

CHAPTER 278

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 99-1039

BY REPRESENTATIVES Clapp, Chavez, Coleman, Dean, Fairbank, Hefley, Hoppe, Lee, Mace, May, McElhany, McKay, McPherson, Miller, Mitchell, Paschall, Spence, Stengel, Swenson, and Taylor;
also SENATORS Hillman, Arnold, Blickensderfer, Congrove, Epps, Evans, and Musgrave.

AN ACT

CONCERNING BACKGROUND CHECKS FOR PROSPECTIVE SCHOOL EMPLOYEES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 22-32-109.7 (1) (a), Colorado Revised Statutes, is amended, and the said 22-32-109.7 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

22-32-109.7. Board of education - specific duties - employment of personnel.

(1) Prior to the employment of any person by a school district, the board of education shall make an inquiry concerning such person to the department of education for the purpose of determining:

(a) Whether such person has been convicted of, has pled nolo contendere to, or has received a deferred sentence OR DEFERRED PROSECUTION for:

(I) A FELONY; OR

(II) A MISDEMEANOR crime involving unlawful sexual behavior or unlawful behavior involving children;

(1.5) DURING THE EMPLOYMENT OF ANY PERSON BY A SCHOOL DISTRICT, THE BOARD OF EDUCATION MAY MAKE AN INQUIRY CONCERNING SUCH PERSON TO THE DEPARTMENT OF EDUCATION FOR THE PURPOSES DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(3.5) WHENEVER A SCHOOL DISTRICT LEARNS FROM A SOURCE OTHER THAN THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DEPARTMENT OF EDUCATION THAT A CURRENT OR PAST EMPLOYEE OF THE SCHOOL DISTRICT HAS BEEN CONVICTED OF, PLED NOLO CONTENDERE TO, OR HAS RECEIVED A DEFERRED SENTENCE OR DEFERRED PROSECUTION FOR A FELONY OR A MISDEMEANOR CRIME INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR UNLAWFUL BEHAVIOR INVOLVING CHILDREN, THE SCHOOL DISTRICT SHALL NOTIFY THE DEPARTMENT OF EDUCATION.

SECTION 2. 22-1-121 (1) (a), Colorado Revised Statutes, is amended, and the said 22-1-121 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

22-1-121. Nonpublic schools - employment of personnel - access to information of department of education. (1) Prior to the employment of any person by a nonpublic school in this state, the governing board of such school may make an inquiry concerning such person to the department of education for the purpose of determining:

(a) Whether such person has been convicted of, has pled nolo contendere to, or has received a deferred sentence OR DEFERRED PROSECUTION for:

(I) A FELONY; OR

(II) A MISDEMEANOR crime involving unlawful sexual behavior or unlawful behavior involving children;

(1.5) DURING THE TIME THAT A PERSON IS EMPLOYED BY A NONPUBLIC SCHOOL IN THIS STATE, THE GOVERNING BOARD OF SUCH SCHOOL MAY MAKE AN INQUIRY CONCERNING SUCH PERSON TO THE DEPARTMENT OF EDUCATION FOR THE PURPOSES DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(1.7) (a) TO FACILITATE THE INQUIRY PERMITTED BY SUBSECTION (1) OF THIS SECTION, THE GOVERNING BOARD OF A PARTICIPATING NONPUBLIC SCHOOL SHALL REQUIRE AN APPLICANT TO SUBMIT TO THE GOVERNING BOARD OF THE SCHOOL A COMPLETE SET OF HIS OR HER FINGERPRINTS TAKEN BY A QUALIFIED LAW ENFORCEMENT AGENCY OR AN AUTHORIZED SCHOOL EMPLOYEE. THE GOVERNING BOARD SHALL FORWARD THE SET OF FINGERPRINTS TOGETHER WITH A CHECK TO COVER THE COSTS CHARGED BY THE COLORADO BUREAU OF INVESTIGATION TO THE DEPARTMENT OF EDUCATION FOR RELEASE TO THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION.

(b) ALL COSTS ARISING FROM ANY FINGERPRINT PROCESSING PERFORMED BY THE COLORADO BUREAU OF INVESTIGATION PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE BORNE BY THE NONPUBLIC SCHOOL. SUCH COSTS MAY BE PASSED ON TO THE PROSPECTIVE EMPLOYEE.

(c) THE DEPARTMENT OF EDUCATION SHALL TRANSMIT ANY CHECKS RECEIVED PURSUANT TO THIS SUBSECTION (1.7) TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE NONPUBLIC SCHOOL FINGERPRINT FUND WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE MONEYS IN THE NONPUBLIC SCHOOL FINGERPRINT FUND SHALL BE USED TO PAY FOR FINGERPRINT CHECKS REQUIRED PURSUANT TO THIS SUBSECTION (1.7) AND SHALL BE SUBJECT TO ANNUAL

APPROPRIATION BY THE GENERAL ASSEMBLY. ANY MONEYS NOT APPROPRIATED SHALL REMAIN IN THE NONPUBLIC SCHOOL FINGERPRINT FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

SECTION 3. The introductory portion to 22-2-119 (1) and 22-2-119 (1) (a), Colorado Revised Statutes, are amended to read:

22-2-119. Department of education - inquiries by boards of education concerning prospective employees. (1) When an inquiry is made by a board of education of a school district pursuant to the provisions of section 22-32-109.7 (1) OR (1.5) or by the governing board of a nonpublic school pursuant to the provisions of section 22-1-121 concerning a prospective OR CURRENT employee, the department shall provide the following information concerning such person:

(a) Whether ACCORDING TO THE RECORDS OF THE DEPARTMENT such person has been convicted of, has pled nolo contendere to, or has received a deferred sentence OR DEFERRED PROSECUTION for:

(I) A FELONY; OR

(II) A MISDEMEANOR crime involving unlawful sexual behavior or unlawful behavior involving children; ~~according to records provided to the department by the judicial department pursuant to section 13-1-130, C.R.S.;~~

SECTION 4. 22-60-105.2 (2) (c), Colorado Revised Statutes, is amended to read:

22-60-105.2. Initial applicants - certificates - letters of authorization - submittal of form and fingerprints - failure to comply constitutes grounds for denial. (c) For purposes of this subsection (2), "convicted" means a conviction by a jury or by a court and shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed a felony or misdemeanor, the payment of a fine, a plea of nolo contendere, ~~and~~ the imposition of a deferred or suspended sentence by the court, OR AN AGREEMENT FOR A DEFERRED PROSECUTION APPROVED BY THE COURT.

SECTION 5. 22-60-110 (2) (b) and (2.1), Colorado Revised Statutes, are amended to read:

22-60-110. Grounds for denying, annulling, suspending, or revoking certificate or letter of authorization. (2) A certificate or letter of authorization may be denied, annulled, suspended, or revoked in the manner prescribed in section 22-60-111, notwithstanding the provisions of subsection (1) of this section:

(b) When the holder is convicted, pleads nolo contendere, or receives a deferred sentence OR DEFERRED PROSECUTION for a violation of any law of this state or any counterpart municipal law of this state involving unlawful behavior pursuant to any of the following statutory provisions: Sections 18-3-305, 18-6-302, and 18-6-701, or of section 18-6-301, C.R.S., when the victim is a child who is ten years of age or older and under eighteen years of age, part 4 of article 3, part 4 of article 6, and part 4 of article 7 of title 18, C.R.S.;

(2.1) A certified copy of the judgment of a court of competent jurisdiction of a conviction, the acceptance of a guilty plea, a plea of nolo contendere, ~~or~~ a deferred sentence, OR DEFERRED PROSECUTION shall be conclusive evidence for the purposes of paragraphs (b) and (c) of subsection (2) of this section. Upon receipt of a certified copy of the judgment, the state board of education may take immediate action to deny, annul, or suspend a certificate or letter of authorization without a hearing, notwithstanding the provisions of section 22-60-111. The state board of education may revoke a suspended certificate based on a violation of paragraph (b) or (c) of subsection (2) of this section, without a hearing and without any further action, after the exhaustion of all appeals, if any, or after the time for seeking an appeal has elapsed and upon the entry of a final judgment.

SECTION 6. 22-60.5-103 (2) (c), Colorado Revised Statutes, is amended to read:

22-60.5-103. Initial applicants - licenses - authorizations - submittal of form and fingerprints - failure to comply constitutes grounds for denial. (2) (c) For the purposes of this subsection (2), "convicted" means a conviction by a jury or by a court and shall also include the forfeiture of any bail, bond, or other security deposited to secure the appearance by a person charged with having committed a felony or misdemeanor, the payment of a fine, a plea of nolo contendere, ~~and~~ the imposition of a deferred or suspended sentence by the court, OR AN AGREEMENT FOR A DEFERRED PROSECUTION APPROVED BY THE COURT.

SECTION 7. 22-60.5-107 (2) (b) and (3), Colorado Revised Statutes, are amended to read:

22-60.5-107. Grounds for denying, annulling, suspending, or revoking license, certificate, endorsement, or authorization. (2) Any license, certificate, endorsement, or authorization may be denied, annulled, suspended, or revoked in the manner prescribed in section 22-60.5-108, notwithstanding the provisions of subsection (1) of this section:

(b) When the holder is convicted, pleads nolo contendere, or receives a deferred sentence OR A DEFERRED PROSECUTION for a violation of any law of this state or any counterpart municipal law of this state involving unlawful behavior pursuant to any of the following statutory provisions: Sections 18-3-305, 18-6-302, and 18-6-701, C.R.S., section 18-6-301, C.R.S., when the victim is a child who is ten years of age or older and under eighteen years of age, part 4 of article 3, part 4 of article 6, and part 4 of article 7 of title 18, C.R.S.;

(3) A certified copy of the judgment of a court of competent jurisdiction of a conviction, the acceptance of a guilty plea, a plea of nolo contendere, ~~or~~ a deferred sentence, OR A DEFERRED PROSECUTION shall be conclusive evidence for the purposes of paragraphs (b) and (c) of subsection (2) of this section. Upon receipt of a certified copy of the judgment, the department of education may take immediate action to deny, annul, or suspend any license, certificate, endorsement, or authorization without a hearing, notwithstanding the provisions of section 22-60.5-108. The department of education may revoke a suspended license based on a violation of paragraph (b) or (c) of subsection (2) of this section without a hearing and without any further action, after the exhaustion of all appeals, if any, or after the time for seeking an appeal has elapsed, and upon the entry of a final judgment.

SECTION 8. 22-63-202, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-63-202. Employment contracts - contracts to be in writing - duration - damage provision. (4) (a) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-72-204 (3) (a), C.R.S., UPON A REQUEST FROM A SCHOOL DISTRICT OR A SCHOOL CONCERNING A PERSON APPLYING FOR A POSITION AS A TEACHER, A SCHOOL DISTRICT MAY DISCLOSE TO THE REQUESTING SCHOOL DISTRICT OR SCHOOL THE REASON OR REASONS WHY A TEACHER LEFT EMPLOYMENT WITH THE ORIGINAL SCHOOL DISTRICT. THE INFORMATION DISCLOSED PURSUANT TO THIS PARAGRAPH (a) SHALL ONLY BE DISCLOSED TO PERSONNEL AUTHORIZED TO REVIEW THE PERSONNEL FILE IN THE SCHOOL DISTRICT OR SCHOOL AND TO THE PERSON APPLYING FOR A POSITION AS A TEACHER.

(b) NO EMPLOYMENT CONTRACT EXECUTED PURSUANT TO THIS SECTION SHALL CONTAIN A PROVISION THAT RESTRICTS OR PROHIBITS A SCHOOL DISTRICT FROM DISCLOSING TO ANOTHER SCHOOL DISTRICT OR SCHOOL THE REASON OR REASONS WHY A TEACHER LEFT EMPLOYMENT WITH THE ORIGINAL SCHOOL DISTRICT.

SECTION 9. 22-63-203, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-63-203. Probationary teachers - renewal and nonrenewal of employment contract. (6) (a) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-72-204 (3) (a), C.R.S., UPON A REQUEST FROM A SCHOOL DISTRICT OR A SCHOOL CONCERNING A PERSON APPLYING FOR A POSITION AS A TEACHER, A SCHOOL DISTRICT MAY DISCLOSE TO THE REQUESTING SCHOOL DISTRICT OR SCHOOL THE REASON OR REASONS WHY A TEACHER LEFT EMPLOYMENT WITH THE ORIGINAL SCHOOL DISTRICT. THE INFORMATION DISCLOSED PURSUANT TO THIS PARAGRAPH (a) SHALL ONLY BE DISCLOSED TO PERSONNEL AUTHORIZED TO REVIEW THE PERSONNEL FILE IN THE SCHOOL DISTRICT OR SCHOOL AND TO THE PERSON APPLYING FOR A POSITION AS A TEACHER.

(b) NO EMPLOYMENT CONTRACT EXECUTED PURSUANT TO THIS SECTION SHALL CONTAIN A PROVISION THAT RESTRICTS OR PROHIBITS A SCHOOL DISTRICT FROM DISCLOSING TO ANOTHER SCHOOL DISTRICT OR SCHOOL THE REASON OR REASONS WHY A TEACHER LEFT EMPLOYMENT WITH THE ORIGINAL SCHOOL DISTRICT.

SECTION 10. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, from the nonpublic school fingerprint cash fund, to the department of education, for the fiscal year beginning July 1, 1999, the sum of one thousand nine hundred dollars (\$1,900), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the Department of Public Safety, Colorado Bureau of Investigation, Crime Information Center, for the fiscal year beginning July 1, 1999, the sum of one thousand nine hundred dollars (\$1,900), or so much thereof as may be necessary, for conducting background checks related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of education out of the appropriation made in subsection (1) of this section.

SECTION 11. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to persons employed by any school district or nonpublic school and prospective school employees applying on or after said effective date.

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1999