

CHAPTER 355

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 08-208

BY SENATOR(S) Windels, Boyd, Gibbs, Groff, Kester, Romer, Shaffer, Spence, Tochtrop, Tupa, Ward, Wiens, Williams, and Penry;
also REPRESENTATIVE(S) Benefield, Carroll T., Jahn, King, Labuda, Madden, Merrifield, Stafford, Summers, Todd, Kerr A., Middleton, and Solano.

AN ACT**CONCERNING BACKGROUND INVESTIGATIONS OF SCHOOL EMPLOYEES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. The introductory portion to 22-2-119 (1) and 22-2-119 (2), Colorado Revised Statutes, are amended, and the said 22-2-119 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

22-2-119. Department of education - inquiries concerning prospective employees - background investigation fee. (1) When an inquiry is made by a board of education of a school district pursuant to the provisions of section 22-32-109.7 (1) or (1.5), ~~or~~ by the governing board of a nonpublic school pursuant to the provisions of section 22-1-121, BY THE GOVERNING BOARD OF A CHARTER SCHOOL PURSUANT TO THE PROVISIONS OF SECTION 22-30.5-110.5, OR BY THE GOVERNING BOARD OF AN INSTITUTE CHARTER SCHOOL PURSUANT TO THE PROVISIONS OF SECTION 22-30.5-511.5, concerning a prospective or current employee, the department shall provide the following information concerning such person:

(b.5) WHETHER THE PERSON'S EDUCATOR LICENSE OR CERTIFICATION HAS EVER BEEN DENIED, SUSPENDED, REVOKED, OR ANNULLED IN THIS STATE OR IN ANOTHER STATE, INCLUDING BUT NOT LIMITED TO ANY INFORMATION GAINED AS A RESULT OF AN INQUIRY BY THE DEPARTMENT TO A NATIONAL TEACHER INFORMATION CLEARINGHOUSE;

(2) Except for authorized inquiries made by boards of education, GOVERNING BOARDS OF NONPUBLIC SCHOOLS, GOVERNING BOARDS OF CHARTER SCHOOLS, OR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

GOVERNING BOARDS OF INSTITUTE CHARTER SCHOOLS, the department shall consider information held by the department to be confidential information and not subject to the provisions of part 2 of article 72 of title 24, C.R.S. Any person who releases such information in violation of this subsection (2) shall be subject to the penalties set forth in section 24-72-206, C.R.S.; except that any person who releases information received by the department concerning information contained in the records and reports of child abuse or neglect maintained by the state department of human services shall be deemed to have violated section 19-1-307 (4), C.R.S.

SECTION 2. 22-2-119, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-2-119. Department of education - inquiries concerning prospective employees - background investigation fee. (5) THE DEPARTMENT MAY COLLECT A BACKGROUND INVESTIGATION FEE IN RESPONDING TO INQUIRIES PURSUANT TO THIS SECTION SUBMITTED REGARDING A PERSON WHO DOES NOT HOLD AN EDUCATOR LICENSE ISSUED PURSUANT TO ARTICLE 60.5 OF THIS TITLE. THE STATE BOARD, BY RULE, SHALL ESTABLISH THE AMOUNT OF THE BACKGROUND INVESTIGATION FEE TO GENERATE AN AMOUNT OF REVENUE THAT APPROXIMATES THE DIRECT AND INDIRECT COSTS INCURRED BY THE DEPARTMENT IN RESPONDING TO INQUIRIES PURSUANT TO THIS SECTION REGARDING UNLICENSED PERSONS. THE DEPARTMENT SHALL TRANSMIT THE FEES COLLECTED PURSUANT TO THIS SECTION TO THE STATE TREASURER WHO SHALL CREDIT THE FEES TO THE EDUCATOR LICENSURE CASH FUND, CREATED PURSUANT TO SECTION 22-60.5-112.

SECTION 3. Part 1 of article 30.5 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

22-30.5-110.5. Background investigation - charter school employees - information provided to department. (1) A CHARTER SCHOOL SHALL CONDUCT A BACKGROUND INVESTIGATION OF AN APPLICANT TO WHOM AN OFFER OF EMPLOYMENT IS EXTENDED TO DETERMINE WHETHER THE APPLICANT IS SUITABLE TO WORK IN AN ENVIRONMENT WITH CHILDREN.

(2) THE BACKGROUND INVESTIGATION OF AN APPLICANT, AT A MINIMUM, SHALL INCLUDE:

(a) AN INQUIRY BY THE CHARTER SCHOOL TO THE DEPARTMENT TO DETERMINE WHETHER THE APPLICANT:

(I) HAS HAD HIS OR HER EDUCATOR LICENSE OR CERTIFICATION DENIED, SUSPENDED, REVOKED, OR ANNULLED IN THIS STATE OR ANOTHER STATE FOR ANY REASON, INCLUDING BUT NOT LIMITED TO A CONVICTION, A PLEA OF NOT GUILTY, A PLEA OF NOLO CONTENDERE, OR A DEFERRED SENTENCE FOR A CRIME INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR UNLAWFUL BEHAVIOR INVOLVING CHILDREN;

(II) HAS BEEN DISMISSED BY, OR HAS RESIGNED FROM, A SCHOOL DISTRICT AS A RESULT OF ANY ALLEGATION, INCLUDING BUT NOT LIMITED TO UNLAWFUL SEXUAL BEHAVIOR, THAT WAS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE ACCORDING TO INFORMATION PROVIDED TO THE DEPARTMENT PURSUANT TO SECTION 22-32-109.7 (3) OR SUBSECTION (7) OF THIS SECTION AND CONFIRMED BY

THE DEPARTMENT PURSUANT TO SECTION 22-2-119 (1) (b);

(b) (I) A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AS DESCRIBED IN SECTION 22-30.5-110.7.

(II) THE CRIMINAL HISTORY RECORD CHECK SHALL BE DESIGNED TO DETERMINE, AT A MINIMUM, WHETHER THE APPLICANT HAS BEEN CONVICTED OF, PLED NOLO CONTENDERE OR GUILTY TO, OR RECEIVED A DEFERRED SENTENCE OR DEFERRED PROSECUTION FOR:

(A) A FELONY; OR

(B) A MISDEMEANOR CRIME INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR UNLAWFUL BEHAVIOR INVOLVING CHILDREN.

(c) INQUIRIES TO THE APPLICANT'S PREVIOUS EMPLOYERS TO OBTAIN INFORMATION OR RECOMMENDATIONS THAT MAY BE RELEVANT TO THE APPLICANT'S FITNESS FOR EMPLOYMENT.

(3) UPON REQUEST, THE DEPARTMENT SHALL PROVIDE THE CHARTER SCHOOL WITH ANY INFORMATION THE DEPARTMENT MAY HAVE CONCERNING A PERSON WHO APPLIES FOR EMPLOYMENT WITH A CHARTER SCHOOL OR A CHARTER SCHOOL EMPLOYEE.

(4) THE CHARTER SCHOOL SHALL PAY TO THE DEPARTMENT THE BACKGROUND INVESTIGATION FEE ESTABLISHED PURSUANT TO SECTION 22-2-119 (5) FOR EACH APPLICANT WHO DOES NOT HOLD AN EDUCATOR LICENSE ISSUED PURSUANT TO ARTICLE 60.5 OF THIS TITLE AND FOR WHOM THE CHARTER SCHOOL REQUESTS A BACKGROUND INVESTIGATION. THE CHARTER SCHOOL MAY ASSESS THE AMOUNT OF THE FEE TO THE APPLICANT.

(5) (a) AN APPLICANT'S PREVIOUS EMPLOYER THAT PROVIDES INFORMATION TO A CHARTER SCHOOL OR MAKES A RECOMMENDATION CONCERNING THE APPLICANT, WHETHER AT THE REQUEST OF THE CHARTER SCHOOL OR THE APPLICANT, SHALL BE IMMUNE FROM CIVIL LIABILITY UNLESS:

(I) THE INFORMATION IS FALSE AND THE PREVIOUS EMPLOYER KNOWS THE INFORMATION IS FALSE OR ACTS WITH RECKLESS DISREGARD CONCERNING THE VERACITY OF THE INFORMATION; AND

(II) THE CHARTER SCHOOL ACTS UPON THE INFORMATION TO THE DETRIMENT OF:

(A) THE APPLICANT BECAUSE THE CHARTER SCHOOL REFUSES TO EMPLOY THE APPLICANT BASED, IN WHOLE OR IN PART, ON NEGATIVE INFORMATION CONCERNING THE APPLICANT LATER DETERMINED TO BE FALSE; OR

(B) THE CHARTER SCHOOL BECAUSE THE CHARTER SCHOOL EMPLOYS THE APPLICANT BASED, IN WHOLE OR IN PART, ON POSITIVE INFORMATION CONCERNING THE APPLICANT LATER DETERMINED TO BE FALSE.

(b) A CHARTER SCHOOL THAT RELIES ON INFORMATION PROVIDED BY OR A

RECOMMENDATION MADE BY A PREVIOUS EMPLOYER IN MAKING AN EMPLOYMENT DECISION SHALL BE IMMUNE FROM CIVIL LIABILITY UNLESS THE INFORMATION IS FALSE AND THE CHARTER SCHOOL KNOWS THE INFORMATION IS FALSE OR ACTS WITH RECKLESS DISREGARD CONCERNING THE VERACITY OF THE INFORMATION.

(6) (a) EACH CHARTER SCHOOL SHALL SUBMIT TO THE DEPARTMENT THE NAME, DATE OF BIRTH, AND SOCIAL SECURITY NUMBER OF EACH PERSON EMPLOYED BY THE CHARTER SCHOOL. THE DEPARTMENT SHALL ADD THE INFORMATION SUBMITTED PURSUANT TO THIS SUBSECTION (6) FOR CHARTER SCHOOL EMPLOYEES WHO DO NOT HOLD AN EDUCATOR LICENSE TO THE DATABASE FOR NONLICENSED SCHOOL EMPLOYEES MAINTAINED BY THE DEPARTMENT PURSUANT TO SECTION 22-32-109.8 (11). THE DEPARTMENT SHALL ADD THE INFORMATION SUBMITTED PURSUANT TO THIS SUBSECTION (6) FOR LICENSED EMPLOYEES TO THE DATABASE MAINTAINED BY THE DEPARTMENT FOR LICENSED EDUCATORS.

(b) AT THE BEGINNING OF EACH SEMESTER, EACH CHARTER SCHOOL SHALL NOTIFY THE DEPARTMENT IF A NONLICENSED EMPLOYEE IS NO LONGER EMPLOYED BY THE CHARTER SCHOOL. THE DEPARTMENT SHALL PURGE THE EMPLOYEE'S INFORMATION FROM THE DATABASE WITHIN TWELVE MONTHS AFTER RECEIVING THE NOTICE.

(7) (a) IF AN EMPLOYEE OF A CHARTER SCHOOL IS DISMISSED OR RESIGNS AS A RESULT OF AN ALLEGATION OF UNLAWFUL BEHAVIOR INVOLVING A CHILD, INCLUDING UNLAWFUL SEXUAL BEHAVIOR, THAT IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, THE GOVERNING BOARD OF THE CHARTER SCHOOL SHALL NOTIFY THE DEPARTMENT AND PROVIDE ANY INFORMATION REQUESTED BY THE DEPARTMENT CONCERNING THE CIRCUMSTANCES OF THE DISMISSAL OR RESIGNATION. THE CHARTER SCHOOL SHALL ALSO NOTIFY THE EMPLOYEE THAT INFORMATION CONCERNING THE EMPLOYEE'S DISMISSAL OR RESIGNATION IS BEING FORWARDED TO THE DEPARTMENT UNLESS THE NOTICE WOULD CONFLICT WITH THE CONFIDENTIALITY REQUIREMENTS OF THE "CHILD PROTECTION ACT OF 1987", PART 3 OF ARTICLE 3 OF TITLE 19, C.R.S.

(b) IF A CHARTER SCHOOL LEARNS FROM A SOURCE OTHER THAN THE DEPARTMENT THAT A CURRENT OR PAST EMPLOYEE OF THE CHARTER SCHOOL HAS BEEN CONVICTED OF, PLED GUILTY TO, PLED NOLO CONTENDERE TO, OR HAS RECEIVED A DEFERRED SENTENCE OR DEFERRED PROSECUTION FOR A FELONY OR A MISDEMEANOR CRIME INVOLVING UNLAWFUL SEXUAL BEHAVIOR OR UNLAWFUL BEHAVIOR INVOLVING CHILDREN, THE CHARTER SCHOOL SHALL NOTIFY THE DEPARTMENT.

(8) ON OR BEFORE AUGUST 30 EACH YEAR, THE DEPARTMENT SHALL SUBMIT A LIST OF ALL PERSONS EMPLOYED BY EACH CHARTER SCHOOL IN THE STATE FOR THE PRECEDING SCHOOL YEAR TO THE COLORADO BUREAU OF INVESTIGATION. THE LIST SHALL INCLUDE EACH EMPLOYEE'S NAME AND DATE OF BIRTH.

(9) ANY INFORMATION RECEIVED BY A CHARTER SCHOOL PURSUANT TO THIS SECTION OR SECTION 22-30.5-110.7 SHALL BE CONFIDENTIAL INFORMATION AND NOT SUBJECT TO THE PROVISIONS OF PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S. A PERSON WHO RELEASES INFORMATION OBTAINED PURSUANT TO THE PROVISIONS OF THIS SECTION OR SECTION 22-30.5-110.7 OR WHO MAKES AN UNAUTHORIZED REQUEST FOR INFORMATION FROM THE CHARTER SCHOOL SHALL BE SUBJECT TO THE

PENALTIES SET FORTH IN SECTION 24-72-206, C.R.S.; EXCEPT THAT A PERSON WHO RELEASES INFORMATION RECEIVED FROM THE CHARTER SCHOOL CONCERNING INFORMATION CONTAINED IN THE RECORDS AND REPORTS OF CHILD ABUSE OR NEGLECT MAINTAINED BY THE DEPARTMENT OF HUMAN SERVICES SHALL BE DEEMED TO HAVE VIOLATED SECTION 19-1-307 (4), C.R.S.

22-30.5-110.7. Fingerprint-based criminal history record checks - charter school employees - procedures. (1) A PERSON APPLYING FOR EMPLOYMENT WITH A CHARTER SCHOOL TO WHOM AN OFFER OF EMPLOYMENT IS EXTENDED SHALL SUBMIT TO THE CHARTER SCHOOL A COMPLETE SET OF HIS OR HER FINGERPRINTS TAKEN BY A QUALIFIED LAW ENFORCEMENT AGENCY OR AN AUTHORIZED EMPLOYEE OF THE CHARTER SCHOOL AND NOTARIZED.

(2) ON A FORM PROVIDED BY THE CHARTER SCHOOL, AN APPLICANT TO WHOM AN OFFER OF EMPLOYMENT IS EXTENDED SHALL CERTIFY, UNDER PENALTY OF PERJURY, EITHER:

(a) THAT HE OR SHE HAS NEVER BEEN CONVICTED OF COMMITTING ANY FELONY OR MISDEMEANOR, BUT NOT INCLUDING ANY MISDEMEANOR TRAFFIC OFFENSE OR TRAFFIC INFRACTION; OR

(b) THAT HE OR SHE HAS BEEN CONVICTED OF COMMITTING A FELONY OR MISDEMEANOR, BUT NOT INCLUDING ANY MISDEMEANOR TRAFFIC OFFENSE OR TRAFFIC INFRACTION. THE CERTIFICATION SHALL SPECIFY THE FELONY OR MISDEMEANOR FOR WHICH THE APPLICANT WAS CONVICTED, THE DATE OF THE CONVICTION, AND THE COURT ENTERING THE JUDGMENT OF CONVICTION.

(3) IN ADDITION TO ANY OTHER REQUIREMENTS ESTABLISHED BY LAW, THE SUBMITTAL OF FINGERPRINTS PURSUANT TO SUBSECTION (1) OF THIS SECTION AND OF THE FORM PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE A PREREQUISITE TO THE EMPLOYMENT OF ANY PERSON IN A CHARTER SCHOOL. A CHARTER SCHOOL SHALL NOT EMPLOY A PERSON WHO HAS NOT COMPLIED WITH THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION.

(4) A CHARTER SCHOOL TO WHICH FINGERPRINTS ARE SUBMITTED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL FORWARD THE FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING THE RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION.

(5) A CHARTER SCHOOL MAY EMPLOY A PERSON IN THE CHARTER SCHOOL PRIOR TO RECEIVING THE RESULTS OF THE PERSON'S FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK; EXCEPT THAT THE CHARTER SCHOOL MAY TERMINATE THE EMPLOYMENT OF THE PERSON IF THE RESULTS ARE INCONSISTENT WITH THE INFORMATION PROVIDED BY THE PERSON IN THE FORM SUBMITTED PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE CHARTER SCHOOL SHALL NOTIFY THE PROPER DISTRICT ATTORNEY OF SUCH INCONSISTENT RESULTS FOR PURPOSES OF ACTION OR POSSIBLE PROSECUTION.

(6) WHEN A CHARTER SCHOOL FINDS GOOD CAUSE TO BELIEVE THAT A PERSON

EMPLOYED BY THE CHARTER SCHOOL HAS BEEN CONVICTED OF A FELONY OR MISDEMEANOR, OTHER THAN A MISDEMEANOR TRAFFIC OFFENSE OR TRAFFIC INFRACTION, SUBSEQUENT TO SUCH EMPLOYMENT, THE CHARTER SCHOOL SHALL REQUIRE THE PERSON TO SUBMIT TO THE CHARTER SCHOOL A COMPLETE SET OF HIS OR HER FINGERPRINTS TAKEN BY A QUALIFIED LAW ENFORCEMENT AGENCY OR AN AUTHORIZED EMPLOYEE OF THE CHARTER SCHOOL. THE EMPLOYEE SHALL SUBMIT HIS OR HER FINGERPRINTS WITHIN TWENTY DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION FROM THE CHARTER SCHOOL. THE CHARTER SCHOOL SHALL FORWARD THE EMPLOYEE'S FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING THE RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION.

(7) FOR PURPOSES OF THIS SECTION, A PERSON IS DEEMED TO HAVE BEEN CONVICTED OF COMMITTING A FELONY OR MISDEMEANOR IF THE PERSON HAS BEEN CONVICTED UNDER THE LAWS OF ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF AN UNLAWFUL ACT THAT, IF COMMITTED WITHIN THIS STATE, WOULD BE A FELONY OR MISDEMEANOR.

(8) FOR PURPOSES OF THIS SECTION:

(a) "CONVICTED" MEANS A CONVICTION BY A JURY OR BY A COURT AND SHALL ALSO INCLUDE THE FORFEITURE OF ANY BAIL, BOND, OR OTHER SECURITY DEPOSITED TO SECURE APPEARANCE BY A PERSON CHARGED WITH A FELONY OR MISDEMEANOR, THE PAYMENT OF A FINE, A PLEA OF GUILTY, A PLEA OF NOLO CONTENDERE, AND THE IMPOSITION OF A DEFERRED OR SUSPENDED SENTENCE BY THE COURT.

(b) "POSITION OF EMPLOYMENT" MEANS ANY JOB OR POSITION IN WHICH A PERSON MAY BE ENGAGED IN THE SERVICE OF A CHARTER SCHOOL FOR SALARY OR HOURLY WAGES, WHETHER FULL TIME OR PART TIME AND WHETHER TEMPORARY OR PERMANENT.

(9) THE EMPLOYING CHARTER SCHOOL SHALL BE RESPONSIBLE FOR COSTS ARISING FROM A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK PERFORMED BY THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION PURSUANT TO THE PROVISIONS OF THIS SECTION. THE CHARTER SCHOOL MAY COLLECT THE COSTS FROM THE EMPLOYEE OR THE PROSPECTIVE EMPLOYEE.

SECTION 4. Part 5 of article 30.5 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-30.5-511.5. Background investigation - institute charter school employees information provided to department. (1) AN INSTITUTE CHARTER SCHOOL SHALL CONDUCT A BACKGROUND INVESTIGATION, INCLUDING A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, AS DESCRIBED IN SECTIONS 22-30.5-110.5 AND 22-30.5-110.7, OF AN APPLICANT TO WHOM AN OFFER OF EMPLOYMENT IS EXTENDED BY THE INSTITUTE CHARTER SCHOOL TO DETERMINE WHETHER THE APPLICANT IS SUITABLE TO WORK IN AN ENVIRONMENT WITH CHILDREN. AN APPLICANT WHO APPLIES FOR A POSITION OF EMPLOYMENT WITH AN INSTITUTE CHARTER SCHOOL

SHALL SUBMIT TO A BACKGROUND INVESTIGATION, INCLUDING A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, AS DESCRIBED IN SECTIONS 22-30.5-110.5 AND 22-30.5-110.7.

(2) WHEN AN INSTITUTE CHARTER SCHOOL FINDS GOOD CAUSE TO BELIEVE THAT A PERSON EMPLOYED BY THE INSTITUTE CHARTER SCHOOL HAS BEEN CONVICTED OF A FELONY OR MISDEMEANOR, OTHER THAN A MISDEMEANOR TRAFFIC OFFENSE OR TRAFFIC INFRACTION SUBSEQUENT TO SUCH EMPLOYMENT, THE INSTITUTE CHARTER SCHOOL SHALL REQUIRE THE PERSON TO SUBMIT TO THE INSTITUTE CHARTER SCHOOL A COMPLETE SET OF HIS OR HER FINGERPRINTS FOR A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AS DESCRIBED IN 22-30.5-110.7 (6).

(3) EACH INSTITUTE CHARTER SCHOOL SHALL COMPLY WITH THE REPORTING REQUIREMENTS SPECIFIED IN SECTION 22-30.5-110.5.

SECTION 5. 22-2-111 (3) (a), Colorado Revised Statutes, is amended to read:

22-2-111. Commissioner of education - office - records - confidential nature.

(3) (a) Except when requested by the governor or a committee of the general assembly or pursuant to compliance with ~~section 22-32-109.8 (11)~~ SECTION 22-32-109.8 OR 22-2-119, all papers filed in the department of education ~~which~~ THAT contain personal information about applicants for employment, employees, or holders of educator licenses or authorizations or about pupils' test scores are classified as confidential in nature; however, each educator has the right to inspect and to have copies made at the educator's expense of all information pertaining to the educator on file in the department of education. The educator may challenge any such record by formal letter or other evidence, which shall be added to the state records. The state board may authorize any material to be added to or removed from an educator's official records in its custody. It is unlawful for any officer, employee, or other person to divulge, or to make known in any way, any such personal information without the written consent of said applicant, employee, educator, or pupil; but the information may be divulged or made known in the normal and proper course of administration of programs relating thereto without such written consent. Nothing in this subsection (3) shall be construed in a manner to prohibit the publication of statistics relative to the aforementioned information when so classified as to prevent the identification of educators or pupils involved in said statistics.

SECTION 6. 22-60.5-103 (4) and (6) (b), Colorado Revised Statutes, are amended, and the said 22-60.5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION, to read:

22-60.5-103. Applicants - licenses - authorizations - submittal of form and fingerprints - failure to comply constitutes grounds for denial. (4) To facilitate a criminal history record check conducted pursuant to subsection (1) of this section, the department of education may conduct a search on the ICON system at the state judicial department, as defined in section 24-33.5-102 (3), C.R.S., and may use any other available source of criminal history information that the department of education determines is appropriate, INCLUDING OBTAINING RECORDS FROM ANY LAW ENFORCEMENT AGENCY AND JUVENILE DELINQUENCY RECORDS PURSUANT TO SECTION 19-1-304, C.R.S. The department of education may use the specified

sources to determine any crime or crimes for which the person was arrested or charged and the disposition of any criminal charges.

(5.5) FOR THE PURPOSES OF THIS SECTION, THE DEPARTMENT OF EDUCATION IS A CRIMINAL JUSTICE AGENCY AS THAT TERM IS DEFINED IN SECTION 24-72-302 (3), C.R.S. LAW ENFORCEMENT AGENCIES SHALL COOPERATE WITH THE DEPARTMENT OF EDUCATION WHEN THE DEPARTMENT CONDUCTS A CRIMINAL HISTORY RECORD CHECK PURSUANT TO THIS SECTION.

(6)(b) The department of education shall forward fingerprints submitted pursuant to this subsection (6) to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check through the Colorado bureau of investigation and the federal bureau of investigation, to determine whether the educator has a criminal history. In addition, the department of education may use the records of the ICON system at the state judicial department, as defined in section 24-33.5-102 (3), C.R.S., or any other source available, INCLUDING OBTAINING RECORDS FROM ANY LAW ENFORCEMENT AGENCY AND JUVENILE DELINQUENT RECORDS PURSUANT TO SECTION 19-1-304, C.R.S., to ascertain whether the educator has been convicted of an offense described in section 22-60.5-107 (2) or (2.5).

SECTION 7. 22-60.5-107 (2) (b) (VII), Colorado Revised Statutes, is amended, and the said 22-60.5-107 (2) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

22-60.5-107. Grounds for denying, annulling, suspending, or revoking license, certificate, endorsement, or authorization. (2) Any license, certificate, endorsement, or authorization may be denied, annulled, suspended, or revoked in the manner prescribed in section 22-60.5-108, notwithstanding the provisions of subsection (1) of this section:

(b) When the applicant or holder is convicted of, pleads nolo contendere to, or receives a deferred sentence for a violation of any one of the following offenses:

(VII) Contributing to the delinquency of a minor as described in section 18-6-701, C.R.S.; or

(VII.5) A MISDEMEANOR COMMITTED UNDER THE LAWS OF THE UNITED STATES, ANOTHER STATE, A MUNICIPALITY OF ANOTHER STATE, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES, THE ELEMENTS OF WHICH ARE SUBSTANTIALLY SIMILAR TO SEXUAL EXPLOITATION OF CHILDREN AS DESCRIBED IN SECTION 18-6-403 (3) (b.5), C.R.S.; OR

SECTION 8. 22-60.5-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-60.5-107. Grounds for denying, annulling, suspending, or revoking license, certificate, endorsement, or authorization. (9) IN FURTHERANCE OF ITS DUTIES UNDER THIS SECTION AND SECTION 22-60.5-103, THE DEPARTMENT OF EDUCATION MAY CONDUCT A SEARCH ON THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT, AS DEFINED IN SECTION 24-33.5-102 (3), C.R.S., AND MAY USE ANY

OTHER AVAILABLE SOURCE OF CRIMINAL HISTORY INFORMATION THE DEPARTMENT OF EDUCATION DEEMS APPROPRIATE, INCLUDING OBTAINING RECORDS FROM ANY LAW ENFORCEMENT AGENCY AND JUVENILE DELINQUENCY RECORDS PURSUANT TO SECTION 19-1-304, C.R.S.

SECTION 9. 22-60.5-108, Colorado Revised Statutes, is amended to read:

22-60.5-108. Procedure - denial, suspension, annulment, or revocation - license, certificate, endorsement, or authorization. (1) (a) Procedures for the denial, suspension, revocation, or annulment of any license, certificate, endorsement, or authorization shall be in accordance with the provisions of sections 24-4-102 to 24-4-107, C.R.S.; except that, where judicial review is pending or the time in which to seek judicial review has not elapsed, the department of education may take emergency action relating to the annulment, suspension, or revocation of any license, certificate, endorsement, or authorization, and the expiration date of any license, certificate, endorsement, or authorization shall not be extended, even though judicial review is pending or the time for seeking such review has not elapsed.

(b) IF THE DEPARTMENT OF EDUCATION SEEKS TO CONTACT A CRIME VICTIM FOR THE PURPOSES OF A LICENSURE HEARING, THE DEPARTMENT SHALL CONTACT THE VICTIM'S ADVOCATE IN THE LAW ENFORCEMENT AGENCY OR DISTRICT ATTORNEY'S OFFICE OF THE JURISDICTION IN WHICH THE OFFENSE WAS PROSECUTED OR THE VICTIM'S ADVOCATE IN THE ATTORNEY GENERAL'S OFFICE, IF APPLICABLE. THE VICTIM'S ADVOCATE SHALL MAKE REASONABLE EFFORTS TO CONTACT THE VICTIM, ADVISE THE VICTIM OF THE HEARING, AND INVITE THE VICTIM TO PARTICIPATE IN THE LICENSURE HEARING. A VICTIM SHALL NOT BE REQUIRED TO PARTICIPATE IN A LICENSURE HEARING.

(2) IF THE DEPARTMENT OF EDUCATION DENIES, ANNULS, SUSPENDS, OR REVOKES A LICENSE, AUTHORIZATION, OR ENDORSEMENT PURSUANT TO THIS SECTION, THE DEPARTMENT, AS SOON AS PRACTICABLE, SHALL NOTIFY THE BOARD OF EDUCATION OF THE EMPLOYING SCHOOL DISTRICT OR THE GOVERNING BOARD OF THE EMPLOYING CHARTER SCHOOL OR INSTITUTE CHARTER SCHOOL, IF ANY, OF THE ACTION TAKEN.

SECTION 10. 19-1-304 (1) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

19-1-304. Juvenile delinquency records. (1) (a) **Court records - open.** Except as provided in paragraph (b.5) of this subsection (1), court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance shall be open to inspection to the following persons without court order:

(XVII) THE DEPARTMENT OF EDUCATION WHEN ACTING PURSUANT SECTION 22-2-119, C.R.S., OR PURSUANT TO THE "COLORADO EDUCATOR LICENSING ACT OF 1991", ARTICLE 60.5 OF TITLE 22, C.R.S.

SECTION 11. The introductory portion to 19-1-304 (1) (c) and 19-1-304 (1) (c) (IX) and (1) (c) (X), Colorado Revised Statutes, are amended, and the said 19-1-304 (1) (c) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH,

to read:

19-1-304. Juvenile delinquency records. (1) (c) **Probation records - limited access.** Except as otherwise authorized by section 19-1-303, a juvenile probation officer's records, whether or not part of the court file, shall not be open to inspection except as provided in subparagraphs ~~(H) to (X)~~ (I) TO (XI) of this paragraph (c):

(IX) To the juvenile's guardian ad litem; ~~or~~

(X) To the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee; OR

(XI) TO THE DEPARTMENT OF EDUCATION WHEN ACTING PURSUANT TO SECTION 22-2-119, C.R.S., OR PURSUANT TO THE "COLORADO EDUCATOR LICENSING ACT OF 1991", ARTICLE 60.5 OF TITLE 22, C.R.S.

SECTION 12. 19-1-304 (2) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

19-1-304. Juvenile delinquency records. (2) (a) **Law enforcement records in general - closed.** Except as otherwise provided by paragraph (b.5) of subsection (1) of this section and otherwise authorized by section 19-1-303, the records of law enforcement officers concerning juveniles, including identifying information, shall be identified as juvenile records and shall not be inspected by or disclosed to the public, except:

(XVII) TO THE DEPARTMENT OF EDUCATION WHEN ACTING PURSUANT TO SECTION 22-2-119, C.R.S., OR PURSUANT TO THE "COLORADO EDUCATOR LICENSING ACT OF 1991", ARTICLE 60.5 OF TITLE 22, C.R.S.

SECTION 13. 24-72-302 (3), Colorado Revised Statutes, is amended to read:

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(3) "Criminal justice agency" means any court with criminal jurisdiction and any agency of the state, INCLUDING BUT NOT LIMITED TO THE DEPARTMENT OF EDUCATION, or ANY AGENCY of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority ~~which~~ THAT performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

SECTION 14. 24-72-308 (1) (f), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-72-308. Sealing of records. (1) (f) (III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (f), THE DEPARTMENT OF EDUCATION MAY REQUIRE A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE DEPARTMENT SHALL HAVE THE RIGHT TO INQUIRE INTO THE FACTS OF THE CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE EDUCATOR OR APPLICANT SHALL HAVE NO RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE PENDING PETITION TO SEAL.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 2008