
ENGROSSED SUBSTITUTE HOUSE BILL 2518

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Education (originally sponsored by Representatives Peery, Vance, Brumsickle, D. Sommers, Winsley, Van Luven, Bowman, Broback, Wood, Wynne, Mitchell and H. Myers; by request of Superintendent of Public Instruction and Board of Education)

Read first time 02/03/92.

1 AN ACT Relating to educational employees; amending RCW 28A.410.090,
2 28A.410.100, and 43.43.838; reenacting and amending RCW 28A.410.010;
3 adding new sections to chapter 28A.400 RCW; adding a new section to
4 chapter 28A.410 RCW; adding a new section to chapter 43.43 RCW; and
5 creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that additional
8 safeguards are necessary to ensure the safety of Washington's school
9 children. The legislature further finds that the results from state
10 patrol background checks are more complete when fingerprints of
11 individuals are provided, and that information from the federal bureau
12 of investigation also is necessary to obtain information on out-of-
13 state criminal records. The legislature further finds that
14 confidentiality safeguards in state law are in place to ensure that the

1 rights of applicants for certification or jobs and newly hired
2 employees are protected.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.400
4 RCW to read as follows:

5 School districts, educational service districts, and their
6 contractors shall require a record check through the Washington state
7 patrol criminal identification system under RCW 43.43.830 through
8 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of
9 investigation before hiring an employee. The record check shall
10 include a fingerprint check using a complete Washington state criminal
11 identification fingerprint card. The requesting entity shall provide
12 a copy of the record report to the applicant. When necessary,
13 applicants may be employed on a conditional basis pending completion of
14 the investigation. If the applicant has had a record check within the
15 previous two years, the district or contractor may waive the
16 requirement. The district, pursuant to chapter 41.59 or 41.56 RCW, or
17 contractor hiring the employee or using volunteers shall determine who
18 shall pay costs associated with the record check.

19 **Sec. 3.** RCW 28A.410.010 and 1988 c 172 s 3 and 1988 c 97 s 1 are
20 each reenacted and amended to read as follows:

21 The state board of education shall establish, publish, and enforce
22 rules and regulations determining eligibility for and certification of
23 personnel employed in the common schools of this state, including
24 certification for emergency or temporary, substitute or provisional
25 duty and under such certificates or permits as the board shall deem
26 proper or as otherwise prescribed by law. (~~Except for applicants who~~
27 ~~are applying for certificates which restrict the holder of the~~
28 ~~certificate to the teaching of students who are sixteen years of age or~~

1 ~~elder,~~) The rules shall require that the initial application for
2 certification shall require a (~~background~~) record check of the
3 applicant through the Washington state patrol criminal identification
4 system and through the federal bureau of investigation at the
5 applicant's expense. The record check shall include a fingerprint
6 check using a complete Washington state criminal identification
7 fingerprint card. The superintendent of public instruction may waive
8 the record check for any applicant who has had a record check within
9 the two years before application.

10 In establishing rules pertaining to the qualifications of
11 instructors of sign language the state board shall consult with the
12 national association of the deaf, "sign instructors guidance network"
13 (s.i.g.n.), and the Washington state association of the deaf for
14 evaluation and certification of sign language instructors.

15 The superintendent of public instruction shall act as the
16 administrator of any such rules and regulations and have the power to
17 issue any certificates or permits and revoke the same in accordance
18 with board rules and regulations.

19 **Sec. 4.** RCW 28A.410.090 and 1990 c 33 s 408 are each amended to
20 read as follows:

21 (1) Any certificate or permit authorized under the provisions of
22 this chapter, chapter 28A.405 RCW, or rules and regulations promulgated
23 thereunder may be revoked or suspended by the authority authorized to
24 grant the same upon complaint of any school district superintendent
25 (~~or~~), educational service district superintendent, or private school
26 administrator for immorality, violation of written contract,
27 unprofessional conduct, intemperance, or crime against the law of the
28 state.

1 If the superintendent of public instruction has reasonable cause to
2 believe that an alleged violation of this chapter or rules adopted
3 under it has occurred, but no complaint has been filed pursuant to this
4 chapter, and that a school district superintendent, educational service
5 district superintendent, or private school administrator has sufficient
6 notice of the alleged violation and opportunity to file a complaint,
7 the superintendent of public instruction may cause an investigation to
8 be made of the alleged violation, together with such other matters that
9 may be disclosed in the course of the investigation related to
10 certificated personnel.

11 (2) Any such certificate or permit authorized under this chapter or
12 chapter 28A.405 RCW shall be revoked by the authority authorized to
13 grant the certificate upon a guilty plea or the conviction of any
14 felony crime involving the physical neglect of a child under chapter
15 9A.42 RCW, the physical injury or death of a child under chapter 9A.32
16 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61
17 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual
18 offenses under chapter 9A.44 RCW where a minor is the victim, promoting
19 prostitution of a minor under chapter 9A.88 RCW, the sale or purchase
20 of a minor child under RCW 9A.64.030, or violation of similar laws of
21 another jurisdiction. The person whose certificate is in question
22 shall be given an opportunity to be heard. Mandatory permanent
23 revocation upon a guilty plea or the conviction of felony crimes
24 specified under this subsection shall apply to such convictions or
25 guilty pleas which occur after July 23, 1989. Revocation of any
26 certificate or permit authorized under this chapter or chapter 28A.405
27 RCW for a guilty plea or criminal conviction occurring prior to July
28 23, 1989, shall be subject to the provisions of subsection (1) of this
29 section.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.410
2 RCW to read as follows:

3 (1) The superintendent of public instruction may initiate and
4 conduct investigations as may be reasonably necessary to establish the
5 existence of any alleged violations of or noncompliance with this
6 chapter or any rules adopted under it. For the purpose of any
7 investigation or proceeding under this chapter, the superintendent or
8 any officer designated by the superintendent may administer oaths and
9 affirmations, subpoena witnesses and compel their attendance, take
10 evidence, and require the production of any books, papers,
11 correspondence, memoranda, agreements, or other documents or records
12 that the superintendent deems relevant and material to the inquiry.

13 (2) If any person fails to obey a subpoena or obeys a subpoena but
14 refuses to give evidence, any court of competent jurisdiction, upon
15 application by the superintendent, may issue to that person an order
16 requiring him or her to appear before the court and to show cause why
17 he or she should not be compelled to obey the subpoena, and give
18 evidence material to the matter under investigation. The failure to
19 obey an order of the court may be punishable as contempt.

20 **Sec. 6.** RCW 28A.410.100 and 1990 c 33 s 409 are each amended to
21 read as follows:

22 Any teacher whose certificate to teach has been questioned (~~by the~~
23 ~~filing of a complaint by a school district superintendent or~~
24 ~~educational service district superintendent~~)) under RCW 28A.410.090
25 shall have a right to be heard by the issuing authority before his or
26 her certificate is revoked. Any teacher whose certificate to teach has
27 been revoked shall have a right of appeal to the state board of
28 education if notice of appeal is given by written affidavit to the
29 board within thirty days after the certificate is revoked.

1 An appeal to the state board of education within the time specified
2 shall operate as a stay of revocation proceedings until the next
3 regular or special meeting of said board and until the board's decision
4 has been rendered.

5 **Sec. 7.** RCW 43.43.838 and 1990 c 3 s 1104 are each amended to read
6 as follows:

7 (1) After January 1, 1988, and notwithstanding any provision of RCW
8 43.43.700 through 43.43.810 to the contrary, the state patrol shall
9 furnish a transcript of the conviction record, disciplinary board final
10 decision and any subsequent criminal charges associated with the
11 conduct that is the subject of the disciplinary board final decision,
12 or civil adjudication record pertaining to any person for whom the
13 state patrol or the federal bureau of investigation has a record upon
14 the written request of:

15 (a) The subject of the inquiry;

16 (b) Any business or organization for the purpose of conducting
17 evaluations under RCW 43.43.832;

18 (c) The department of social and health services;

19 (d) Any law enforcement agency, prosecuting authority, or the
20 office of the attorney general; or

21 (e) The department of social and health services for the purpose of
22 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
23 72.23 RCW, or any later-enacted statute which purpose is to regulate or
24 license a facility which handles vulnerable adults. However, access to
25 conviction records pursuant to this subsection (1)(e) does not limit or
26 restrict the ability of the department to obtain additional information
27 regarding conviction records and pending charges as set forth in RCW
28 74.15.030(2)(b).

1 After processing the request, if the conviction record,
2 disciplinary board final decision and any subsequent criminal charges
3 associated with the conduct that is the subject of the disciplinary
4 board final decision, or adjudication record shows no evidence of a
5 crime against children or other persons or, in the case of vulnerable
6 adults, no evidence of crimes relating to financial exploitation in
7 which the victim was a vulnerable adult, an identification declaring
8 the showing of no evidence shall be issued to the applicant by the
9 state patrol and shall be issued within fourteen working days of the
10 request. Possession of such identification shall satisfy future
11 background check requirements for the applicant for a two-year period
12 unless the prospective employee is any current school district employee
13 who has applied for a position in another school district.

14 (2) The state patrol shall by rule establish fees for disseminating
15 records under this section to recipients identified in subsection
16 (1)(a) and (b) of this section. The state patrol shall also by rule
17 establish fees for disseminating records in the custody of the national
18 crime information center. The revenue from the fees shall cover, as
19 nearly as practicable, the direct and indirect costs to the state
20 patrol of disseminating the records: PROVIDED, That no fee shall be
21 charged to a nonprofit organization(~~(, including school districts and~~
22 ~~educational service districts,~~)) for the records check: PROVIDED
23 FURTHER, That in the case of background checks using fingerprints
24 requested by school districts and educational service districts, the
25 state patrol shall charge only for the incremental costs associated
26 with checking fingerprints in addition to name and date of birth.
27 Background checks requested by school districts and educational service
28 districts using only name and date of birth shall continue to be
29 provided free of charge.

1 (3) No employee of the state, employee of a business or
2 organization, or the business or organization is liable for defamation,
3 invasion of privacy, negligence, or any other claim in connection with
4 any lawful dissemination of information under RCW 43.43.830 through
5 43.43.840 or 43.43.760.

6 (4) Before July 26, 1987, the state patrol shall adopt rules and
7 forms to implement this section and to provide for security and privacy
8 of information disseminated under this section, giving first priority
9 to the criminal justice requirements of this chapter. The rules may
10 include requirements for users, audits of users, and other procedures
11 to prevent use of civil adjudication record information or criminal
12 history record information inconsistent with this chapter.

13 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an
14 employer to make an inquiry not specifically authorized by this
15 chapter, or be construed to affect the policy of the state declared in
16 chapter 9.96A RCW.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.43 RCW
18 to read as follows:

19 The fingerprint identification account is created in the custody of
20 the state treasurer. All receipts from incremental charges of
21 fingerprint checks requested by school districts shall be deposited in
22 the account. Receipts for fingerprint checks by the federal bureau of
23 investigation may also be deposited in the account. Expenditures from
24 the account may be used only for the cost of background checks. Only
25 the chief of the state patrol or the chief's designee may authorize
26 expenditures from the account. The account is subject to allotment
27 procedures under chapter 43.88 RCW. No appropriation is required for
28 expenditures prior to July 1, 1995. After June 30, 1995, the account
29 shall be subject to appropriation.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 28A.400
2 RCW to read as follows:

3 The state patrol shall accept fingerprints obtained under this
4 chapter only if it can ensure that the patrol will not retain a record
5 of the fingerprints after the check is complete. It shall not forward
6 fingerprints obtained under this chapter to the federal bureau of
7 investigation unless it can ensure that the federal bureau of
8 investigation will not retain a record of the fingerprints after the
9 check is complete. The state patrol shall report to the house of
10 representatives appropriations committee and the senate ways and means
11 committee on measures taken to implement this section before accepting
12 any fingerprints obtained under this chapter.