

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 449

Introduced by Assembly Member Muratsuchi

February 19, 2013

An act to amend Section 44242.5 of, and to repeal and add Section 44030 of, the Education Code, relating to elementary and secondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 449, as amended, Muratsuchi. Elementary and secondary education: ~~pupil safety and certificated school employees.~~ *employees: school district superintendent: reports to Commission on Teacher Credentialing.*

Existing law provides that any principal, teacher, employee, or school officer of any elementary or secondary school who refuses or willfully neglects to make such reports as are required by law is guilty of a misdemeanor and is punishable by a fine of not more than \$100.

This bill would delete that provision.

~~Existing law provides that school districts and county offices of education are responsible for the overall development of a comprehensive school safety plan for their schools operating kindergarten or any of grades 1 to 12, inclusive. Existing law provides for the employment of certificated school employees by school districts. Existing law provides for the credentialing of certificated employees of a school district by the Commission on Teacher Credentialing.~~

~~This bill would state the intent of the Legislature to enact legislation that would ensure the safety of California's school pupils and promote the professionalism of certificated school employees. require the~~

superintendent of a school district with certificated employees to report to the commission any change in the employment status of a credentialholder, not later than 30 days after the change in employment status, if the credentialholder, while working in a position requiring a credential, and as a result of an allegation of misconduct or while an allegation of misconduct is pending, is dismissed, is nonreelected, resigns, is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse action, retires, or is otherwise terminated by a decision not to employ or reemploy. The bill would make failure to make the report unprofessional conduct and subject the superintendent of the school district to adverse action by the commission, and would make the refusal or willful neglect to make the report a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

Under existing law, each allegation of an act or omission by an applicant for, or holder of, a credential, for which he or she may be subject to an adverse action, is required to be presented to the Committee of Credentials. Existing law provides that the committee has jurisdiction to commence an initial review and a formal review upon receipt of any of specified records, declarations, statements, notices, or responses.

This bill would provide that the committee has jurisdiction to commence an initial review also upon receipt of a writing, as defined, notifying the Commission on Teacher Credentialing that a superintendent of a school district employing a person with a credential has failed to make the report described above regarding the change in employment status of a credentialholder. The bill would provide that the committee has jurisdiction to commence a formal review also upon receipt of official records of a school district or of the commission that confirm that the report described above was not made by a superintendent of a school district.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 44030 of the Education Code is repealed.*
 2 ~~44030. Any principal, teacher, employee, or school officer of~~
 3 ~~any elementary or secondary school who refuses or willfully~~
 4 ~~neglects to make such reports as are required by law is guilty of a~~
 5 ~~misdemeanor and is punishable by a fine of not more than one~~
 6 ~~hundred dollars (\$100).~~

7 *SEC. 2. Section 44030 is added to the Education Code, to read:*
 8 44030. (a) *The superintendent of a school district employing*
 9 *a person with a credential shall report any change in the*
 10 *employment status of the credentialholder to the commission not*
 11 *later than 30 days after the change in employment status, if the*
 12 *credentialholder, while working in a position requiring a*
 13 *credential, and as a result of an allegation of misconduct or while*
 14 *an allegation of misconduct is pending, is dismissed, is*
 15 *nonreelected, resigns, is suspended or placed on unpaid*
 16 *administrative leave for more than 10 days as a final adverse*
 17 *action, retires, or is otherwise terminated by a decision not to*
 18 *employ or reemploy.*

19 *(b) For purposes of subdivision (a), a change of employment*
 20 *status due solely to unsatisfactory performance pursuant to*
 21 *paragraph (4) of subdivision (a) of Section 44932 or a reduction*
 22 *in force pursuant to Sections 44955 to 44958, inclusive, is not an*
 23 *allegation of misconduct.*

24 *(c) The failure to make the report required by subdivision (a)*
 25 *is unprofessional conduct and shall subject the superintendent of*
 26 *the school district to adverse action by the commission.*

27 *(d) (1) The refusal or willful neglect to make the report required*
 28 *by subdivision (a) is a misdemeanor, punishable as follows:*

29 *(A) Upon a first conviction, by a fine of not less than five*
 30 *hundred dollars (\$500) or more than one thousand dollars*
 31 *(\$1,000).*

32 *(B) Upon a second or subsequent conviction, by a fine of not*
 33 *less than one thousand dollars (\$1,000) or more than five thousand*
 34 *dollars (\$5,000).*

35 *(2) All fines imposed pursuant to this subdivision are the*
 36 *personal responsibility of the superintendent of the school district*
 37 *and may not be paid or reimbursed by any other person, source,*
 38 *or entity.*

1 *SEC. 3. Section 44242.5 of the Education Code is amended to*
 2 *read:*

3 44242.5. (a) Each allegation of an act or omission by an
 4 applicant for, or holder of, a credential for which he or she may
 5 be subject to an adverse action shall be presented to the Committee
 6 of Credentials.

7 (b) The committee has jurisdiction to commence an initial
 8 review upon receipt of any of the following:

9 (1) (A) Official records of the Department of Justice, of a law
 10 enforcement agency, of a state or federal court, and of any other
 11 agency of this state or another state.

12 (B) For purposes of subparagraph (A), “agency of this state”
 13 has the same meaning as that of “state agency” as set forth in
 14 Section 11000 of the Government Code.

15 (2) An affidavit or declaration signed by person or persons with
 16 personal knowledge of the acts alleged to constitute misconduct.

17 (3) (A) A statement from an employer notifying the commission
 18 that, as a result of, or while an allegation of misconduct is pending,
 19 a credential holder has been dismissed, nonreelected, suspended
 20 for more than 10 days, or placed pursuant to a final adverse
 21 employment action on unpaid administrative leave for more than
 22 10 days, or has resigned or otherwise left employment.

23 (B) The employer shall provide the notice described in
 24 subparagraph (A) to the commission not later than 30 days after
 25 the dismissal, nonreelection, suspension, placement on unpaid
 26 administrative leave, resignation, or departure from employment
 27 of the employee.

28 (C) *For purposes of subparagraphs (A) and (B), a change in*
 29 *status due solely to unsatisfactory performance pursuant to*
 30 *paragraph (4) of subdivision (a) of Section 44932 or a reduction*
 31 *in force pursuant to Sections 44955 to 44958, inclusive, is not an*
 32 *allegation of misconduct.*

33 (4) *A writing, as defined by Section 250 of the Evidence Code,*
 34 *notifying the commission that a superintendent of a school district*
 35 *employing a person with a credential has failed to make the report*
 36 *required by subdivision (a) of Section 44030.*

37 ~~(4)~~

38 (5) A notice from an employer that a complaint was filed with
 39 the school district alleging sexual misconduct by a credential
 40 holder. Results of an investigation by the committee based on this

1 paragraph shall not be considered for action by the committee
2 unless there is evidence presented to the committee in the form of
3 a written or oral declaration under penalty of perjury that confirms
4 the personal knowledge of the declarant regarding the acts alleged
5 to constitute misconduct.

6 ~~(5)~~

7 (6) A notice from a school district, employer, public agency, or
8 testing administrator of a violation of Section 44420, 44421.1,
9 44421.5, or 44439.

10 ~~(6)~~

11 (7) (A) An affirmative response on an application submitted
12 to the commission as to any conviction, adverse action on, or denial
13 of, a license, or pending investigation into a criminal allegation or
14 pending investigation of a noncriminal allegation of misconduct
15 by a governmental licensing entity.

16 (B) Failure to disclose any matter set forth in subparagraph (A).

17 (c) An initial review commences on the date that the written
18 notice is mailed to the applicant or credential holder that his or her
19 fitness to hold a credential is under review. Upon commencement
20 of a formal review pursuant to Section 44244, the committee shall
21 investigate all alleged misconduct and the circumstances in
22 mitigation and aggravation. The investigation shall include, but
23 not be limited to, all of the following:

24 (1) Investigation of the fitness and competence of the applicant
25 or credential holder to perform the duties authorized by the
26 credential for which he or she has applied or that he or she presently
27 holds.

28 (2) Preparation of a summary of the applicable law, a summary
29 of the facts, contested and uncontested, and a summary of any
30 circumstances in aggravation or mitigation of the allegation.

31 (3) Determination of probable cause for an adverse action on
32 the credential. If the allegation is for unprofessional or immoral
33 conduct, the committee, in any formal review conducted pursuant
34 to Section 44244 to determine probable cause, shall permit the
35 employer of the credential holder to be present while testimony is
36 taken. If the allegation of unprofessional or immoral conduct
37 involves sexual abuse, the employer shall be examined in the
38 meeting for any relevant evidence relating to the sexual abuse.

1 (A) If the committee determines that probable cause for an
2 adverse action does not exist, the committee shall terminate the
3 investigation.

4 (B) If the committee determines that probable cause for an
5 adverse action on the credential exists, upon receipt of a request
6 from an applicant or a credential holder pursuant to Section
7 44244.1, the commission shall initiate an adjudicatory hearing, as
8 prescribed by Chapter 5 (commencing with Section 11500) of
9 Division 3 of Title 2 of the Government Code, by filing an
10 accusation or statement of issues.

11 (d) The committee has jurisdiction to commence a formal review
12 pursuant to Section 44244 upon receipt of any of the following:

13 (1) (A) Official records of a state or federal court that reflect a
14 conviction or plea, including a plea of nolo contendere, to a
15 criminal offense or official records of a state court that adjudge a
16 juvenile to be a dependent of the court pursuant to Section 300 of
17 the Welfare and Institutions Code due to allegations of sexual
18 misconduct or physical abuse by a credential holder or applicant.

19 (B) Nothing in subparagraph (A) shall be construed to relieve
20 the commission from the confidentiality provisions, notice, and
21 due process requirements set forth in Section 827 of the Welfare
22 and Institutions Code.

23 (2) An affidavit or declaration signed by a person or persons
24 with personal knowledge of the acts alleged to constitute
25 misconduct.

26 (3) A statement described in paragraph (3) of subdivision (b).

27 (4) *Official records of a school district or of the commission*
28 *that confirm that the report required by subdivision (a) of Section*
29 *44030 was not made as required by that section.*

30 ~~(4)~~

31 (5) Official records of a governmental licensing entity that
32 reflect an administrative proceeding or investigation, otherwise
33 authorized by law or regulation, which has become final.

34 ~~(5)~~

35 (6) A notice described in paragraph ~~(5)~~ (6) of subdivision (b).

36 ~~(6)~~

37 (7) A response or failure to disclose, as described in paragraph
38 ~~(6)~~ (7) of subdivision (b).

39 (e) (1) Upon completion of its investigation, the committee
40 shall report its actions and recommendations to the commission,

1 including its findings as to probable cause, and if probable cause
2 exists, its recommendations as to the appropriate adverse action.

3 (2) The findings shall be available, upon its request, to the
4 employing or last known employing school district, or, if adverse
5 action is recommended by the committee and the credential holder
6 has not filed a timely appeal of the recommendation of the
7 committee pursuant to Section 44244.1, upon a request made within
8 five years of the date of the committee's recommendations to a
9 school district providing verification that the credential holder has
10 applied for employment in the *school* district. The findings, for all
11 purposes, shall remain confidential and limited to school district
12 personnel in a direct supervisory capacity in relation to the person
13 investigated. Any person who otherwise releases findings received
14 from the committee or the commission, absent a verified release
15 signed by the person who is the subject of the investigation, shall
16 be guilty of a misdemeanor.

17 (3) The findings shall not contain any information that reveals
18 the identity of persons other than the person who is the subject of
19 the investigation.

20 (f) (1) Except as provided in paragraph (2) and, notwithstanding
21 subdivision (b), for purposes of determining whether jurisdiction
22 exists under subdivision (b), the commission, in accordance with
23 Section 44341, may make inquiries and requests for production
24 of information and records only from the Department of Justice,
25 a law enforcement agency, a state or federal court, and a licensing
26 agency of this state or a licensing agency of another state.

27 (2) For purposes of determining whether jurisdiction exists,
28 paragraph (1) does not apply to release of personnel records.

29 *SEC. 4. No reimbursement is required by this act pursuant to*
30 *Section 6 of Article XIII B of the California Constitution because*
31 *the only costs that may be incurred by a local agency or school*
32 *district will be incurred because this act creates a new crime or*
33 *infraction, eliminates a crime or infraction, or changes the penalty*
34 *for a crime or infraction, within the meaning of Section 17556 of*
35 *the Government Code, or changes the definition of a crime within*
36 *the meaning of Section 6 of Article XIII B of the California*
37 *Constitution.*

38 ~~SECTION 1. It is the intent of the Legislature to enact~~
39 ~~legislation that would ensure the safety of California's school~~

- 1 ~~pupils and promote the professionalism of certificated school~~
- 2 ~~employees.~~

O