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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5533

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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 of a present or former employee or of expunging information  
20 about that abuse or sexual misconduct from all 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) School personnel have the right to review their entire  
5 personnel file relating to sexual misconduct as addressed in this  
6 section and attach rebuttals to any documents as the employee deems  
7 necessary. These rebuttal documents shall be disclosed in the same  
8 manner as the document to which they refer. The provisions of this  
9 subsection shall not override any protections provided individuals  
10 under the state whistleblower laws as established in chapter 42.41 RCW.

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

13 School districts shall provide parents with information regarding  
14 their rights under the Washington public disclosure act, chapter 42.17  
15 RCW, to request the public records regarding school employee  
16 discipline. This information shall be provided to all parents on an  
17 annual basis.

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

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

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