

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5533

Chapter 29, Laws of 2004

58th Legislature
2004 Regular Session

SCHOOL EMPLOYEES--MISCONDUCT REPORTING

EFFECTIVE DATE: 6/10/04

Passed by the Senate March 8, 2004
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 4, 2004
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5533** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

March 22, 2004 - 4:15 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5533

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington **58th Legislature** **2004 Regular Session**

By Senate Committee on Education (originally sponsored by Senators Kohl-Welles, Johnson, McAuliffe, Carlson, Keiser, Rasmussen and Kline)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to providing increased access to information on
2 disciplinary actions taken against school employees; adding a new
3 section to chapter 28A.400 RCW; adding a new section to chapter 28A.320
4 RCW; adding a new section to chapter 28A.410 RCW; creating a new
5 section; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that state law
8 requires criminal background checks of applicants for school district
9 employment. However, the legislature finds that, because they
10 generally are limited to criminal conviction histories, results of
11 background checks are more complete when supplemented by an applicant's
12 history of past sexual misconduct. Therefore, the legislature finds
13 that additional safeguards are necessary in the hiring of school
14 district employees to ensure the safety of Washington's school
15 children. In order to provide the safest educational environment for
16 children, school districts must provide known information regarding
17 employees' sexual misconduct when those employees attempt to transfer
18 to different school districts.

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

3 (1) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Applicant" means an applicant for employment in a certificated
6 or classified position who is currently or was previously employed by
7 a school district.

8 (b) "Employer" means a school district employer.

9 (2) Before hiring an applicant, a school district shall request the
10 applicant to sign a statement:

11 (a) Authorizing the applicant's current and past employers to
12 disclose to the hiring school district sexual misconduct, if any, by
13 the applicant and making available to the hiring school district copies
14 of all documents in the previous employer's personnel, investigative,
15 or other files relating to sexual misconduct by the applicant; and

16 (b) Releasing the applicant's current and past employers, and
17 employees acting on behalf of that employer, from any liability for
18 providing information described in (a) of this subsection, as provided
19 in subsection (4) of this section.

20 (3) Before hiring an applicant, a school district shall request in
21 writing, electronic or otherwise, the applicant's current and past
22 employers to provide the information described in subsection (2)(a) of
23 this section, if any. The request shall include a copy of the
24 statement signed by the applicant under subsection (2) of this section.

25 (4) Not later than twenty business days after receiving a request
26 under subsection (3) of this section, a school district shall provide
27 the information requested and make available to the requesting school
28 district copies of all documents in the applicant's personnel record
29 relating to the sexual misconduct. The school district, or an employee
30 acting on behalf of the school district, who in good faith discloses
31 information under this section is immune from civil liability for the
32 disclosure.

33 (5) A hiring district shall request from the office of the
34 superintendent of public instruction verification of certification
35 status, including information relating to sexual misconduct as
36 established by the provisions of subsection (11) of this section, if
37 any, for applicants for certificated employment.

1 (6) A school district shall not hire an applicant who does not sign
2 the statement described in subsection (2) of this section.

3 (7) School districts may employ applicants on a conditional basis
4 pending the district's review of information obtained under this
5 section.

6 (8) Information received under this section shall be used by a
7 school district only for the purpose of evaluating an applicant's
8 qualifications for employment in the position for which he or she has
9 applied. Except as otherwise provided by law, a board member or
10 employee of a school district shall not disclose the information to any
11 person, other than the applicant, who is not directly involved in the
12 process of evaluating the applicant's qualifications for employment.
13 A person who violates this subsection is guilty of a misdemeanor.

14 (9) Beginning September 1, 2004, the board or an official of a
15 school district shall not enter into a collective bargaining agreement,
16 individual employment contract, resignation agreement, severance
17 agreement, or any other contract or agreement that has the effect of
18 suppressing information about verbal or physical abuse or sexual
19 misconduct by a present or former employee or of expunging information
20 about that abuse or sexual misconduct from any documents in the
21 previous employer's personnel, investigative, or other files relating
22 to verbal or physical abuse or sexual misconduct by the applicant. Any
23 provision of a contract or agreement that is contrary to this
24 subsection is void and unenforceable, and may not be withheld from
25 disclosure by the entry of any administrative or court order. This
26 subsection does not restrict the expungement from a personnel file of
27 information about alleged verbal or physical abuse or sexual misconduct
28 that has not been substantiated.

29 (10) This section does not prevent a school district from
30 requesting or requiring an applicant to provide information other than
31 that described in this section.

32 (11) By September 1, 2004, the state board of education has the
33 authority to and shall adopt rules defining "verbal abuse," "physical
34 abuse," and "sexual misconduct" as used in this section for application
35 to all classified and certificated employees. The definitions of
36 verbal and physical abuse and sexual misconduct adopted by the state
37 board of education must include the requirement that the school
38 district has made a determination that there is sufficient information

1 to conclude that the abuse or misconduct occurred and that the abuse or
2 misconduct resulted in the employee's leaving his or her position at
3 the school district.

4 (12) Except as limited by chapter 49.12 RCW, at the conclusion of
5 a school district's investigation, a school employee has the right to
6 review his or her entire personnel file, investigative file, or other
7 file maintained by the school district relating to sexual misconduct as
8 addressed in this section and to attach rebuttals to any documents as
9 the employee deems necessary. Rebuttal documents shall be disclosed in
10 the same manner as the documents to which they are attached. The
11 provisions of this subsection do not supercede the protections provided
12 individuals under the state whistleblower laws in chapter 42.41 RCW.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.320
14 RCW to read as follows:

15 School districts must, at the first opportunity but in all cases
16 within forty-eight hours of receiving a report alleging sexual
17 misconduct by a school employee, notify the parents of a student
18 alleged to be the victim, target, or recipient of the misconduct.
19 School districts shall provide parents with information regarding their
20 rights under the Washington public disclosure act, chapter 42.17 RCW,
21 to request the public records regarding school employee discipline.
22 This information shall be provided to all parents on an annual basis.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.410
24 RCW to read as follows:

25 For the purposes of reporting disciplinary actions taken against
26 certificated staff to other states via a national data base used by the
27 office of the superintendent of public instruction, the following
28 actions shall be reported: Suspension, surrender, revocation, denial,
29 stayed suspension, reinstatement, and any written reprimand related to
30 abuse and sexual misconduct. These actions will only be reported to
31 the extent that they are accepted by the national clearinghouse, but if
32 there are categories not included, the office of the superintendent of
33 public instruction shall seek modification to the national
34 clearinghouse format.

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