

1 H.730

2 Introduced by Representatives Wright of Burlington, Hubert of Milton and

3 McAllister of Highgate

4 Referred to Committee on

5 Date:

6 Subject: Education; teacher; employment; disciplinary actions; separation

7 agreements

8 Statement of purpose: This bill proposes to ensure that supervisory unions and
9 school districts have adequate information when considering a teacher's
10 application for employment.

11 An act relating to employment ~~of teachers~~

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 16 V.S.A. chapter 5, subchapter 4 is redesignated to read:~~

14 ~~Subchapter 4. Access to Criminal Records and to Employment History~~

15 ~~* * *~~

16 ~~Sec. 2. 16 V.S.A. § 255 is redesignated to read:~~

17 ~~§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;~~

18 ~~CONTRACTORS; CRIMINAL RECORDS~~

19 ~~* * *~~

1 ~~Sec. 3. 16 V.S.A. § 255a is added to read:~~

2 § 255a. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;

3 EMPLOYMENT HISTORY

4 (a) For any person a superintendent or a headmaster of a recognized or
5 approved independent school is prepared to recommend for any full-time,
6 part-time, or temporary employment, the superintendent or headmaster shall:

7 (1) require the person to:

8 (A) provide a list of all employers, as defined in this section; and

9 (B) sign a written statement, to be developed by the commissioner,
10 that acknowledges the immunity from liability conferred in this section; and

11 (2) request that the three most recent employers provide all written
12 documentation prepared and maintained by the employer concerning the
13 person's job performance and reasons for separation, including:

14 (A) evaluations conducted during the person's employment;

15 (B) notes concerning specific events or an aspect of the person's
16 performance; and

17 (B) separation agreements and other documents concerning the
18 termination of employment.

19 (b) An employer shall respond to a request made under this section by
20 providing accurate and complete information about a current or former
21 employee's job performance and reasons for separation.

1 (c) A prospective employer that, when making hiring or retention
2 decisions, reasonably relies on the information provided to it under this section
3 shall be immune from civil liability in connection with that reliance.

4 (d) An employer shall be immune from civil liability in connection with the
5 disclosure required by this section, unless it has acted in bad faith. The
6 employer shall be considered to have acted in bad faith only if it is shown by a
7 preponderance of the evidence that the employer disclosed information that it
8 knew was false or that was deliberately misleading.

9 (e) As used in this section:

10 (1) "Employer" means all Vermont supervisory unions, school districts,
11 and recognized and independent schools by which a person is or has been
12 employed.

13 (2) "Job performance" includes a current or former employee's
14 attendance, attitude, awards, demotions, duties, effort, evaluations, knowledge,
15 skills, promotions, and disciplinary actions.

16 Sec. 4. EFFECTIVE DATE

17 ~~This act shall take effect on July 1, 2010.~~

Sec. 1. 16 V.S.A. § 1699a is added to read:

(a) If the commissioner for children and families receives a report of suspected child abuse pursuant to subchapter 2 of chapter 49 of Title 33 concerning a licensed educator and determines that the report merits investigation, then the commissioner shall forward to the commissioner of education a copy of the report.

(b) The commissioner of education shall ensure that the report and all related information remain confidential while the commissioner for children and families investigates the complaint.

(c) When the commissioner for children and families issues a determination that the report is substantiated or not substantiated, a copy of the determination shall be simultaneously forwarded to the commissioner of education.

(d) Upon receiving notification that a report is not substantiated, the commissioner of education shall destroy and expunge the report and all related documents and information in the department of education's files.

Sec. 2. 21 V.S.A. § 306 is added to read:

§ 306. PUBLIC POLICY OF THE STATE OF VERMONT; EMPLOYMENT SEPARATION AGREEMENTS

In support of the state's fundamental interest in protecting the safety of minors and vulnerable adults, as defined in 33 V.S.A. § 6902, it is the policy of the state of Vermont that no confidential employment separation agreement shall inhibit the disclosure to prospective employers of factual information about a prospective employee's background that would lead a reasonable person to conclude that the prospective employee has engaged in conduct jeopardizing the safety of a minor or vulnerable adult. Any provision in an agreement entered into on or after the effective date of this section that attempts to do so is void and unenforceable.

Sec. 3. 21 V.S.A. § 307 is added to read:

§ 307. DISCLOSURE OF INFORMATION; WAIVER

(a) Each prospective employee whose duties may place that person in a position of power, authority, or supervision over or permit unsupervised contact with a minor or vulnerable adult shall sign a waiver prior to employment authorizing:

(1) the prospective employer to request information about the prospective employee from current employers and former employers who employed the person within the previous ten years regarding conduct jeopardizing the safety of a minor or vulnerable adult; and

(2) the current and former employers to disclose the requested information as provided in subsection (c) of this section.

(b) The prospective employer of a prospective employee described in subsection (a) of this section shall request in writing that the current and former employers disclose all factual information that would lead a reasonable

person to conclude that the prospective employee engaged in conduct jeopardizing the safety of a minor or vulnerable adult.

(c) Upon receiving an inquiry from a prospective employer pursuant to subsection (b) of this section, a current or former employer promptly shall disclose in writing all factual information in its possession that is responsive to that inquiry; provided that the affected employee shall have had the opportunity to review and respond to the information and the employee's response, if any, shall be included with the disclosure. Current and former employers shall provide a copy of the disclosure, or a statement that there is nothing to disclose, to both the prospective employer and the prospective employee.

Sec. 4. REPORT

Legislative counsel shall review the potential impacts on hiring practices in Vermont if the state were to grant civil immunity for prospective, current, and former employers in connection with the disclosure of information concerning conduct jeopardizing the safety of a minor or vulnerable adult contained in a prospective employee's personnel file from the previous ten years, including the manner in which these matters are addressed in other jurisdictions. On or before January 15, 2011, the legislative counsel shall submit a report regarding the review to the general assembly.

Sec. 5. EFFECTIVE DATES

(a) Sec. 3 of this act shall take effect on April 1, 2011.

(b) This section and Secs. 1, 2, and 4 of this act shall take effect on passage.