

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 739

AN ACT

To repeal sections 162.068, 162.203, 168.133, and 210.110, RSMo, and to enact in lieu thereof five new sections relating to elementary and secondary education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 162.068, 162.203, 168.133, and 210.110, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 162.068, 162.203, 168.133, 170.045, and 210.110, to read as follows:

162.068. 1. (1) By July 1, 2012, every school district shall adopt a written policy on information that the district provides about former employees, both certificated and noncertificated, to other public schools. By July 1, 2014, every charter school shall adopt a written policy on information that the charter school provides about former employees, both certificated and noncertificated, to other public schools. The policy shall include who is permitted to respond to requests for information from potential employers and the information the district or charter school would provide when responding to such a request. The policy shall require that notice of this provision be provided to all current employees and to all

potential employers who contact the school district or charter school regarding the possible employment of an employee.

(2) The policy described under this subsection shall require the district or charter school to disclose, to any public school that contacts such district or charter school about a former employee, information regarding any violation of the published regulations of the board of education of the district or the governing body of the charter school by the former employee if such violation related to sexual misconduct with a student and was determined to be an actual violation by the board of the district or the governing body of the charter school after a contested case due process hearing conducted pursuant to board policy.

2. Any school district or charter school that employs a person about whom the children's division conducts an investigation involving allegations of sexual misconduct with a student and reaches a finding of substantiated shall immediately suspend the employment of such person, notwithstanding any other provision of law, but the district or charter school may return the person to his or her employment if the child abuse and neglect review board's finding that the allegation is substantiated is reversed by a court on appeal and becomes final. Nothing shall preclude a school district or charter school from otherwise lawfully terminating the employment of any employee about whom there has been a finding of unsubstantiated resulting from an investigation by the children's division involving allegations of sexual misconduct with a student.

3. Any employee who is permitted to respond to requests for

information regarding former employees under a policy adopted by his or her school district or charter school under [subsection 2 of] this section and who communicates only the information which such policy directs, and who acts in good faith and without malice shall be immune against any civil action for damages brought by the former employee arising out of the communication of such information. If any such action is brought, the employee may, at his or her option, request the attorney general to defend him or her in such suit and the attorney general shall provide such defense, except that if the attorney general represents the school district or the department of elementary and secondary education in a pending licensing matter under section 168.071 the attorney general shall not represent the school district employee.

4. Notwithstanding the provisions of subsection 2 of this section, if a district or charter school that has employed any employee whose job involves contact with children receives allegations of sexual misconduct, as provided in section 566.083, concerning the employee and, as a result of such allegations or as a result of such allegations being substantiated by the child abuse and neglect review board, dismisses the employee or allows the employee to resign in lieu of being fired and fails to disclose the allegations of sexual misconduct when furnishing a reference for the former employee or responding to a potential employer's request for information regarding such employee, the district or charter school shall be directly liable for damages to any student of a subsequent employing district or charter school who is found by a court of competent jurisdiction to be a

victim of the former employee's sexual misconduct, and the district or charter school shall bear third-party liability to the employing district or charter school for any legal liability, legal fees, costs, and expenses incurred by the employing district or charter school caused by the failure to disclose such information to the employing district or charter school.

5. If a school district or charter school has previously employed a person about whom the children's division has conducted an investigation involving allegations of sexual misconduct with a student and has reached a finding of substantiated and another public school contacts the district or charter school for a reference for the former employee, the district or charter school shall disclose the results of the children's division's investigation to the public school.

6. Any school district or charter school employee, acting in good faith, who reports alleged sexual misconduct on the part of a teacher or other school employee shall not be discharged or otherwise discriminated against in any fashion because of such reporting.

7. Any school district or charter school shall, before offering employment to any teacher who was employed by a Missouri school district or charter school, contact the department of elementary and secondary education to determine the school district or charter school that previously employed such employee. School districts and charter school contacting the department under this subsection shall request, from the most recent, information as outlined in this section regarding the former employee.

162.203. 1. Board members initially elected or appointed under section 162.291, 162.459, 162.471, or 162.581 after August 28, 1993, in addition to the qualifications prescribed in those sections, shall successfully complete orientation and training requirements within one year of the date of the election or appointment. The orientation and training shall consist of at least ~~[sixteen]~~ eighteen hours and thirty minutes with the cost of such training to be paid by the district.

2. The orientation and training required under subsection 1 of this section shall include two hours and thirty minutes of training that provides up-to-date and reliable information on identifying signs of sexual abuse in children and danger signals of potentially abusive relationships between children and adults. The training shall emphasize how to establish an atmosphere of trust so that students feel their school has concerned adults with whom students can feel comfortable discussing matters related to abuse. If, before August 28, 2019, a board member completed the orientation and training requirements of this section as they existed before August 28, 2019, the board member shall not be required to complete any additional training other than the refresher training described in subsection 3 of this section.

3. Any school board member serving a term as of August 28, 2019, or elected or appointed after August 28, 2019, shall complete at least one hour of refresher training each year of any term in office; except that, the refresher training shall not be required in the year in which the member completes the initial orientation and training under subsection 1 of this section. The

refresher training shall address concepts covered in the initial training including, but not limited to, the prevention of sexual abuse of children.

4. All programs providing the orientation and training required under the provisions of this section shall be offered by a statewide association organized for the benefit of members of boards of education or be approved by the state board of education.

168.133. 1. As used in this section, "screened volunteer" shall mean any person who assists a school by providing uncompensated service and who may periodically be left alone with students. The school district shall ensure that a criminal background check is conducted for all screened volunteers, who shall complete the criminal background check prior to being left alone with a student. Screened volunteers include, but are not limited to, persons who regularly assist in the office or library, mentor or tutor students, coach or supervise a school-sponsored activity before or after school, or chaperone students on an overnight trip. Screened volunteers may only access student education records when necessary to assist the district and while supervised by staff members. Volunteers that are not screened shall not be left alone with a student or have access to student records.

2. The school district shall ensure that a criminal background check is conducted on any person employed after January 1, 2005, authorized to have contact with pupils and prior to the individual having contact with any pupil. Such persons include, but are not limited to, administrators, teachers, aides,

paraprofessionals, assistants, secretaries, custodians, cooks, screened volunteers, and nurses. The school district shall also ensure that a criminal background check is conducted for school bus drivers. The district may allow such drivers to operate buses pending the result of the criminal background check. For bus drivers, the school district shall be responsible for conducting the criminal background check on drivers employed by the school district. For drivers employed by a pupil transportation company under contract with the school district, the criminal background check shall be conducted pursuant to section 43.540 and conform to the requirements established in the National Child Protection Act of 1993, as amended by the Volunteers for Children Act. Personnel who have successfully undergone a criminal background check and a check of the family care safety registry as part of the professional license application process under section 168.021 and who have received clearance on the checks within one prior year of employment shall be considered to have completed the background check requirement. A criminal background check under this section shall include a search of any information publicly available in an electronic format through a public index or single case display.

[2.] 3. In order to facilitate the criminal history background check, the applicant shall submit a set of fingerprints collected pursuant to standards determined by the Missouri highway patrol. The fingerprints shall be used by the highway patrol to search the criminal history repository and shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.

[3.] 4. The applicant shall pay the fee for the state criminal history record information pursuant to section 43.530 and sections 210.900 to 210.936 and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record when he or she applies for a position authorized to have contact with pupils pursuant to this section. The department shall distribute the fees collected for the state and federal criminal histories to the Missouri highway patrol.

[4.] 5. The department of elementary and secondary education shall facilitate an annual check of employed persons holding current active certificates under section 168.021 against criminal history records in the central repository under section 43.530, the sexual offender registry under sections 589.400 to [589.475] 589.426, and child abuse central registry under sections 210.109 to 210.183. The department of elementary and secondary education shall facilitate procedures for school districts to submit personnel information annually for persons employed by the school districts who do not hold a current valid certificate who are required by subsection 1 of this section to undergo a criminal background check, sexual offender registry check, and child abuse central registry check. The Missouri state highway patrol shall provide ongoing electronic updates to criminal history background checks of those persons previously submitted, both those who have an active certificate and those who do not have an active certificate, by the department of elementary and secondary education. This shall fulfill the annual check against the criminal history records in the central repository under section 43.530.

[5.] 6. The school district may adopt a policy to provide for reimbursement of expenses incurred by an employee for state and federal criminal history information pursuant to section 43.530.

[6.] 7. If, as a result of the criminal history background check mandated by this section, it is determined that the holder of a certificate issued pursuant to section 168.021 has pled guilty or nolo contendere to, or been found guilty of a crime or offense listed in section 168.071, or a similar crime or offense committed in another state, the United States, or any other country, regardless of imposition of sentence, such information shall be reported to the department of elementary and secondary education.

[7.] 8. Any school official making a report to the department of elementary and secondary education in conformity with this section shall not be subject to civil liability for such action.

[8.] 9. For any teacher who is employed by a school district on a substitute or part-time basis within one year of such teacher's retirement from a Missouri school, the state of Missouri shall not require such teacher to be subject to any additional background checks prior to having contact with pupils. Nothing in this subsection shall be construed as prohibiting or otherwise restricting a school district from requiring additional background checks for such teachers employed by the school district.

[9.] 10. A criminal background check and fingerprint collection conducted under subsections 1 [and 2] to 3 of this

section shall be valid for at least a period of one year and transferrable from one school district to another district. A school district may, in its discretion, conduct a new criminal background check and fingerprint collection under subsections 1 [and 2] to 3 for a newly hired employee at the district's expense. A teacher's change in type of certification shall have no effect on the transferability or validity of such records.

[10.] 11. Nothing in this section shall be construed to alter the standards for suspension, denial, or revocation of a certificate issued pursuant to this chapter.

[11.] 12. The state board of education may promulgate rules for criminal history background checks made pursuant to this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2005, shall be invalid and void.

170.045. 1. In school year 2020-21 and in each school year thereafter, each school district shall provide trauma-informed, developmentally-appropriate sexual abuse training to students in all grades not lower than sixth grade. School districts must include in the training the following:

(1) Instruction providing students with the knowledge and tools to recognize sexual abuse;

(2) Instruction providing students with the knowledge and tools to report an incident of sexual abuse;

(3) Actions that a student who is a victim of sexual abuse could take to obtain assistance and intervention; and

(4) Available resources for students affected by sexual abuse.

2. The department of elementary and secondary education shall provide guidance and training materials school districts may use to comply with the provisions of this section. The training materials shall be developed in consultation with the task force on the prevention of sexual abuse of children as established in section 210.1200.

3. The school district shall notify parents or guardians in advance of the training required under this section, of the content of the instruction, and the parent or guardian's right to have the student excused from the instruction. Upon written request of the parent or guardian of a student, the student shall be excused from instruction.

4. The department of elementary and secondary education may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general

assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid and void.

210.110. As used in sections 210.109 to 210.165, and sections 210.180 to 210.183, the following terms mean:

(1) "Abuse", any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody, and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse. Victims of abuse shall also include any victims of sex trafficking or severe forms of trafficking as those terms are defined in 22 U.S.C. 78 Section 7102(9)-(10);

(2) "Assessment and treatment services for children", an approach to be developed by the children's division which will recognize and treat the specific needs of at-risk and abused or neglected children. The developmental and medical assessment may be a broad physical, developmental, and mental health screening to be completed within thirty days of a child's entry into custody and in accordance with the periodicity schedule set forth by the American Academy of Pediatrics thereafter as long as the child remains in care. Screenings may be offered at a centralized location and include, at a minimum, the following:

- (a) Complete physical to be performed by a pediatrician familiar with the effects of abuse and neglect on young children;
- (b) Developmental, behavioral, and emotional screening in

addition to early periodic screening, diagnosis, and treatment services, including a core set of standardized and recognized instruments as well as interviews with the child and appropriate caregivers. The screening battery may be performed by a licensed mental health professional familiar with the effects of abuse and neglect on young children, who will then serve as the liaison between all service providers in ensuring that needed services are provided. Such treatment services may include in-home services, out-of-home placement, intensive twenty-four-hour treatment services, family counseling, parenting training and other best practices.

Children whose screenings indicate an area of concern may complete a comprehensive, in-depth health, psychodiagnostic, or developmental assessment within sixty days of entry into custody;

(3) "Central registry", a registry of persons where the division has found probable cause to believe prior to August 28, 2004, or by a preponderance of the evidence after August 28, 2004, or a court has substantiated through court adjudication that the individual has committed child abuse or neglect or the person has pled guilty or has been found guilty of a crime pursuant to section 565.020, 565.021, 565.023, 565.024, 565.050, 566.030, 566.060, or 567.050 if the victim is a child less than eighteen years of age, or any other crime pursuant to chapter 566 if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, a crime under section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, 568.090, 573.023, 573.025, 573.035, 573.037, 573.040, 573.200, or

573.205, or an attempt to commit any such crimes. Any persons placed on the registry prior to August 28, 2004, shall remain on the registry for the duration of time required by section 210.152;

(4) "Child", any person, regardless of physical or mental condition, under eighteen years of age;

(5) "Children's services providers and agencies", any public, quasi-public, or private entity with the appropriate and relevant training and expertise in delivering services to children and their families as determined by the children's division, and capable of providing direct services and other family services for children in the custody of the children's division or any such entities or agencies that are receiving state moneys for such services;

(6) "Director", the director of the Missouri children's division within the department of social services;

(7) "Division", the Missouri children's division within the department of social services;

(8) "Family assessment and services", an approach to be developed by the children's division which will provide for a prompt assessment of a child who has been reported to the division as a victim of abuse or neglect by a person responsible for that child's care, custody or control and of that child's family, including risk of abuse and neglect and, if necessary, the provision of community-based services to reduce the risk and support the family;

(9) "Family support team meeting" or "team meeting", a meeting convened by the division or children's services provider

in behalf of the family and/or child for the purpose of determining service and treatment needs, determining the need for placement and developing a plan for reunification or other permanency options, determining the appropriate placement of the child, evaluating case progress, and establishing and revising the case plan;

(10) "Investigation", the collection of physical and verbal evidence to determine if a child has been abused or neglected;

(11) "Jail or detention center personnel", employees and volunteers working in any premises or institution where incarceration, evaluation, care, treatment or rehabilitation is provided to persons who are being held under custody of the law;

(12) "Neglect", failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for the child's well-being. Victims of neglect shall also include any victims of sex trafficking or severe forms of trafficking as those terms are defined in 22 U.S.C. 78 Section 7102(9)-(10);

(13) "Preponderance of the evidence", that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it or evidence which as a whole shows the fact to be proved to be more probable than not;

(14) "Probable cause", available facts when viewed in the light of surrounding circumstances which would cause a reasonable person to believe a child was abused or neglected;

(15) "Report", the communication of an allegation of child

abuse or neglect to the division pursuant to section 210.115;

(16) "Those responsible for the care, custody, and control of the child", includes, but is not limited to:

(a) The parents or legal guardians of a child;

(b) Other members of the child's household;

(c) Those exercising supervision over a child for any part of a twenty-four-hour day;

(d) Any adult person who has access to the child based on relationship to the parents of the child or members of the child's household or the family; [or]

(e) Any person who takes control of the child by deception, force, or coercion; or

(f) School personnel, contractors, and volunteers, if the relationship with the child was established through the school or through school related activities, even if the alleged abuse or neglect occurred outside of school hours or off school grounds.