

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0979.01 Michael Dohr

HOUSE BILL 08-1344

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HOUSE SPONSORSHIP

Green,

SENATE SPONSORSHIP

(None),

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House Committees  
Education

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING BACKGROUND CHECK PROCEDURES RELATED TO  
102 EMPLOYMENT AT A SCHOOL.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Requires the department of education to respond to a background query within 24 hours. Directs a school district board of education to report to the department of education within 24 hours after a dismissal or resignation as a result of an allegation of unlawful behavior involving a child, including unlawful sexual behavior, which is supported by a preponderance of the evidence.

Waives sovereign immunity and the notice requirement for an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

action arising out of a school district's or the department of education's failure to perform an education employment required background check prior to hiring an individual who will work with children or in a setting with children. Eliminates the statute of limitations for a civil action based on a failure to perform an education employment required background check by a school district or the department of education prior to hiring an individual who will work with children or in a setting with children.

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

2 **SECTION 1.** The introductory portion to 22-2-119 (1), Colorado  
3 Revised Statutes, is amended to read:

4 **22-2-119. Department of education - inquiries by boards of**  
5 **education concerning prospective employees.** (1) When an inquiry is  
6 made by a board of education of a school district pursuant to the  
7 provisions of section 22-32-109.7 (1) or (1.5) or by the governing board  
8 of a nonpublic school pursuant to the provisions of section 22-1-121  
9 concerning a prospective or current employee, the department shall  
10 provide the following information WITHIN TWENTY- FOUR HOURS AFTER  
11 RECEIVING THE REQUEST concerning ~~such~~ THE person:

12 **SECTION 2.** 22-32-109.7 (3), Colorado Revised Statutes, are  
13 amended to read:

14 **22-32-109.7. Board of education - specific duties - employment**  
15 **of personnel.** (3) If an employee of a school district is dismissed or  
16 resigns as a result of an allegation of unlawful behavior involving a child,  
17 including unlawful sexual behavior, which is supported by a  
18 preponderance of the evidence, WITHIN TWENTY-FOUR HOURS AFTER THE  
19 DISMISSAL OR RESIGNATION, the board of education of ~~such~~ THE school  
20 district shall notify the department of education and provide any  
21 information requested by the department concerning the circumstances of  
22 the dismissal or resignation. The district shall also notify the employee

1 that information concerning the employee's dismissal or resignation is  
2 being forwarded to the department of education unless ~~such~~ THE notice  
3 would conflict with the confidentiality requirements of the "Child  
4 Protection Act of 1987", part 3 of article 3 of title 19, C.R.S.

5 **SECTION 3.** Article 80 of title 13, Colorado Revised Statutes, is  
6 amended BY THE ADDITION OF A NEW SECTION to read:

7 **13-80-103.9. No limitation of actions - failure to perform a**  
8 **background check by a public entity - injury to a child.** (1) AS USED  
9 IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

10 (a) "CHILD" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE.

11 (b) "EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK"  
12 MEANS COMPLYING WITH SECTIONS 22-2-119 AND 22-32-109.7, C.R.S.

13 (c) "SEXUAL OFFENSE AGAINST A CHILD" SHALL INCLUDE ALL  
14 OFFENSES LISTED IN SECTION 18-3-411 (1), C.R.S.

15 (2) NOTWITHSTANDING ANY OTHER STATUTE OF LIMITATIONS  
16 SPECIFIED IN THIS ARTICLE OR ANY OTHER PROVISION OF LAW THAT CAN  
17 BE CONSTRUED TO REDUCE THE STATUTORY PERIOD SET FORTH IN THIS  
18 SECTION, A CIVIL ACTION, AS DESCRIBED IN SUBSECTION (3) OF THIS  
19 SECTION, AGAINST A PUBLIC ENTITY FOR FAILURE TO PERFORM AN  
20 EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK MAY BE  
21 BROUGHT AT ANY TIME AFTER THE CAUSE OF ACTION ACCRUES.

22 (3) IN BRINGING A CIVIL ACTION FOR FAILURE TO PERFORM AN  
23 EDUCATION EMPLOYMENT REQUIRED BACKGROUND CHECK PURSUANT TO  
24 THIS SECTION, A PLAINTIFF SHALL MAKE A PRIMA FACIE SHOWING OF THE  
25 FOLLOWING FACTS AND CIRCUMSTANCES:

26 (a) THE SCHOOL DISTRICT, IN HIRING AN INDIVIDUAL TO WORK  
27 WITH CHILDREN OR IN A SETTING WITH CHILDREN, OR THE DEPARTMENT OF

1 EDUCATION DID NOT PERFORM AN EDUCATION EMPLOYMENT REQUIRED  
2 BACKGROUND CHECK OF THE INDIVIDUAL;

3 (b) THE INDIVIDUAL, AT THE TIME OF HIRING, HAD A CRIMINAL  
4 RECORD THAT INCLUDED ONE OR MORE CONVICTIONS FOR THE OFFENSE OF  
5 SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402, C.R.S., FOR A  
6 SEXUAL OFFENSE AGAINST A CHILD, OR FOR CHILD ABUSE AS DESCRIBED  
7 IN SECTION 18-6-401, C.R.S., OR THE INDIVIDUAL HAD BEEN DISMISSED OR  
8 HAD RESIGNED FROM A SCHOOL DISTRICT UNDER THE CIRCUMSTANCES  
9 DESCRIBED IN SECTION 22-32-109.7 (1) (b), C.R.S.; AND

10 (c) THE INDIVIDUAL COMMITTED ONE OF THE FOLLOWING  
11 OFFENSES AGAINST A CHILD WITH WHOM THE INDIVIDUAL CAME IN  
12 CONTACT IN THE COURSE OF HIS OR HER EMPLOYMENT WITH THE PUBLIC  
13 ENTITY:

14 (I) SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402, C.R.S.;

15 (II) SEXUAL OFFENSE AGAINST A CHILD; OR

16 (III) CHILD ABUSE AS DESCRIBED IN SECTION 18-6-401, C.R.S.

17 (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE  
18 CONTRARY, A SUCCESSFUL PLAINTIFF UNDER THIS SECTION SHALL BE  
19 ENTITLED TO A NONECONOMIC DAMAGE AWARD NOT TO EXCEED FOUR  
20 HUNDRED THOUSAND DOLLARS, IN ADDITION TO ANY OTHER ALLOWABLE  
21 AWARD.

22 **SECTION 4.** 24-10-106 (1), Colorado Revised Statutes, is  
23 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24 **24-10-106. Immunity and partial waiver.** (1) A public entity  
25 shall be immune from liability in all claims for injury which lie in tort or  
26 could lie in tort regardless of whether that may be the type of action or the  
27 form of relief chosen by the claimant except as provided otherwise in this

1 section. Sovereign immunity is waived by a public entity in an action for  
2 injuries resulting from:

3 (h) FAILURE TO PERFORM AN EDUCATION EMPLOYMENT REQUIRED  
4 BACKGROUND CHECK AS DESCRIBED IN SECTION 13-80-103.9, C.R.S.

5 **SECTION 5.** 24-10-109, Colorado Revised Statutes, is amended  
6 BY THE ADDITION OF A NEW SUBSECTION to read:

7 **24-10-109. Notice required - contents - to whom given -**  
8 **limitations.** (7) THIS SECTION SHALL NOT APPLY TO A CLAIM FOR  
9 FAILURE TO PERFORM AN EDUCATION EMPLOYMENT REQUIRED  
10 BACKGROUND CHECK AS DESCRIBED IN SECTION 13-80-103.9, C.R.S.

11 **SECTION 6. Effective date - applicability.** This act shall take  
12 effect upon passage and shall apply to actions accruing on or after the  
13 effective date of this act.

14 **SECTION 7. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety.