include principals. This will be beneficial for the larger school districts in the state.

C.S.S.B. 7 makes the failure to report an incident a Class A criminal offense unless it is determined during the trial of the offense that the superintendent/director intentionally tried to conceal the incident. In that case, it is a state jail felony.

C.S.S.B. 7 requires for continuing education that would include preventing, recognizing, and reporting inappropriate sexual conduct between an educator and a student.

To prevent "passing the trash," C.S.S.B. 7 states an educator certificate may be revoked if an administrator assists a person in obtaining employment at a school and they knew or should have known that person had engaged in sexual misconduct.

This bill expands TEA's subpoena authority to include testimony and the attendance of relevant witnesses during the investigation process.

Under C.S.S.B. 7, teacher evaluations may be provided to TEA for investigative proceedings.

One factor contributing to the rise of inappropriate relationships is the increased use of social media and electronic communications. C.S.S.B. 7 requires that school districts adopt, implement, and enforce local policies regarding teacher-student electronic communications.

C.S.S.B. 7 also states the commissioner may authorize a special accreditation investigation when a school district fails to produce, upon request of the agency, evidence or an investigation report relating to an educator who is under investigation by the State Board for Educator Certification.

C.S.S.B. 7 adds districts of innovations to the entities that are required to comply with educator misconduct laws.

The substitute clarifies that teacher evaluations obtained by TEA can only be used for the purpose of investigations and will be kept confidential unless they are put into the court record.

Lastly, C.S.S.B. 7 allows educators to opt out from providing their personal cell phones and e-mails to students.

C.S.S.B. 7 amends current law relating to improper relationships between educators and students, creating a criminal offense and expanding the applicability of an existing offense.

### **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 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 42.018(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 3. Amends Section 21.006, Education Code, by amending Subsections (b), (b-1), and (c) and adding Subsections (b-2) and (i), as follows:

(b) Requires the superintendent or director of a school district, district of innovation, open enrollment charter school, regional education service center, or shared services arrangement to notify the State Board for Educator Certification (SBEC) if an educator employed by or seeking employment by certain entities has a criminal record and those entities obtained information about the educator's criminal record in a certain manner; or 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.

(b-1) Requires a superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement 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.

(b-2) Requires the principal of a school district, district of innovation, or open-enrollment charter school campus to notify the superintendent or director of the school district, district of innovation, or charter school not later than the seventh day after the date the principal knew or should have known about an educator's criminal record or a termination of employment or resignation following an alleged incident of misconduct.

(c) 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 or should have known about an educator's, rather than an employee's, criminal record or a termination of employment or resignation following an alleged incident of misconduct.

(i) Provides that a superintendent or director required to file a report under Subsection (c) commits an offense if the superintendent or director knowingly fails to file the report by the required date. 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 knowingly fails to provide the notice by the required date. Establishes that an offense under this subsection is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the superintendent, director, or principal intended to conceal an educator's criminal record or alleged incident of misconduct.

SECTION 4. Amends Sections 21.054(d) and (e), Education Code, as follows:

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

(e) Requires the continuing education requirements for a principal to 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 (Requirement to Report Misconduct).

SECTION 5. Amends the heading to Section 21.058, Education Code, to read as follows:

Sec. 21.058. New heading: REVOCATION OF CERTIFICATE AND TERMINATION OF EMPLOYMENT BASED ON CONVICTION OF OR PLACEMENT ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION FOR CERTAIN OFFENSES.

SECTION 6. Amends Section 21.058(a) and (b), 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.

(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, to revoke the certificate held by the person and provide to the person, to the Texas Education Agency (TEA), and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of the revocation and the basis for the revocation.

SECTION 7. 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 if the person assists another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and the person knew or should have known that the other person 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 8. 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 9. 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 open-enrollment 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 based on a submitted report concerning an alleged incident of misconduct, if permissible 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 10. 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 the adopted policy to include provisions designed to prevent improper electronic communications between a school employee and a student and allow a school employee to elect to not disclose to students the employee's personal telephone number or e-mail address.

SECTION 11. Amends Section 39.057(a), Education Code, to authorize 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.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2017.