

CHAPTER 434

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 08-1344

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also SENATOR(S) Penry, Gibbs, Groff, Harvey, Kester, Mitchell S., Romer, Schwartz, Shaffer, Spence, Tupa, Ward, Wiens, and Williams.

AN ACT

CONCERNING BACKGROUND CHECK PROCEDURES RELATED TO EMPLOYMENT AT A SCHOOL.

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

SECTION 1. 22-2-119, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

22-2-119. Department of education - inquiries by boards of education concerning prospective employees. (3) (a) WHEN PROVIDING THE INFORMATION REQUIRED IN SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL PROVIDE THE INFORMATION WITHIN THE FOLLOWING TIMELINES:

(I) FOR INFORMATION THAT THE DEPARTMENT POSSESSES AT THE TIME OF THE REQUEST, THE DEPARTMENT SHALL PROVIDE THE INFORMATION NO LATER THAN TEN BUSINESS DAYS FOLLOWING THE RECEIPT OF THE INQUIRY;

(II) FOR INFORMATION THAT THE DEPARTMENT MUST OBTAIN BY A BACKGROUND CHECK, THE DEPARTMENT SHALL PROVIDE THE INFORMATION NO LATER THAN TEN BUSINESS DAYS FOLLOWING THE RECEIPT OF THE INFORMATION.

(b) IF PROVISIONS OF THIS SUBSECTION (3) INCREASE THE COSTS FOR THE DEPARTMENT AND THE DEPARTMENT INCREASES EDUCATOR LICENSING FEES TO ADDRESS THE INCREASED COSTS, THE INCREASE SHALL BE NO GREATER THAN NECESSARY AND SHALL BE INCLUDED IN THE DEPARTMENT'S ANNUAL BUDGET REQUEST TO THE JOINT BUDGET COMMITTEE.

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

(4) (a) A SCHOOL DISTRICT SHALL VERIFY THE RESULTS OF A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK PERFORMED FOR THE DEPARTMENT ON A SCHOOL EMPLOYEE OR APPLICANT, AND THE COLORADO BUREAU OF INVESTIGATION SHALL SHARE THE INFORMATION FROM THE INITIAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK WITH THE REQUESTING ENTITY.

(b) WHEN THE COLORADO BUREAU OF INVESTIGATION PROVIDES THE DEPARTMENT WITH AN UPDATE REGARDING A SCHOOL EMPLOYEE WHO WAS PREVIOUSLY SUBJECT TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, THE DEPARTMENT SHALL PROVIDE THAT UPDATE TO EACH SCHOOL DISTRICT AND CHARTER SCHOOL IN THE STATE. EACH SCHOOL DISTRICT AND CHARTER SCHOOL SHALL CROSS-CHECK ITS EMPLOYEE LIST WITH THE PROVIDED UPDATE AND TAKE APPROPRIATE ACTION, IF NECESSARY.

SECTION 2. 22-32-109.7 (3), Colorado Revised Statutes, is amended to read:

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

(3) If an employee of a school district is dismissed or resigns as a result of an allegation of unlawful behavior involving a child, including unlawful sexual behavior, which is supported by a preponderance of the evidence, WITHIN TEN BUSINESS DAYS AFTER THE DISMISSAL OR RESIGNATION, the board of education of ~~such~~ THE school district shall notify the department of education and provide any information requested by the department concerning the circumstances of the dismissal or resignation. The district shall also notify the employee that information concerning the employee's dismissal or resignation is being forwarded to the department of education unless ~~such~~ THE notice would conflict with the confidentiality requirements of the "Child Protection Act of 1987", part 3 of article 3 of title 19, C.R.S. A PUBLIC SCHOOL DISTRICT OR CHARTER SCHOOL SHALL NOT ENTER INTO A SETTLEMENT AGREEMENT THAT WOULD RESTRICT THE SCHOOL DISTRICT OR CHARTER SCHOOL FROM SHARING ANY RELEVANT INFORMATION RELATED TO A CONVICTION FOR CHILD ABUSE OR A SEXUAL OFFENSE AGAINST A CHILD AS DEFINED BY SECTION 13-80-103.9 (1) (c), C.R.S., PERTAINING TO THE EMPLOYEE WITH THE DEPARTMENT, ANOTHER SCHOOL DISTRICT, OR CHARTER SCHOOL PERTAINING TO THE INCIDENT UPON WHICH THE DISMISSAL OR RESIGNATION IS BASED.

SECTION 3. Article 80 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-80-103.9. No limitation of actions - failure to perform a background check by a public entity - injury to a child. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CHILD" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE.

(b) "EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK" MEANS COMPLYING WITH SECTIONS 22-2-119 AND 22-32-109.7, C.R.S.

(c) "SEXUAL OFFENSE AGAINST A CHILD" SHALL INCLUDE ALL OFFENSES LISTED IN SECTION 18-3-411 (1), C.R.S.

(2) NOTWITHSTANDING ANY OTHER STATUTE OF LIMITATIONS SPECIFIED IN THIS ARTICLE OR ANY OTHER PROVISION OF LAW, A CIVIL ACTION, AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, AGAINST A SCHOOL DISTRICT OR CHARTER SCHOOL FOR FAILURE TO PERFORM AN EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK MAY BE BROUGHT AT ANY TIME WITHIN TWO YEARS OF THE AGE OF MAJORITY OF THE PLAINTIFF.

(3) IN BRINGING A CIVIL ACTION FOR FAILURE TO PERFORM AN EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK PURSUANT TO THIS SECTION, A PLAINTIFF SHALL MAKE A PRIMA FACIE SHOWING OF THE FOLLOWING FACTS AND CIRCUMSTANCES:

(a) THE SCHOOL DISTRICT OR CHARTER SCHOOL, IN HIRING AN INDIVIDUAL TO WORK WITH CHILDREN OR IN A SETTING WITH CHILDREN, OR THE DEPARTMENT OF EDUCATION DID NOT PERFORM AN EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK OF THE INDIVIDUAL, AND THE FAILURE TO CONDUCT THE REQUIRED BACKGROUND CHECK WAS THE RESULT OF THE SCHOOL DISTRICT'S OR CHARTER SCHOOL'S DELIBERATE INDIFFERENCE OR RECKLESS DISREGARD OF ITS OBLIGATIONS TO CONDUCT THE BACKGROUND CHECK AS PROVIDED BY LAW; ORDINARY NEGLIGENCE OR UNINTENTIONAL OVERSIGHT IS NOT SUFFICIENT.

(b) THE INDIVIDUAL, AT THE TIME OF HIRING, HAD A CRIMINAL RECORD THAT INCLUDED ONE OR MORE CONVICTIONS FOR THE OFFENSE OF SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402, C.R.S., FOR A SEXUAL OFFENSE AGAINST A CHILD, OR FOR CHILD ABUSE AS DESCRIBED IN SECTION 18-6-401, C.R.S., OR THE INDIVIDUAL HAD BEEN DISMISSED OR HAD RESIGNED FROM A SCHOOL DISTRICT UNDER THE CIRCUMSTANCES DESCRIBED IN SECTION 22-32-109.7 (1) (b), C.R.S.; AND

(c) THE INDIVIDUAL COMMITTED ONE OF THE FOLLOWING OFFENSES AGAINST A CHILD WITH WHOM THE INDIVIDUAL CAME IN CONTACT IN THE COURSE OF HIS OR HER EMPLOYMENT WITH THE SCHOOL DISTRICT OR CHARTER SCHOOL:

- (I) SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402, C.R.S.;
- (II) SEXUAL OFFENSE AGAINST A CHILD; OR
- (III) CHILD ABUSE AS DESCRIBED IN SECTION 18-6-401, C.R.S.

(4) AN ACTION MAY NOT BE BROUGHT PURSUANT TO SUBSECTION (3) OF THIS SECTION IF THE DEFENDANT IS DECEASED OR IS INCAPACITATED TO THE EXTENT THAT THE SCHOOL DISTRICT OR CHARTER SCHOOL IS INCAPABLE OF RENDERING A DEFENSE TO THE ACTION.

SECTION 4. 24-10-106 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-10-106. Immunity and partial waiver. (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is

waived by a public entity in an action for injuries resulting from:

(h) FAILURE TO PERFORM AN EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK AS DESCRIBED IN SECTION 13-80-103.9, C.R.S.

SECTION 5. 22-60.5-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-60.5-107. Grounds for denying, annulling, suspending, or revoking license, certificate, endorsement, or authorization. (8) WHEN AN APPLICANT'S OR HOLDER'S LICENSE IS DENIED, ANNULLED, SUSPENDED, OR REVOKED PURSUANT TO THE PROVISIONS OF SUBSECTION (2.5) OF THIS SECTION, THE DEPARTMENT OF EDUCATION SHALL POST THE NAME OF THE PERSON AND BASIS FOR THE DENIAL, ANNULMENT, SUSPENSION, OR REVOCATION ON ITS WEB SITE.

SECTION 6. 22-60.5-108, Colorado Revised Statutes, is amended to read:

22-60.5-108. Procedure - denial, suspension, annulment, or revocation - license, certificate, endorsement, or authorization. (1) Procedures for the denial, suspension, revocation, or annulment of any license, certificate, endorsement, or authorization shall be in accordance with the provisions of sections 24-4-102 to 24-4-107, C.R.S.; except that, where judicial review is pending or the time in which to seek judicial review has not elapsed, the department of education may take emergency action relating to the annulment, suspension, or revocation of any license, certificate, endorsement, or authorization, and the expiration date of any license, certificate, endorsement, or authorization shall not be extended, even though judicial review is pending or the time for seeking such review has not elapsed.

(2) WHEN THE DEPARTMENT OF EDUCATION DENIES, ANNULS, SUSPENDS, OR REVOKES A LICENSE, CERTIFICATE, ENDORSEMENT, OR AUTHORIZATION BECAUSE THE APPLICANT OR HOLDER WAS CONVICTED OF FELONY CHILD ABUSE OR A FELONY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR PURSUANT TO SECTION 22-60.5-107 (2.5), THE DEPARTMENT SHALL RELEASE THE NAME OF THAT INDIVIDUAL TO THE PUBLIC.

(3) WHEN THE DEPARTMENT OF EDUCATION REVOKES A LICENSE, CERTIFICATE, ENDORSEMENT, OR AUTHORIZATION BECAUSE THE APPLICANT OR HOLDER WAS CONVICTED OF FELONY CHILD ABUSE OR A FELONY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR PURSUANT TO SECTION 22-60.5-107 (2.5), THE DEPARTMENT SHALL ENTER INTO A SETTLEMENT AGREEMENT WITH THAT INDIVIDUAL THAT PROHIBITS THE INDIVIDUAL FROM EVER TEACHING AT A PUBLIC OR PRIVATE SCHOOL IN THE UNITED STATES.

SECTION 7. Effective date - applicability. This act shall take effect upon passage and shall apply to actions accruing on or after the effective date of this act.

SECTION 8. 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 5, 2008