HOUSE BILL No. 6043


A bill to amend 1976 PA 451, entitled "The revised school code," by amending section 1230b (MCL 380.1230b), as added by 1996 PA 189, and by adding section 1230i.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1230b. (1) Before hiring an applicant for employment, a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall request the applicant for employment to sign a statement that does both of the following:

(a) Authorizes the applicant's current or former employer or employers to disclose to the school district, local act school district, public school academy, intermediate school district, or nonpublic school any unprofessional conduct by the applicant and to make available to the school district, local act school district, public school academy, intermediate school district, or nonpublic school copies of all documents in the employee's personnel record maintained by the current or former employer relating to that unprofessional conduct.
(b) Releases the current or former employer, and employees acting on behalf of the current or former employer, from any liability for providing information described in subdivision (a), as provided in subsection (3), and waives any written notice required under section 6 of the Bullard-Plawecki employee right to know act, Act No. 397 of the Public Acts of 1978, being section 423.506 of the Michigan Compiled Laws, 1978 PA 397, MCL 423.506.

(2) Before hiring an applicant for employment, a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall request at least the applicant's current employer or, if the applicant is not currently employed, the applicant's immediately previous employer to provide the information described in subsection (1)(a), if any. The request shall include a copy of the statement signed by the applicant under subsection (1).

(3) Not later than 20 business days after receiving a request under subsection (2), an employer shall provide the information requested and make available to the requesting school district, local act school district, public school academy, intermediate school district, or nonpublic school copies of all documents in the employee's personnel record relating to the unprofessional conduct. An employer, or an employee acting on behalf of the employer, that discloses information under this section in good faith is immune from civil liability for the disclosure. An employer, or an employee acting on behalf of the employer, is presumed to be acting in good faith at the time of a disclosure under this section unless a preponderance of the evidence establishes 1 or more of the following:

(a) That the employer, or employee, knew the information disclosed was false or misleading.

(b) That the employer, or employee, disclosed the information with a reckless disregard for the truth.

(c) That the disclosure was specifically prohibited by a state or federal statute.
(4) The board, BOARD OF DIRECTORS, or governing body of a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall not hire an applicant who does not sign the statement described in subsection (1).

(5) Information received under this section shall be used by a school district, local act school district, public school academy, intermediate school district, or nonpublic school only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. Except as otherwise provided by law, a board member or employee of a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall not disclose the information to any person, INDIVIDUAL, other than the applicant, who is not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than $10,000.00, but is not subject to the penalties under section 1804.

(6) The board, BOARD OF DIRECTORS, GOVERNING BODY, or an official of a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall not enter into a collective bargaining agreement, individual employment contract, resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about unprofessional conduct of an employee or former employee or of expunging information about that unprofessional conduct from personnel records. Any provision of a contract or agreement that is contrary to this subsection is void and unenforceable. This subsection does not restrict the expungement from a personnel file of information about alleged unprofessional conduct that has not been substantiated.

(7) IF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL RECEIVES INFORMATION UNDER SUBSECTION (3) CONCERNING AN ACT OF IMMORALITY, MORAL TURPITUDE, OR
INAPPROPRIATE BEHAVIOR INVOLVING A MINOR; A LISTED OFFENSE INVOLVING A MINOR; OR THE COMMISSION OF A CRIME INVOLVING A MINOR, WITHIN 60 DAYS AFTER RECEIVING THE INFORMATION THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL SHALL SUBMIT TO THE DEPARTMENT IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT A REPORT DETAILING THE INFORMATION RECEIVED AND ANY ACTION TAKEN AS A RESULT BY THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL. THE DEPARTMENT SHALL MAINTAIN A COPY OF THIS REPORT FOR AT LEAST 6 YEARS.

(8) This section does not prevent a school district, local act school district, public school academy, intermediate school district, or nonpublic school from requesting or requiring an applicant for employment to provide information other than that described in this section.

(9) As used in this section:

(A) "LISTED OFFENSE" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.722.

(B) "Personnel record" means that term as defined in section 1 of Act No. 397 of the Public Acts of 1978, being section 423.501 of the Michigan Compiled Laws. THE BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT, 1978 PA 397, MCL 423.501.

(C) "Unprofessional conduct" means 1 or more acts of misconduct; 1 or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; A LISTED OFFENSE INVOLVING A MINOR; or commission of a crime involving a minor. A criminal conviction is not an essential element of determining whether or not a particular act constitutes unprofessional conduct.

SEC. 1230I. (1) IF A SCHOOL OFFICIAL OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL RECEIVES INFORMATION FROM AN AUTHORITATIVE SOURCE RELATING TO ANY UNPROFESSIONAL CONDUCT OF AN INDIVIDUAL WHO IS EITHER A FULL-TIME OR PART-TIME EMPLOYEE OF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL.
SCHOOL OR IS ASSIGNED TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS SCHOOLS, WITHIN 60 DAYS AFTER RECEIVING THAT INFORMATION THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL SHALL SUBMIT TO THE DEPARTMENT IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT A REPORT DETAILING THE INFORMATION RECEIVED AND ANY ACTION TAKEN AS A RESULT BY THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL. THE DEPARTMENT SHALL MAINTAIN A COPY OF THIS REPORT FOR AT LEAST 6 YEARS.

(2) AS USED IN THIS SECTION:

(A) "AT SCHOOL" MEANS IN A CLASSROOM, ELSEWHERE ON SCHOOL PROPERTY, OR ON A SCHOOL BUS OR OTHER SCHOOL-RELATED VEHICLE.

(B) "LISTED OFFENSE" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.722.

(C) "REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT" MEANS ANY OF THE FOLLOWING:

(i) TO WORK AT SCHOOL ON A MORE THAN INTERMITTENT OR SPORADIC BASIS AS AN OWNER OR EMPLOYEE OF AN ENTITY THAT HAS A CONTRACT WITH A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL TO PROVIDE FOOD, CUSTODIAL, TRANSPORTATION, COUNSELING, OR ADMINISTRATIVE SERVICES, OR TO PROVIDE INSTRUCTIONAL SERVICES TO PUPILS OR RELATED AND AUXILIARY SERVICES TO SPECIAL EDUCATION PUPILS.

(ii) TO WORK AT SCHOOL ON A MORE THAN INTERMITTENT OR SPORADIC BASIS AS AN INDIVIDUAL UNDER A CONTRACT WITH A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL TO PROVIDE FOOD, CUSTODIAL, TRANSPORTATION, COUNSELING, OR ADMINISTRATIVE SERVICES, OR TO PROVIDE INSTRUCTIONAL SERVICES TO PUPILS OR RELATED AND AUXILIARY SERVICES TO SPECIAL EDUCATION PUPILS.

(D) "SCHOOL PROPERTY" MEANS THAT TERM AS DEFINED IN SECTION 33 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.733.

(E) "UNPROFESSIONAL CONDUCT" MEANS 1 OR MORE ACTS OF IMMORALITY, MORAL TURPITUDE, OR INAPPROPRIATE BEHAVIOR INVOLVING A MINOR; A LISTED OFFENSE INVOLVING A MINOR; OR COMMISSION OF A CRIME.
INVolving a MINOr. A CRIMINAL CONVICTION IS NOT AN ESSENTIAL ELEMENT OF DETERMINING WHETHER OR NOT A PARTICULAR ACT CONSTITUTES UNPROFESSIONAL CONDUCT.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.