

AMENDED IN ASSEMBLY AUGUST 5, 2008

AMENDED IN ASSEMBLY JUNE 25, 2008

AMENDED IN SENATE MAY 8, 2008

AMENDED IN SENATE APRIL 9, 2008

AMENDED IN SENATE MARCH 10, 2008

SENATE BILL

No. 1105

Introduced by Senator Margett

(Principal coauthor: Assembly Member Spitzer)

(Coauthor: Assembly Member La Malfa)

January 15, 2008

An act to amend Sections 44009, 44242.5, and 44425 of the Education Code, relating to teacher credentialing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1105, as amended, Margett. Teacher credentialing: criminal convictions.

(1) Existing law provides that whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing has been convicted of any sex offense *or controlled substance offense*, as defined, the commission shall forthwith suspend the credential and that when the conviction becomes final or when imposition of sentence is suspended, the commission shall forthwith revoke the credential.

This bill would authorize a ~~credential holder~~ *credentialholder* whose credential has not been revoked as a result of a misdemeanor sex offense that does not require registration as a sex offender to apply for reinstatement of his or her credential if the accusation or information

against the holder has been dismissed and he or she has been released from all disabilities and penalties resulting from the offense, as specified.

(2) Under existing law, upon a plea of nolo contendere to a sex offense, as specified, all credentials held by the person that have been issued by the State Board of Education or the Commission on Teacher Credentialing are suspended until a final disposition regarding those credentials is made by the Commission on Teacher Credentialing. An action that the commission is permitted to take following a conviction may be taken after the judgment is final, as specified.

This bill would delete those provisions and provide instead that credentials shall be suspended in the manner described above only if the credentialholder pleads nolo contendere to loitering in or about a public toilet, as specified.

This bill would also require the Legislature to convene a working group to study provisions of law relating to suspension and revocation of credentials issued by the state board or the commission for a sex offense, a controlled substance offense, or another crime, as specified, and to provide a report on its findings on or before December 1, 2009.

(3) Under existing law, a plea or verdict of guilty by a court is deemed to be a conviction for purposes of provisions of law that require the Commission on Teacher Credentialing and the county board of education to suspend a credential issued by the State Board of Education or the commission whenever the holder has been convicted of a sex offense or controlled substance offense. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the suspension of the credential will be terminated. When the conviction becomes final or when imposition of sentence is suspended, the credential will be revoked.

This bill would expand these provisions to include a plea or verdict of guilty by a court and a conviction following a plea of nolo contendere as a conviction for purposes of provisions of law that require the Commission on Teacher Credentialing to suspend, terminate the suspension of, or revoke a credential whenever the holder has been convicted of any sex offense or controlled substance offense. This definition of “conviction” also would apply to other provisions concerning the procedure to be used by the Committee of Credentials upon receipt of allegations of conduct by an applicant for, or holder of, a credential, affecting the right to a credential, and grounds for the Commission on Teacher Credentialing to deny an application for the issuance of a credential or an application for the renewal of a credential.

These provisions would no longer apply to the actions required of a county board of education with respect to a ~~credential holder~~ *credentialholder*.

(4) 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 ~~shall~~ *is required to* be presented to the Committee of Credentials. Upon completion of an investigation, if adverse action is recommended to the Commission on Teacher Credentialing, the findings of the committee are available upon request within one year from the date that the committee makes its recommendation to a school district providing verification that the ~~credential holder~~ *credentialholder* has applied for employment in the district.

This bill would instead allow the release of those findings if the ~~credential holder~~ *credentialholder* has not filed a timely appeal of the recommendation of the committee and would require that the request for the findings by a school district providing verification that the ~~credential holder~~ *credentialholder* has applied for employment in the district be made within 5 years from the date that the committee makes its recommendation.

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

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

1 SECTION 1. Section 44009 of the Education Code is amended
2 to read:
3 44009. (a) A plea or verdict of guilty or finding of guilt by a
4 court in a trial without a jury, or a conviction following a plea of
5 nolo contendere is deemed to be a conviction within the meaning
6 of Sections 44242.5, 44345, 44346, 44346.1, 44424, and 44425,
7 irrespective of a subsequent order for probation suspending the
8 imposition of a sentence or an order under Section 1203.4 of the
9 Penal Code allowing the withdrawal of the plea of guilty and
10 entering a plea of not guilty, or setting aside the verdict of guilty,
11 or dismissing the accusations or information.
12 (b) The record of a narcotics offense, as defined in Section
13 44011, shall be sufficient proof of conviction of a crime involving
14 moral turpitude for the purposes of Sections 44907 and 44923,

1 and Sections 44932 to 44947, inclusive, relating to the dismissal
2 of permanent employees.

3 (c) A plea or verdict of guilty, or finding of guilt by a court in
4 a trial without a jury, or a conviction following a plea of nolo
5 contendere is deemed to be a conviction within the meaning of
6 Sections 44836 and 45123, irrespective of a subsequent order for
7 probation suspending the imposition of a sentence or an order
8 under Section 1203.4 of the Penal Code allowing the withdrawal
9 of the plea of guilty and entering a plea of not guilty, or setting
10 aside the verdict of guilty, or dismissing the accusations or
11 information. The record of conviction shall be sufficient proof of
12 conviction of a crime involving moral turpitude for the purposes
13 of Section 44907 and Sections 44932 to 44947, inclusive, relating
14 to the dismissal of permanent employees.

15 SEC. 2. Section 44242.5 of the Education Code is amended to
16 read:

17 44242.5. (a) Each allegation of an act or omission by an
18 applicant for, or holder of, a credential for which he or she may
19 be subject to an adverse action shall be presented to the Committee
20 of Credentials.

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

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

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

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

31 (3) (A) A statement from an employer notifying the commission
32 that, as a result of, or while an allegation of misconduct is pending,
33 a ~~credential holder~~ *credentialholder* has been dismissed,
34 nonreelected, suspended for more than 10 days, or placed pursuant
35 to a final adverse employment action on unpaid administrative
36 leave for more than 10 days, or has resigned or otherwise left
37 employment.

38 (B) The employer shall provide the notice described in
39 subparagraph (A) to the commission not later than 30 days after
40 the dismissal, nonreelection, suspension, placement on unpaid

1 administrative leave, resignation, or departure from employment
2 of the employee.

3 (4) A notice from an employer that a complaint was filed with
4 the school district alleging sexual misconduct by a ~~credential holder~~
5 *credentialholder*. Results of an investigation by the committee
6 based on this paragraph shall not be considered for action by the
7 committee unless there is evidence presented to the committee in
8 the form of a written or oral declaration under penalty of perjury
9 that confirms the personal knowledge of the declarant regarding
10 the acts alleged to constitute misconduct.

11 (5) A notice from a school district, employer, public agency, or
12 testing administrator of a violation of Section 44420, 44421.1,
13 44421.5, or 44439.

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

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

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

28 (1) Investigation of the fitness and competence of the applicant
29 or ~~credential holder~~ *credentialholder* to perform the duties
30 authorized by the credential for which he or she has applied or that
31 he or she presently holds.

32 (2) Preparation of a summary of the applicable law, a summary
33 of the facts, contested and uncontested, and a summary of any
34 circumstances in aggravation or mitigation of the allegation.

35 (3) Determination of probable cause for an adverse action on
36 the credential. If the allegation is for unprofessional or immoral
37 conduct, the committee, in any formal review conducted pursuant
38 to Section 44244 to determine probable cause, shall permit the
39 employer of the ~~credential holder~~ *credentialholder* to be present
40 while testimony is taken. If the allegation of unprofessional or

1 immoral conduct involves sexual abuse, the employer shall be
2 examined in the meeting for any relevant evidence relating to the
3 sexual abuse.

4 (A) If the committee determines that probable cause for an
5 adverse action does not exist, the committee shall terminate the
6 investigation.

7 (B) If the committee determines that probable cause for an
8 adverse action on the credential exists, upon receipt of a request
9 from an applicant or a ~~credential holder~~ *credentialholder* pursuant
10 to Section 44244.1, the commission shall initiate an adjudicatory
11 hearing, as prescribed by Chapter 5 (commencing with Section
12 11500) of Division 3 of Title 2 of the Government Code, by filing
13 an accusation or statement of issues.

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

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

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

27 (2) An affidavit or declaration signed by a person or persons
28 with personal knowledge of the acts alleged to constitute
29 misconduct.

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

31 (4) 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) A notice described in paragraph (5) of subdivision (b).

35 (6) A response or failure to disclose, as described in paragraph
36 (6) of subdivision (b).

37 (e) (1) Upon completion of its investigation, the committee
38 shall report its actions and recommendations to the commission,
39 including its findings as to probable cause, and if probable cause
40 exists, its recommendations as to the appropriate adverse action.

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

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

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

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

28 SEC. 3. Section 44425 of the Education Code is amended to
29 read:

30 44425. (a) Whenever the holder of a credential issued by the
31 state board or the Commission on Teacher Credentialing has been
32 convicted of a sex offense, as defined in Section 44010, or
33 controlled substance offense, as defined in Section 44011, the
34 commission immediately shall suspend the credential. If the
35 conviction is reversed and the holder is acquitted of the offense in
36 a new trial or the charges against him or her are dismissed, the
37 commission immediately shall terminate the suspension of the
38 credential. When the conviction becomes final or when imposition
39 of sentence is suspended, the commission immediately shall revoke
40 the credential.

1 **(b) (1)** Notwithstanding subdivision (a) and Section 44009, if
2 the holder of a credential enters a plea of *nolo contendere* for a
3 violation of subdivision (d) of Section 647 of the Penal Code, the
4 commission of a sex offense as defined in Section 44010, all
5 credentials held by the individual shall be suspended until a final
6 disposition regarding those credentials is made by the commission.
7 Any action that the commission is permitted to take following a
8 conviction may be taken after the time for appeal has elapsed, the
9 judgment of conviction has been confirmed on appeal, or when an
10 order granting probation is made suspending the imposition of
11 sentence and the time of appeal has elapsed or the judgment of
12 conviction has been affirmed on appeal, irrespective of a
13 subsequent order pursuant to Section 1203.4 of the Penal Code.

14 **(2)** The Legislature shall convene a working group of interested
15 parties including, but not limited to, the commission, civil rights
16 organizations, and organizations that represent teachers,
17 administrators, county offices of education, school districts, school
18 boards, and parents to study Sections 44010, 44011, and 44424,
19 and to provide a report on its findings on or before December 1,
20 2009.

21 ~~(b)~~

22 **(c)** Notwithstanding any other law, revocation shall be final
23 without possibility of reinstatement of the credential if the
24 conviction is for a felony sex offense, as defined in Section 44010,
25 or a felony controlled substance offense, as defined in Section
26 44011, in which an element of the controlled substance offense is
27 either the distribution to, or use of a controlled substance by, a
28 minor.

29 ~~(e)~~

30 **(d) (1)** Notwithstanding any other provision of law, the
31 commission immediately shall suspend the credential of any holder
32 who is required to register as a sex offender pursuant to either of
33 the following:

34 **(A)** Section 290 of the Penal Code.

35 **(B)** A law of any other state or of the United States when the
36 underlying offense, if committed in this state, would require
37 registration as a sex offender pursuant to Section 290 of the Penal
38 Code.

39 **(2)** If the conviction requiring registration as a sex offender is
40 reversed on appeal and the holder is acquitted at a new trial or if

1 the charges against the holder are dismissed as a result of the
2 reversal, upon notice, the commission shall immediately reinstate
3 the credential.

4 (3) The commission immediately shall revoke a credential based
5 on a conviction requiring registration as a sex offender when the
6 time for appeal has elapsed, the judgment of conviction has been
7 affirmed on appeal, or an order granting probation is made
8 suspending the imposition of sentence and the time for appeal has
9 elapsed.

10 ~~(d)~~

11 (e) A ~~credential holder~~ *credentialholder* whose credential has
12 not been revoked pursuant to subdivision (a) as a result of a
13 misdemeanor sex offense, as defined in Section 44010, that does
14 not require registration as a sex offender as set forth in subdivision
15 (c), may apply for reinstatement of his or her credential pursuant
16 to Section 11522 of the Government Code if the accusation or
17 information against the holder has been dismissed and he or she
18 has been released from all disabilities and penalties resulting from
19 the offense pursuant to Section 1203.4 of the Penal Code or the
20 equivalent statute in another federal or state jurisdiction.