

AN ACT

ENTITLED, An Act to revise certain provisions regarding educational personnel certification and discipline.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this chapter and §§ 13-43-16 to 13-43-49, inclusive, mean:

- (1) "Administrator," a superintendent, principal, or other person whose assigned duties require the person to be issued a certificate as an administrator;
- (2) "Applicant," an individual who has applied for a certificate, either through an initial application or a renewal application;
- (3) "Certificate," a certificate and endorsements required by the South Dakota Board of Education pursuant to § 13-42-3 for a teacher, administrator, or other educational professional which authorize the certificate holder to work in assigned grades and fields;
- (4) "Department," the South Dakota Department of Education;
- (5) "Other educational professional," an instructor, school service specialist, or other person whose duties require the person to be issued a certificate;
- (6) "Secretary," the secretary of the department;
- (7) "Teacher," a person whose assigned duties require the person to be issued a certificate as a teacher.

Section 2. That § 13-42-1 be amended to read as follows:

13-42-1. No person may draw wages as a teacher, administrator, or other educational professional in any public school or other accredited school who does not have a valid certificate.

Section 3. That § 13-42-3 be amended to read as follows:

13-42-3. The South Dakota Board of Education shall promulgate rules, pursuant to chapter 1-26, establishing the requirements and criteria that an applicant shall meet in order to be issued a certificate by the secretary as a teacher, administrator, or other educational professional authorizing the holder of the certificate to accept a position in any elementary or secondary school in the grades and fields specified by the certificate. The rules shall specify the duration and the method of renewal or reinstatement, the amount of the fee for issuing the certificate, the application procedures and documentation requirements for certificates, the endorsements to certificates, the requirements for certification, the procedures for denial or nonrenewal of a certificate and disciplinary proceedings and assessment of costs, the procedures for processing applications and issuing certificates for military spouses, and other procedures necessary for the administration of certification.

In addition to teacher certificate renewal based on academic coursework, the rules for teacher certificate renewal shall include guidelines and criteria by which an applicant may receive credit toward renewal based on private or public sector experience that was not obtained through academic coursework if the experience is related to the applicant's teaching field. Any change to a rule promulgated pursuant to this section which increases the educational requirements that an applicant shall meet to qualify for a certificate shall be preceded by at least two years' notice before the effective date of the change. The two-year notice requirement does not apply to an increase in the application fee, which increase shall comply with §§ 1-26-4.8 and 1-26-6.9.

Section 4. That § 13-42-4 be amended to read as follows:

13-42-4. The authority to issue a certificate is vested in the secretary, and the certificate shall be issued, renewed, or validated to a person who has met the rules and requirements for the certificate as determined by the South Dakota Board of Education.

Section 5. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as follows:

The secretary may, upon receipt of information suggesting the failure of an applicant or certificate holder to comply with requirements necessary for certification, initiate and conduct an investigation. The secretary may also initiate and conduct an investigation in regard to a person subject to § 13-43-59. In conducting the investigation, the secretary shall have the powers referenced in § 1-26-19.1.

Section 6. That § 13-42-6 be amended to read as follows:

13-42-6. No certificate may be issued unless the applicant is a United States citizen and takes an oath or affirmation to support the Constitutions of the United States and of the State of South Dakota or unless the applicant is a legal alien. The department shall keep a copy of the oath on file. A legal alien employed by a school district is not required to file an oath or affirmation of allegiance. The secretary may administer the oath or affirmation required under this chapter.

Section 7. That § 13-42-7 be amended to read as follows:

13-42-7. The secretary may refuse to issue or renew a certificate at any time for any of the reasons referenced in § 13-42-9 or 13-42-10.

Section 8. That § 13-42-9 be amended to read as follows:

13-42-9. The secretary may refuse to issue or renew, revoke, or suspend any certificate for:

- (1) Incompetency;
- (2) Violation of the code of ethics, established pursuant to § 13-43-25 or 13-43-45, as determined by the Professional Teachers Practices and Standards Commission or the Professional Administrators Practices and Standards Commission;
- (3) Flagrant neglect of duty;
- (4) Failure to fulfill any requirement for certification imposed pursuant to this chapter or chapter 13-43 and rules promulgated thereto;
- (5) Moral turpitude; or

(6) Any other cause specifically allowed by law.

Section 9. That § 13-42-10 be amended to read as follows:

13-42-10. The secretary may suspend or refuse to issue or renew any certificate for a period not to exceed one year for breaking a contract with a school. However, the secretary may not suspend the certificate if the school board or governing body collects liquidated damages pursuant to the terms of the contract. In order to initiate proceedings pursuant to this section, the school board or governing body employing the certificate holder shall file a complaint pursuant to § 13-42-12.

Section 10. That § 13-42-12 be amended to read as follows:

13-42-12. Except as provided in § 13-42-10, any person may initiate proceedings for the revocation or suspension of a certificate. A written complaint shall be filed with the Professional Teachers Practices and Standards Commission or the Professional Administrators Practices and Standards Commission. The complaint shall specify generally the nature and character of the charges, and within five days after filing, a copy of the complaint shall be served upon the certificate holder in person or by registered or certified mail addressed to the person's last known address. The certificate holder shall, within thirty days after the service of the complaint, file with the commission a written answer to the charges specified. The hearing shall be conducted consistent with the requirements of chapter 1-26. Each commission may promulgate rules, pursuant to chapter 1-26, to further define the standards and procedures for conducting hearings and for filing, investigating, and resolving complaints.

Section 11. That § 13-42-13 be repealed.

Section 12. That § 13-42-14 be amended to read as follows:

13-42-14. The hearing referenced in § 13-42-12 may be either private or public, as the certificate holder may elect, and the certificate holder may appear in person or by counsel and produce evidence at the hearing. Each witness shall be sworn before testifying and the official conducting the hearing

may administer the oath prescribed by law for witnesses in judicial proceedings. A record, in writing, shall be made of the proceedings and of all evidence produced at the hearing and shall be filed with the department upon conclusion of the hearing. The hearing shall be held in Pierre unless good cause is shown to justify moving the hearing to another location for the convenience of the parties and witnesses.

Section 13. That § 13-42-15 be amended to read as follows:

13-42-15. The secretary shall make a decision within thirty days from receipt of a complaint pursuant to § 13-43-28.1 or 13-43-49. In case of suspension or revocation, the secretary shall fix the date at which the suspension or revocation becomes effective and, in case of suspension, the duration of the suspension. The order and findings of fact and conclusions of law of the secretary shall be served upon the certificate holder, and, if applicable, upon the school which last employed the certificate holder, the commission, and the complainant before the commission.

Section 14. That § 13-42-16 be amended to read as follows:

13-42-16. A certificate holder whose certificate has been revoked or suspended pursuant to this chapter has a right of appeal from the decision of the secretary to the circuit court pursuant to chapter 1-26.

Section 15. That § 13-42-17 be amended to read as follows:

13-42-17. Each complaint and answer referenced in § 13-42-12 and all other investigative information regarding potential discipline of an applicant or certificate holder in the possession of the department, the Professional Teachers Practices and Standards Commission, and the Professional Administrators Practices and Standards Commission is confidential. This information may be discovered and disclosed as part of a disciplinary proceeding initiated pursuant to chapter 13-42 or 13-43. In addition, if disciplinary action is imposed by the secretary or a commission pursuant to chapter 13-42 or 13-43, this information may be disclosed to authorities within this state, another

state, the District of Columbia, or a territory or country in which the applicant or certificate holder holds a certificate or has applied for a certificate.

Section 16. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as follows:

The final decision of the secretary regarding a certificate, along with the findings of fact and conclusions of law, is a public record. If the certificate holder requests a private hearing pursuant to § 13-42-14, the written record and evidence from the hearing, including the findings of fact and conclusions of law, are confidential unless adopted by the secretary as part of the final decision. However, if disciplinary action is imposed by the secretary or a commission pursuant to chapter 13-42 or 13-43, the written record and evidence from the hearing may be disclosed to authorities within this state, another state, the District of Columbia, or a territory or country in which the applicant or certificate holder holds a certificate or has applied for a certificate.

Section 17. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as follows:

After conducting a contested case proceeding that results in the denial, nonrenewal, revocation, or suspension of a certificate, the department or commission may assess all or part of its actual costs for the proceeding against the certificate holder or applicant.

Section 18. That § 13-43-5.1 be amended to read as follows:

13-43-5.1. No public school board or other accredited school may employ a person whose certificate as defined in section 1 of this Act is revoked or during the term of a suspension. A revocation or suspension for purposes of this section includes a refusal to issue or renew a certificate.

Section 19. That § 13-43-16 be amended to read as follows:

13-43-16. The Legislature of the State of South Dakota declares teaching to be a profession. It is declared to be in the interest of the state that the profession be recognized and that the profession

accept its responsibilities in the development and promotion of standards of ethics, conduct, performance, preparation, and practices. For the purpose of §§ 13-43-16 to 13-43-30, inclusive, the teaching profession includes each person certificated by the secretary as a teacher, administrator, and other educational professional, as defined by section 1 of this Act, employed by a public school or other accredited school.

Section 20. That § 13-43-23 be amended to read as follows:

13-43-23. Any expense incurred by the Professional Teachers Practices and Standards Commission or the Professional Administrators Practices and Standards Commission in administering the provisions of §§ 13-43-16 to 13-43-50, inclusive, shall be paid from the state institute fund. However, the annual expenses are limited to an amount not to exceed two-thirds of the annual amount collected for certification fees. Nothing in this section is intended to limit the ability to assess costs pursuant to section 17 of this Act.

Section 21. That § 13-43-28 be amended to read as follows:

13-43-28. After notice and hearing as a contested case under the provisions of chapter 1-26, if the Professional Teachers Practices and Standards Commission determines that a certificate holder has engaged in conduct referenced in § 13-42-9 or 13-42-10, the commission may issue a public or private reprimand or impose other appropriate disciplinary action which is in the best interests of the commission, the certificate holder, and the public. The commission does not have the authority to deny, not renew, suspend, or revoke a certificate.

The commission has the powers conferred by §§ 1-26-19.1 and 1-26-19.2 and the certificate holder and the certificate holder's attorney also have available the provisions of those sections. The commission may promulgate rules, pursuant to chapter 1-26, to further define other appropriate disciplinary action referenced in this section. Any member reprimanded or disciplined by the commission pursuant to this section may appeal to circuit court as provided by chapter 1-26.

Section 22. That § 13-43-28.1 be amended to read as follows:

13-43-28.1. If the Professional Teachers Practices and Standards Commission determines that proceedings to revoke or suspend the certificate should be instituted, the commission shall file a written complaint, findings of fact and conclusions of law, and the hearing record with the secretary and serve a copy of the complaint and findings and conclusions upon the parties before the commission. The commission's complaint shall specify the nature and character of the charges. The commission may impose discipline pursuant to § 13-43-28 and file a complaint pursuant to this section.

The secretary may base the revocation or suspension decision solely upon review of the commission's hearing record or may require additional evidence by affidavit, document, or testimony upon the secretary's own motion or upon the request of any party before the commission. The commission's determination to institute proceedings seeking revocation or suspension of a certificate pursuant to this section is not a final agency action and may not be appealed to court. The final decision of the secretary may be appealed to circuit court as provided in § 13-42-16.

Section 23. That § 13-43-30 be repealed.

Section 24. That § 13-43-48 be amended to read as follows:

13-43-48. After notice and hearing as a contested case under the provisions of chapter 1-26, if the Professional Administrators Practices and Standards Commission determines that an administrator has engaged in conduct referenced in § 13-42-9 or 13-42-10, the commission may issue a public or private reprimand or impose other appropriate disciplinary action which is in the best interests of the commission, the certificate holder, and the public. The commission does not have the authority to deny, not renew, suspend, or revoke a certificate.

The commission has the powers conferred by §§ 1-26-19.1 and 1-26-19.2, and the certificate holder and the certificate holder's attorney also have available the provisions of those sections. The

commission may promulgate rules, pursuant to chapter 1-26, to further define other appropriate disciplinary action referenced in this section. Any member reprimanded or disciplined by the commission pursuant to this section may appeal to circuit court as provided by chapter 1-26.

Section 25. That § 13-43-49 be amended to read as follows:

13-43-49. If the Professional Administrators Practices and Standards Commission determines that proceedings to revoke or suspend the certificate of an administrator should be instituted, the commission shall file a written complaint, findings of fact and conclusions of law, and the hearing record with the secretary and serve a copy of the complaint and findings and conclusions upon the parties before the commission. The commission's complaint shall specify the nature and character of the charges. The commission may impose discipline pursuant to § 13-43-48 and file a complaint pursuant to this section.

The secretary may base the revocation or suspension decision solely upon review of the commission's hearing record or may require additional evidence by affidavit, document, or testimony upon the secretary's own motion or upon the request of any party before the commission. The commission's determination to institute proceedings seeking revocation or suspension of a certificate pursuant to this section is not a final agency action and may not be appealed to court. The final decision of the secretary may be appealed to circuit court as provided in § 13-42-16.

Section 26. That § 13-43-50 be repealed.

Section 27. That § 13-43-59 be amended to read as follows:

13-43-59. Any person employed in an administrative capacity, but who does not hold a valid South Dakota certificate pursuant to chapter 13-42, is subject to the code of professional ethics as established under § 13-43-45. The procedures referenced in §§ 13-42-12 and 13-42-14 apply to complaints and hearings regarding an alleged violation of the code of professional ethics by the person. If the Professional Administrators Practices and Standards Commission determines that the

person has violated the code of professional ethics, then the commission may impose discipline referenced in § 13-43-48.

Section 28. That § 23A-27-14.1 be amended to read as follows:

23A-27-14.1. Notwithstanding §§ 23A-27-14 and 23A-27-17, any person who has received an order pursuant to § 23A-27-13 who is licensed or seeks to be licensed pursuant to chapter 13-42 may have the person's application refused or license revoked as provided in chapters 13-42 and 13-43.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1044

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Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1044

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State