

SENATE BILL No. 335

By Senators Smith, Arpke, Denning, Olson and Pilcher-Cook

1-30

1 AN ACT concerning school districts; relating to drug screening of
2 employees; relating to background checks of teachers; relating to
3 revocation of teaching licenses; amending K.S.A. 2013 Supp. 72-1397
4 and 72-1923 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 ~~New Section 1. (a) On or before January 1, 2015, the board of~~
8 ~~education of each school district shall adopt policies and procedures to~~
9 ~~establish and implement a drug screening program for employees of the~~
10 ~~school district. Such policies and procedures shall be adopted in~~
11 ~~accordance with the provisions of this section. A drug screening program~~
12 ~~established pursuant to this section shall be based upon a reasonable~~
13 ~~suspicion of illegal drug use by any employee of the school district.~~

14 ~~(b) (1) No employee shall be terminated solely due to positive results~~
15 ~~of a test administered as a part of a drug screening program established~~
16 ~~pursuant to this section if:~~

17 ~~(A) The employee has not previously had a valid positive test result;~~
18 ~~and~~

19 ~~(B) the employee undergoes a drug evaluation and successfully~~
20 ~~completes any education or treatment program recommended as a result of~~
21 ~~the evaluation.~~

22 ~~(2) Nothing herein shall be construed as prohibiting demotions,~~
23 ~~suspensions or terminations pursuant to article 54 of chapter 72 of the~~
24 ~~Kansas Statutes Annotated, and amendments thereto.~~

25 ~~(c) The results of any test administered as a part of a drug screening~~
26 ~~program established pursuant to this section shall be reported to the state~~
27 ~~board of education, and the state board of education shall maintain a~~
28 ~~record of any such results that are reported. Except as provided in~~
29 ~~subsection (d), the results of any test administered as a part of a drug~~
30 ~~screening program established pursuant to this section and the records of~~
31 ~~the state board of education on such results shall be confidential and shall~~
32 ~~not be disclosed publicly.~~

33 ~~(d) Prior to any final decision to hire an individual, a school district~~
34 ~~may request from the state board of education the record of such~~
35 ~~individual, if any exists, maintained by the state board of education~~
36 ~~pursuant to subsection (c). Upon receipt of each such request, the state~~

1 board of education shall provide such record, if such record exists, to the
2 school district. In order to ensure the confidentiality of the record, the
3 school district, in its request to the state board of education, shall identify
4 the specific person or persons to whom the record may be disclosed. The
5 record shall not be disclosed to any other individuals other than those
6 persons specifically named in the school district's request.

7 ~~(e) Pursuant to K.S.A. 45-229, and amendments thereto, the~~
8 ~~exception to the Kansas open records act contained in subsections (c) and~~
9 ~~(d) shall expire on June 30, 2019, unless the legislature reviews and~~
10 ~~reenacts these provisions prior to June 30, 2019.~~

11 ~~(f) The state board of education may adopt rules and regulations as~~
12 ~~necessary to carry out the provisions of this section.~~

13 *New Section 1. (a) On or before January 1, 2015, the board of*
14 *education of each school district shall adopt policies and procedures to*
15 *establish and implement a drug screening program for employees of the*
16 *school district. Such policies and procedures shall be adopted in*
17 *accordance with the provisions of this section. A drug screening*
18 *program established pursuant to this section shall be based upon a*
19 *reasonable suspicion of illegal drug use by any employee of the school*
20 *district.*

21 *(b) Any employee who tests positive for the use of drugs under an*
22 *initial test administered as a part of a drug screening program may*
23 *request that the drug screening specimen be sent to a different drug*
24 *testing facility for an additional drug screening. Any such employee who*
25 *requests an additional drug screening at a different drug testing facility*
26 *shall be required to pay the cost of drug screening. Any disciplinary*
27 *action taken by a school district against any employee as a result of a*
28 *positive test for the use of drugs shall be taken only after the employee*
29 *has tested positive under two consecutive drug screenings of the*
30 *employee's specimen, except that disciplinary action may be taken by a*
31 *school district against such employee after only one positive test if the*
32 *employee does not request a second drug screening of the employee's*
33 *specimen.*

34 *(c) Nothing herein shall be construed as prohibiting demotions,*
35 *suspensions, terminations or any other disciplinary action taken in*
36 *accordance with the professional negotiations act, K.S.A. 72-5413 et*
37 *seq., and amendments thereto.*

38 *New Sec. 2. (a) The state board of education shall establish and*
39 *implement an impaired teacher program. The purpose of the impaired*
40 *teacher program is to provide support and assistance to impaired*
41 *teachers who are unable to adequately engage in performance of the*
42 *teaching profession due to a dependency on alcohol or drugs, or both.*

43 *(b) The superintendent of any school district, or any school district*

1 *official designated by the superintendent, may refer any impaired*
2 *teacher to the impaired teacher program established pursuant to*
3 *subsection (a), and shall make such referral for any impaired teacher*
4 *who is subject to disciplinary action as a result of failing one or more*
5 *tests administered pursuant to a drug screening program established*
6 *under section 1, and amendments thereto. Such referral shall be in*
7 *writing and shall be submitted to the state board in such form and*
8 *manner as prescribed by the state board. All referrals made pursuant to*
9 *this section and any information related to a person's participation in*
10 *any evaluations or education or treatment programs shall be*
11 *confidential and shall not be disclosed publicly.*

12 *(c) The impaired teacher program shall:*

13 *(1) Assist those persons referred to the program in undergoing*
14 *alcohol and drug evaluations and any education or treatment programs*
15 *recommended as a result of such evaluations;*

16 *(2) provide support to persons who have successfully completed an*
17 *alcohol or drug education or treatment program in returning to the*
18 *teaching profession; and*

19 *(3) provide guidance on the establishment of programs similar to*
20 *the impaired teacher program by any board of education of a school*
21 *district.*

22 *(d) The state board shall adopt rules and regulations necessary to*
23 *carry out the provisions of this section. Such rules and regulations shall*
24 *provide for the review and approval of any programs similar to the*
25 *impaired teacher program established by a board of education of a*
26 *school district. Such rules and regulations may provide for the*
27 *suspension or revocation of a person's certificate or license by the state*
28 *board if such person is referred to the impaired teacher program and*
29 *refuses to participate in the impaired teacher program. Prior to the*
30 *suspension or revocation of any license by the state board, the person*
31 *shall be given notice and an opportunity for a hearing in accordance*
32 *with the provisions of the Kansas administrative procedure act.*

33 *(e) Pursuant to K.S.A. 45-229, and amendments thereto, the*
34 *exception to the Kansas open records act contained in subsection (b)*
35 *shall expire on June 30, 2019, unless the legislature reviews and*
36 *reenacts these provisions prior to June 30, 2019.*

37 *(f) As used in this section:*

38 *(1) "Impaired teacher" means any employee of a school district*
39 *who holds a valid Kansas certificate or license issued by the state board*
40 *of education and who is either:*

41 *(A) Found to be engaged in the use of illegal drugs as verified*
42 *through testing administered in accordance with a drug screening*
43 *program established under section 1, and amendments thereto; or*

1 **(B) reasonably suspected of engaging in such person's duties as a**
2 **teacher while under the influence of alcohol or drugs, or both.**

3 **(2) "State board" means the state board of education.**

4 New Sec.-2: 3. (a) Each person making an initial application for a
5 Kansas teaching certificate or teaching license, for renewal of such
6 certificate or license or for the renewal of an expired certificate or license
7 shall submit, at the time of application, a complete set of legible
8 fingerprints of the person taken by a qualified law enforcement agency,
9 **unless such person has previously submitted a complete set of legible**
10 **fingerprints taken by a qualified law enforcement agency to the state**
11 **department of education.** Fingerprints submitted pursuant to this
12 ~~regulation~~ **section, or which were previously submitted by the applicant**
13 shall be released by the state department of education to the Kansas bureau
14 of investigation for the purpose of conducting criminal history records
15 checks, utilizing the files and records of the Kansas bureau of investigation
16 and the federal bureau of investigation.

17 (b) Each applicant shall pay a fee for the criminal history records
18 check in an amount necessary to reimburse the state department of
19 education for the cost of the criminal history records check.

20 (c) Any person applying for a Kansas teaching license, or the renewal
21 thereof, who does not comply with the provisions of this section shall not
22 be issued a license by the state board of education.

23 (d) The state board of education may adopt rules and regulations to
24 implement and enforce the provisions of this section.

25 Sec.-3: 4. K.S.A. 2013 Supp. 72-1397 is hereby amended to read as
26 follows: 72-1397. (a) The state board of education shall not knowingly
27 issue a license to or renew the license of any person who has been
28 convicted of *any of the following, and shall revoke the license of any such*
29 *person which has been issued or renewed:*

30 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
31 2013 Supp. 21-5503, and amendments thereto;

32 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior
33 to its repeal, or subsection (a) of K.S.A. 2013 Supp. 21-5506, and
34 amendments thereto;

35 (3) aggravated indecent liberties with a child, as defined in K.S.A.
36 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-
37 5506, and amendments thereto;

38 (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of
39 K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A.
40 2013 Supp. 21-5504, and amendments thereto;

41 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
42 to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5504, and
43 amendments thereto;

- 1 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
2 prior to its repeal, or subsection (a) of K.S.A. 2013 Supp. 21-5508, and
3 amendments thereto;
- 4 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
5 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-
6 5508, and amendments thereto;
- 7 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
8 to its repeal, or K.S.A. 2013 Supp. 21-5510, and amendments thereto;
- 9 (9) aggravated incest, as defined in K.S.A. 21-3603, prior to its
10 repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5604, and amendments
11 thereto;
- 12 (10) aggravated endangering a child, as defined in K.S.A. 21-3608a,
13 prior to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5601, and
14 amendments thereto;
- 15 (11) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
16 or K.S.A. 2013 Supp. 21-5602, and amendments thereto;
- 17 (12) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
18 or K.S.A. 2013 Supp. 21-5401, and amendments thereto;
- 19 (13) murder in the first degree, as defined in K.S.A. 21-3401, prior to
20 its repeal, or K.S.A. 2013 Supp. 21-5402, and amendments thereto;
- 21 (14) murder in the second degree, as defined in K.S.A. 21-3402, prior
22 to its repeal, or K.S.A. 2013 Supp. 21-5403, and amendments thereto;
- 23 (15) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
24 its repeal, or K.S.A. 2013 Supp. 21-5404, and amendments thereto;
- 25 (16) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
26 its repeal, or K.S.A. 2013 Supp. 21-5405, and amendments thereto;
- 27 (17) involuntary manslaughter while driving under the influence of
28 alcohol or drugs, as defined in K.S.A. 21-3442, prior to its repeal;
- 29 (18) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
30 or subsection (a) of K.S.A. 2013 Supp. 21-5505, and amendments thereto,
31 when, at the time the crime was committed, the victim was less than 18
32 years of age or a student of the person committing such crime;
- 33 (19) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
34 its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5505, and
35 amendments thereto;
- 36 (20) attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2013
37 Supp. 21-5301, and amendments thereto, to commit any act specified in
38 this subsection;
- 39 (21) conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A.
40 2013 Supp. 21-5302, and amendments thereto, to commit any act specified
41 in this subsection;
- 42 (22) an act in another state or by the federal government that is
43 comparable to any act described in this subsection; or

1 (23) an offense in effect at any time prior to the effective date of this
2 act that is comparable to an offense as provided in this subsection.

3 (b) Except as provided in subsection (c), the state board of education
4 shall not knowingly issue a license to or renew the license of any person
5 who has been convicted of, or has entered into a criminal diversion
6 agreement after having been charged with *any of the following, and shall*
7 *revoke the license of any such person which has been issued or renewed:*

8 (1) A felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17,
9 prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes
10 Annotated, and amendments thereto, or any felony violation of any
11 provision of the uniform controlled substances act prior to July 1, 2009;

12 (2) a felony described in any section of article 34 of chapter 21 of the
13 Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21
14 of the Kansas Statutes Annotated, or K.S.A. 2013 Supp. 21-6104, 21-6325,
15 21-6326 or 21-6418, and amendments thereto, other than an act specified
16 in subsection (a), or a battery, as described in K.S.A. 21-3412, prior to its
17 repeal, or subsection (a) of K.S.A. 2013 Supp. 21-5413, and amendments
18 thereto, or domestic battery, as described in K.S.A. 21-3412a, prior to its
19 repeal, or K.S.A. 2013 Supp. 21-5414, and amendments thereto, if the
20 victim is a minor or student;

21 (3) a felony described in any section of article 35 of chapter 21 of the
22 Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21
23 of the Kansas Statutes Annotated, or K.S.A. 2013 Supp. 21-6419 through
24 21-6421, and amendments thereto, other than an act specified in
25 subsection (a);

26 (4) any act described in any section of article 36 of chapter 21 of the
27 Kansas Statutes Annotated, prior to their repeal, or article 56 of chapter 21
28 of the Kansas Statutes Annotated, and amendments thereto, other than an
29 act specified in subsection (a);

30 (5) a felony described in article 37 of chapter 21 of the Kansas
31 Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the
32 Kansas Statutes Annotated, or subsection (a)(6) of K.S.A. 2013 Supp. 21-
33 6412, and amendments thereto;

34 (6) promoting obscenity, as described in K.S.A. 21-4301, prior to its
35 repeal, or subsection (a) of K.S.A. 2013 Supp. 21-6401, and amendments
36 thereto, promoting obscenity to minors, as described in K.S.A. 21-4301a,
37 prior to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-6401, and
38 amendments thereto, or promoting to minors obscenity harmful to minors,
39 as described in K.S.A. 21-4301c, prior to its repeal, or K.S.A. 2013 Supp.
40 21-6402, and amendments thereto;

41 (7) endangering a child, as defined in K.S.A. 21-3608, prior to its
42 repeal, or subsection (a) of K.S.A. 2013 Supp. 21-5601, and amendments
43 thereto;

1 (8) driving under the influence of alcohol or drugs in violation of
2 K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation is
3 punishable as a felony;

4 (9) attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2013
5 Supp. 21-5301, and amendments thereto, to commit any act specified in
6 this subsection;

7 (10) conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A.
8 2013 Supp. 21-5302, and amendments thereto, to commit any act specified
9 in this subsection; or

10 (11) an act committed in violation of a federal law or in violation of
11 another state's law that is comparable to any act described in this
12 subsection.

13 (c) The state board of education may issue a license to ~~or renew the~~
14 ~~license of~~ a person who has been convicted of committing an offense or
15 act described in subsection (b) or who has entered into a criminal diversion
16 agreement after having been charged with an offense or act described in
17 subsection (b) if the state board determines, following a hearing, that the
18 person has been rehabilitated for a period of at least five years from the
19 date of conviction of the offense or commission of the act or, in the case of
20 a person who has entered into a criminal diversion agreement, that the
21 person has satisfied the terms and conditions of the agreement. The state
22 board of education may consider factors including, but not limited to, the
23 following in determining whether to grant a license:

24 (1) The nature and seriousness of the offense or act;

25 (2) the conduct of the person subsequent to commission of the
26 offense or act;

27 (3) the time elapsed since the commission of the offense or act;

28 (4) the age of the person at the time of the offense or act;

29 (5) whether the offense or act was an isolated or recurring incident;
30 and

31 (6) discharge from probation, pardon or expungement.

32 (d) Before any license is *revoked or* denied by the state board of
33 education for any of the offenses or acts specified in subsections (a) and
34 (b), the person shall be given notice and an opportunity for a hearing in
35 accordance with the provisions of the Kansas administrative procedure act.

36 (e) (1) The county or district attorney shall file a report with the state
37 board of education indicating the name, address and social security
38 number of any person who has been determined to have committed any
39 offense or act specified in subsection (a) or (b) or to have entered into a
40 criminal diversion agreement after having been charged with any offense
41 or act specified in subsection (b). Such report shall be filed within 30 days
42 of the date of the determination that the person has committed any such act
43 or entered into any such diversion agreement.

1 (2) *If any person reported pursuant to paragraph (1) is a licensed*
2 *employee of a unified school district, the state board of education shall*
3 *notify such unified school district within 30 days that such report has been*
4 *received, and upon request by such unified school district shall provide a*
5 *copy of such report to the unified school district.*

6 (f) The state board of education shall not be liable for civil damages
7 to any person refused issuance or renewal of a license by reason of the
8 state board's compliance, in good faith, with the provisions of this section.

9 Sec. 4. 5. K.S.A. 2013 Supp. 72-1923 is hereby amended to read as
10 follows: 72-1923. (a) Except as provided in K.S.A. 2013 Supp. 72-1925,
11 and amendments thereto, the board of education of any school district may
12 apply to the state board for a grant of authority to operate such school
13 district as a public innovative district. The application shall be submitted in
14 the form and manner prescribed by the state board, and shall be submitted
15 not later than December 1 of the school year preceding the school year in
16 which the school district intends to operate as a public innovative district.

17 (b) The application shall include the following:

18 (1) A description of the educational programs of the public innovative
19 district;

20 (2) a description of the interest and support for partnerships between
21 the public innovative district, parents and the community;

22 (3) the specific goals and the measurable pupil outcomes to be
23 obtained by operating as a public innovative district; and

24 (4) an explanation of how pupil performance in achieving the
25 specified outcomes will be measured, evaluated and reported.

26 (c) (1) Within 90 days from the date such application is submitted, the
27 state board shall review the application to determine compliance with this
28 section, and shall approve or deny such application on or before the
29 conclusion of such 90-day period. If the application is determined to be in
30 compliance with this section, the state board shall approve such
31 application and grant the school district authority to operate as a public
32 innovative district. Notification of such approval shall be sent to the board
33 of education of such school district within 10 days after such decision.

34 (2) If the state board determines such application is not in compliance
35 with either this section, or K.S.A. 2013 Supp. 72-1925, and amendments
36 thereto, the state board shall deny such application. Notification of such
37 denial shall be sent to the board of education of such school district within
38 10 days after such decision and shall specify the reasons therefor. Within
39 30 days from the date such notification is sent, the board of education of
40 such school district may submit a request to the state board for
41 reconsideration of the application and may submit an amended application
42 with such request. The state board shall act on the request for
43 reconsideration within 60 days of receipt of such request.

1 (d) A public innovative district shall:

2 (1) Not charge tuition for any of the pupils residing within the public
3 innovative district;

4 (2) participate in all Kansas math and reading assessments applicable
5 to such public innovative district, or an alternative assessment program for
6 measuring student progress as determined by the board of education;

7 (3) abide by all financial and auditing requirements that are
8 applicable to school districts, except that a public innovative district may
9 use generally accepted accounting principles;

10 (4) comply with all applicable health, safety and access laws; ~~and~~

11 (5) *comply with the provisions of section 1, and amendments thereto;*
12 *and*

13 (6) comply with all statements set forth in the application submitted
14 pursuant to subsection (a).

15 (e) (1) Except as otherwise provided in K.S.A. 2013 Supp. 72-1921
16 through 72-1930, and amendments thereto, or as required by the board of
17 education of the public innovative district, a public innovative district shall
18 be exempt from all laws and rules and regulations that are applicable to
19 school districts.

20 (2) A public innovative district shall be subject to the special
21 education for exceptional children act, the virtual school act, the school
22 district finance and quality performance act, the provisions of K.S.A. 72-
23 8801 et seq., and amendments thereto, all laws governing the issuance of
24 general obligation bonds by school districts, the provisions of K.S.A. 74-
25 4901 et seq., and amendments thereto, and all laws governing the election
26 of members of the board of education, the open meetings act as provided
27 in K.S.A. 75-4317 et seq., and amendments thereto, and the open records
28 act as provided in K.S.A. 45-215 et seq., and amendments thereto.

29 (f) *Prior to hiring any person for a teaching position who does not*
30 *hold a valid teaching certificate or license issued by the state board, a*
31 *public innovative district shall require such person to submit a complete*
32 *set of legible fingerprints of such person taken by a qualified law*
33 *enforcement agency. Fingerprints submitted pursuant to this subsection*
34 *shall be released by the public innovative district to the Kansas bureau of*
35 *investigation for the purpose of conducting criminal history records*
36 *checks. The cost of any such criminal history record check shall be borne*
37 *by the public innovative district.*

38 ~~Sec.-5:~~ 6. K.S.A. 2013 Supp. 72-1397 and 72-1923 are hereby
39 repealed.

40 ~~Sec.-6:~~ 7. This act shall take effect and be in force from and after its
41 publication in the statute book.