

FILED FEB 19 '03

SENATE FILE

169

BY ANGELO

Passed Senate, Date _____ Passed House, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to the conduct and licensure of school employees
 2 by creating a criminal offense of sexual exploitation by a
 3 school employee, providing a penalty, authorizing the board of
 4 educational examiners to perform record checks at the
 5 applicant's expense, and requiring school districts and
 6 schools to report practitioner misconduct under certain
 7 circumstances.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 169
 EDUCATION

1 Section 1. NEW SECTION. 272.15 SINGLE CONTACT REPOSITORY
2 -- RECORD CHECKS.

3 1. The board may access the single contact repository
4 established by the department of inspections and appeals
5 pursuant to section 135C.33 as necessary for the board to
6 perform record checks of persons seeking renewal of a license
7 or certificate issued pursuant to this chapter.

8 2. The board shall charge an applicant seeking renewal of
9 a license, authorization, or certificate a fee to defray the
10 costs of performing record checks in accordance with
11 subsection 1. This fee is in addition to any other license or
12 other fee charged by the board. The executive director shall
13 deposit the fees with the treasurer of state and the fees
14 shall be credited to the general fund of the state. The
15 executive director shall keep an accurate and detailed account
16 of fees received and paid to the treasurer of state.

17 3. The board of directors of a school district or area
18 education agency and the authorities in charge of a nonpublic
19 school shall report to the board the nonrenewal or
20 termination, for reasons of alleged or actual misconduct, of a
21 contract executed under sections 279.12, 279.13, 279.15
22 through 279.21, 279.23, and 279.24. For purposes of this
23 subsection, unless the context otherwise requires,
24 "misconduct" means a violation of the criteria of professional
25 practices adopted by rule of the board.

26 Sec. 2. Section 614.1, subsection 12, Code 2003, is
27 amended to read as follows:

28 12. SEXUAL ABUSE OR SEXUAL EXPLOITATION BY A COUNSELOR, OR
29 THERAPIST, OR SCHOOL EMPLOYEE. An action for damages for
30 injury suffered as a result of sexual abuse, as defined in
31 section 709.1, by a counselor, or therapist, or school
32 employee, as defined in section 709.15, or as a result of
33 sexual exploitation by a counselor, or therapist, or school
34 employee shall be brought within five years of the date the
35 victim was last treated by the counselor or therapist, or

1 within five years of the date the victim was last enrolled in
2 the school.

3 Sec. 3. Section 692A.1, subsection 10, Code 2003, is
4 amended to read as follows:

5 10. "Sexual exploitation" means sexual exploitation by a
6 counselor, or therapist, or school employee under section
7 709.15.

8 Sec. 4. Section 702.11, subsection 2, paragraph d, Code
9 2003, is amended to read as follows:

10 d. Sexual exploitation by a counselor, or therapist, or
11 school employee in violation of section 709.15.

12 Sec. 5. Section 709.15, Code 2003, is amended to read as
13 follows:

14 709.15 SEXUAL EXPLOITATION BY A COUNSELOR, OR THERAPIST,
15 OR SCHOOL EMPLOYEE.

16 1. As used in this section:

17 a. "Counselor or therapist" means a physician,
18 psychologist, nurse, professional counselor, social worker,
19 marriage or family therapist, alcohol or drug counselor,
20 member of the clergy, or any other person, whether or not
21 licensed or registered by the state, who provides or purports
22 to provide mental health services.

23 b. "Emotionally dependent" means that the nature of the
24 patient's or client's or former patient's or client's
25 emotional condition or the nature of the treatment provided by
26 the counselor or therapist is such that the counselor or
27 therapist knows or has reason to know that the patient or
28 client or former patient or client is significantly impaired
29 in the ability to withhold consent to sexual conduct, as
30 described in paragraph-"f" subsection 2, by the counselor or
31 therapist.

32 For the purposes of paragraph-"f" subsection 2, a former
33 patient or client is presumed to be emotionally dependent for
34 one year following the termination of the provision of mental
35 health services.

1 c. "Former patient or client" means a person who received
2 mental health services from the counselor or therapist.

3 d. "Mental health service" means the treatment,
4 assessment, or counseling of another person for a cognitive,
5 behavioral, emotional, mental, or social dysfunction,
6 including an intrapersonal or interpersonal dysfunction.

7 e. "Patient or client" means a person who receives mental
8 health services from the counselor or therapist.

9 f. "School employee" means a practitioner or para-educator
10 as defined in section 272.1, or a person who holds a coaching
11 authorization awarded pursuant to section 272.31.

12 g. "Student" means a person who is currently enrolled at
13 or attending a public or nonpublic secondary school, or who
14 was a student enrolled at a public or nonpublic secondary
15 school within thirty days of any violation of subsection 3.

16 ~~f.~~ 2. "Sexual exploitation by a counselor or therapist"
17 occurs when any of the following are found:

18 ~~{1}~~ a. A pattern or practice or scheme of conduct to
19 engage in any of the conduct described in ~~subparagraph-(2)-or~~
20 ~~{3}~~ paragraph "b" or "c".

21 ~~{2}~~ b. Any sexual conduct, with an emotionally dependent
22 patient or client or emotionally dependent former patient or
23 client for the purpose of arousing or satisfying the sexual
24 desires of the counselor or therapist or the emotionally
25 dependent patient or client or emotionally dependent former
26 patient or client, which includes but is not limited to the
27 following: kissing; touching of the clothed or unclothed
28 inner thigh, breast, groin, buttock, anus, pubes, or genitals;
29 or a sex act as defined in section 702.17.

30 ~~{3}~~ c. Any sexual conduct with a patient or client or
31 former patient or client within one year of the termination of
32 the provision of mental health services by the counselor or
33 therapist for the purpose of arousing or satisfying the sexual
34 desires of the counselor or therapist or the patient or client
35 or former patient or client which includes but is not limited

1 to the following: kissing; touching of the clothed or
2 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
3 genitals; or a sex act as defined in section 702.17.

4 "Sexual exploitation by a counselor or therapist" does not
5 include touching which is part of a necessary examination or
6 treatment provided a patient or client by a counselor or
7 therapist acting within the scope of the practice or
8 employment in which the counselor or therapist is engaged.

9 3. Sexual exploitation by a school employee occurs when
10 any of the following are found:

11 a. A pattern or practice or scheme of conduct to engage in
12 any of the conduct described in paragraph "b".

13 b. Any sexual conduct with a student for the purpose of
14 arousing or satisfying the sexual desires of the school
15 employee or the student. Sexual conduct includes but is not
16 limited to the following: kissing; touching of the clothed or
17 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
18 genitals; or a sex act as defined in section 702.17.

19 Sexual exploitation by a school employee does not include
20 touching which is necessary in the performance of the school
21 employee's duties while acting within the scope of employment.

22 2: 4. a. A counselor or therapist who commits sexual
23 exploitation in violation of subsection 2, paragraph "f"
24 "a", subparagraph-(1), commits a class "D" felony.

25 3: b. A counselor or therapist who commits sexual
26 exploitation in violation of subsection 2, paragraph "f"
27 "b", subparagraph-(2), commits an aggravated misdemeanor.

28 4: c. A counselor or therapist who commits sexual
29 exploitation in violation of subsection 2, paragraph "f"
30 "c", subparagraph-(3), commits a serious misdemeanor. In lieu
31 of the sentence provided for under section 903.1, subsection
32 1, paragraph "b", the offender may be required to attend a
33 sexual abuser treatment program.

34 5. a. A school employee who commits sexual exploitation
35 in violation of subsection 3, paragraph "a", commits a class

1 "D" felony.

2 b. A school employee who commits sexual exploitation in
3 violation of subsection 3, paragraph "b", commits an
4 aggravated misdemeanor.

5 Sec. 6. Section 802.2A, subsection 2, Code 2003, is
6 amended to read as follows:

7 2. An indictment or information for sexual exploitation by
8 a counselor, ~~or~~ therapist, or school employee under section
9 709.15 committed on or with a person who is under the age of
10 eighteen shall be found within ten years after the person upon
11 whom the offense is committed attains eighteen years of age.
12 An information or indictment for any other sexual exploitation
13 shall be found within ten years of the date the victim was
14 last treated by the counselor or therapist, or within ten
15 years of the date the victim was enrolled in the school.

16 Sec. 7. Section 903B.1, subsection 4, paragraph h, Code
17 2003, is amended to read as follows:

18 h. Sexual exploitation ~~by-a-counselor~~ in violation of
19 section 709.15.

20

EXPLANATION

21 This bill creates a criminal offense of sexual exploitation
22 by a school employee, provides a penalty, and permits the
23 board of educational examiners to perform record checks of
24 individuals seeking license, authorization, or certificate
25 renewal.

26 The bill permits the board of educational examiners to
27 access the single contact repository established by the
28 department of inspections and appeals to perform the record
29 checks. The board shall charge the applicant a fee to defray
30 the costs of performing the record check.

31 The bill directs school districts and nonpublic schools to
32 report to the board the nonrenewal or termination of a
33 contract with a practitioner, coach, or para-educator for
34 reasons of alleged or actual misconduct. "Misconduct" is
35 defined as a violation of the criteria of professional

1 practices adopted by rule of the board.

2 The bill provides that a school employee shall not engage
3 in any sexual conduct with a student who is enrolled at a
4 public or nonpublic secondary school, or who was enrolled at a
5 public or nonpublic secondary school within 30 days of any
6 violation of this bill, for the purpose of arousing the sexual
7 desires of either of them. The bill defines "school employee"
8 to mean a practitioner, coach, or para-educator.

9 The bill defines "sexual conduct" to include but is not
10 limited to the following: kissing; touching of the clothed or
11 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
12 genitals; or a sex act as defined in Code section 702.17.

13 Sexual exploitation by a school employee does not include
14 touching which is necessary in the performance of the school
15 employee's duties while acting within the scope of employment.

16 The bill provides that a school employee commits a class
17 "D" felony if the employee engages in a pattern or practice or
18 scheme of conduct to engage in such sexual conduct with a
19 student.

20 The bill provides that a school employee commits an
21 aggravated misdemeanor if the employee engages in such sexual
22 conduct with a student.

23 The amendments to Code sections 614.1, 692A.1, 702.11,
24 802.2A, and 903B.1 conform the new criminal offense of sexual
25 exploitation by a school employee with other sexual
26 exploitation offense provisions found in Code section 709.15,
27 including the five-year civil and 10-year criminal statute of
28 limitations.

29 A class "D" felony is punishable by confinement for no more
30 than five years and a fine of at least \$750 but not more than
31 \$7,500. An aggravated misdemeanor is punishable by
32 confinement for no more than two years and a fine of at least
33 \$500 but not more than \$5,000.

34
35

SF 169 - Sexual Exploitation Teachers, Checks (LSB 1284 XS)

Analyst: Robin Madison (Phone: (515) 281-5270) (robin.madison@legis.state.ia.us)

Fiscal Note Version — New

Description

Senate File 169 creates a criminal offense of sexual exploitation by a school employee, provides a penalty, and permits the Board of Educational Examiners (BOEE) to perform record checks of individuals seeking renewal of a license or certificate.

Background

Currently, the Board of Educational Examiners conducts approximately 5,000 background checks annually for applicants seeking new licenses. The fee is \$18, which includes \$10 that is passed through to the Department of Public Safety, Division of Criminal Investigation (DCI); \$2 that is passed through to the Information Technology Department (ITD) for processing charges; and \$6 that is retained by the BOEE to defray personnel costs associated with 1.0 temporary FTE position for a clerk to process the information. In addition, the BOEE has 1.0 FTE position for an investigator to conduct investigations. Denials of licensure may result in hearings that require the compensation of hearing officers at \$65 per hour. There were 12 hearings in FY 2002 at an average cost of \$1,051 per case.

Assumptions

1. The BOEE will conduct an additional 15,000 background checks annually and charge each applicant a fee of \$18, \$6 of which will be retained by the BOEE to defray costs.
2. The BOEE will require an additional 2.0 FTE positions for office support staff at \$30,000 each and 1.0 FTE position for an Investigator II at \$45,000; these costs include salary and benefits.
3. Denials and revocations will result in 25 additional hearings annually, at an average cost of \$1,051 per case.
4. The additional staffing will result in the need for three additional computers at a one-time cost of \$6,000.
5. The additional workload will result in additional expense for printing and supplies of \$2,000 annually.
6. It is also assumed that the \$10 pass-through fee to DCI and the \$2 pass-through fee to ITD are sufficient to cover the costs to those agencies.

Correctional Impact

The correctional impact of SF 169 cannot be determined due to insufficient information with which to estimate the number of additional convictions, prison terms, jail terms, and/or probation terms that will result.

Fiscal Impact

The estimated net fiscal impact of SF 169 to the operating funds of the Board of Educational Examiners is as follows:

	<u>FY 2004</u>	<u>FY 2005</u>
<u>Revenues</u>		
Applicant fees	\$270,000	\$270,000
<u>Expenditures</u>		
Salaries	\$105,000	\$105,000
Pass-through fees	180,000	180,000
Hearing costs	26,000	26,000
Other	8,000	2,000
Total expenditures	<u>\$319,000</u>	<u>\$313,000</u>
Net impact	<u>\$-49,000</u>	<u>\$-43,000</u>

Source

Board of Educational Examiners

/s/ Dennis C Prouty

March 5, 2003