

**SENATE SUBSTITUTE FOR
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:

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

6 (a) Authorizes the applicant's current or former employer or
7 employers to disclose to the school district, ~~local act school~~
8 ~~district~~, public school academy, intermediate school district, or
9 nonpublic school any unprofessional conduct by the applicant and to
10 make available to the school district, ~~local act school district~~,

1 public school academy, intermediate school district, or nonpublic
2 school copies of all documents in the employee's personnel record
3 maintained by the current or former employer relating to that
4 unprofessional conduct.

5 (b) Releases the current or former employer, and employees
6 acting on behalf of the current or former employer, from any
7 liability for providing information described in subdivision (a),
8 as provided in subsection (3), and waives any written notice
9 required under section 6 of the Bullard-Plawecki employee right to
10 know act, ~~Act No. 397 of the Public Acts of 1978, being section~~
11 ~~423.506 of the Michigan Compiled Laws. 1978 PA 397, MCL 423.506.~~

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

20 (3) Not later than 20 business days after receiving a request
21 under subsection (2), an employer shall provide the information
22 requested and make available to the requesting school district,
23 ~~local act school district,~~ public school academy, intermediate
24 school district, or nonpublic school copies of all documents in the
25 employee's personnel record relating to the unprofessional conduct.
26 An employer, or an employee acting on behalf of the employer, that
27 discloses information under this section in good faith is immune

1 from civil liability for the disclosure. An employer, or an
2 employee acting on behalf of the employer, is presumed to be acting
3 in good faith at the time of a disclosure under this section unless
4 a preponderance of the evidence establishes 1 or more of the
5 following:

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

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

10 (c) That the disclosure was specifically prohibited by a state
11 or federal statute.

12 (4) The board, **BOARD OF DIRECTORS**, or governing body of a
13 school district, ~~local act school district~~, public school academy,
14 intermediate school district, or nonpublic school shall not hire an
15 applicant who does not sign the statement described in subsection
16 (1).

17 (5) Information received under this section shall be used by a
18 school district, ~~local act school district~~, public school academy,
19 intermediate school district, or nonpublic school only for the
20 purpose of evaluating an applicant's qualifications for employment
21 in the position for which he or she has applied. Except as
22 otherwise provided by law, a board member or employee of a school
23 district, ~~local act school district~~, public school academy,
24 intermediate school district, or nonpublic school shall not
25 disclose the information to any ~~person~~, **INDIVIDUAL**, other than the
26 applicant, who is not directly involved in the process of
27 evaluating the applicant's qualifications for employment. ~~A person~~

1 **AN INDIVIDUAL** who violates this subsection is guilty of a
2 misdemeanor punishable by a fine of not more than \$10,000.00, but
3 is not subject to the penalties under section 1804.

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

17 (7) **IF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC**
18 **SCHOOL ACADEMY, OR NONPUBLIC SCHOOL RECEIVES INFORMATION UNDER**
19 **SUBSECTION (3) CONCERNING AN ACT THAT RESULTED IN DISCIPLINARY**
20 **ACTION OR THE NONRENEWAL OF A CONTRACT AND THAT IS AN ACT OF**
21 **IMMORALITY, MORAL TURPITUDE, OR INAPPROPRIATE BEHAVIOR INVOLVING A**
22 **MINOR; A LISTED OFFENSE INVOLVING A MINOR; OR THE COMMISSION OF A**
23 **CRIME INVOLVING A MINOR, WITHIN 60 DAYS AFTER RECEIVING THE**
24 **INFORMATION THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,**
25 **PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL SHALL SUBMIT TO THE**
26 **DEPARTMENT IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT A**
27 **REPORT DETAILING THE INFORMATION RECEIVED AND ANY ACTION TAKEN AS A**

1 RESULT BY THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC
2 SCHOOL ACADEMY, OR NONPUBLIC SCHOOL. THE DEPARTMENT SHALL MAINTAIN
3 A COPY OF THIS REPORT FOR AT LEAST 6 YEARS.

4 (8) IF THE DEPARTMENT, OR AN EMPLOYEE ACTING ON BEHALF OF THE
5 DEPARTMENT, DISCLOSES A RECORD UNDER SUBSECTION (3) IN GOOD FAITH,
6 THE DEPARTMENT, OR AN EMPLOYEE ACTING ON BEHALF OF THE DEPARTMENT,
7 IS IMMUNE FROM CIVIL LIABILITY FOR THE DISCLOSURE. THE DEPARTMENT,
8 OR AN EMPLOYEE ACTING ON BEHALF OF THE DEPARTMENT, IS PRESUMED TO
9 BE ACTING IN GOOD FAITH AT THE TIME OF A DISCLOSURE UNDER THIS
10 SECTION UNLESS A PREPONDERANCE OF THE EVIDENCE ESTABLISHES 1 OR
11 MORE OF THE FOLLOWING:

12 (A) THAT THE DEPARTMENT, OR EMPLOYEE, KNEW THAT THE
13 INFORMATION DISCLOSED WAS FALSE OR MISLEADING.

14 (B) THAT THE DEPARTMENT, OR EMPLOYEE, DISCLOSED THE
15 INFORMATION WITH A RECKLESS DISREGARD FOR THE TRUTH.

16 (C) THAT THE DISCLOSURE WAS SPECIFICALLY PROHIBITED BY A STATE
17 OR FEDERAL STATUTE.

18 (9) IF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC
19 SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR AN EMPLOYEE ACTING ON
20 BEHALF OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC
21 SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, DISCLOSES INFORMATION RECEIVED
22 OR A REPORT UNDER SUBSECTION (7), IN GOOD FAITH, THE SCHOOL
23 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR
24 NONPUBLIC SCHOOL, OR AN EMPLOYEE ACTING ON BEHALF OF THE SCHOOL
25 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR
26 NONPUBLIC SCHOOL, IS IMMUNE FROM CIVIL LIABILITY FOR THE
27 DISCLOSURE. THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,

1 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR AN EMPLOYEE ACTING
 2 ON BEHALF OF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
 3 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, IS PRESUMED TO BE
 4 ACTING IN GOOD FAITH AT THE TIME OF A DISCLOSURE UNDER THIS SECTION
 5 UNLESS A PREPONDERANCE OF THE EVIDENCE ESTABLISHES 1 OR MORE OF THE
 6 FOLLOWING:

7 (A) THAT THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
 8 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR EMPLOYEE, KNEW THAT
 9 THE INFORMATION DISCLOSED WAS FALSE OR MISLEADING.

10 (B) THAT THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
 11 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR EMPLOYEE, DISCLOSED
 12 THE INFORMATION WITH A RECKLESS DISREGARD FOR THE TRUTH.

13 (C) THAT THE DISCLOSURE WAS SPECIFICALLY PROHIBITED BY A STATE
 14 OR FEDERAL STATUTE.

15 (10) ~~(7)~~—This section does not prevent a school district,
 16 ~~local act school district,~~ public school academy, intermediate
 17 school district, or nonpublic school from requesting or requiring
 18 an applicant for employment to provide information other than that
 19 described in this section.

20 (11) INFORMATION RECEIVED UNDER SUBSECTION (3) AND A REPORT
 21 SUBMITTED TO THE DEPARTMENT UNDER SUBSECTION (7) ARE EXEMPT FROM
 22 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
 23 15.231 TO 15.246.

24 (12) ~~(8)~~—As used in this section:

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

27 (B) ~~(a)~~—"Personnel record" means that term as defined in

1 section 1 of ~~Act No. 397 of the Public Acts of 1978, being section~~
2 ~~423.501 of the Michigan Compiled Laws.~~ **THE BULLARD-PLAWECKI EMPLOYEE**
3 **RIGHT TO KNOW ACT, 1978 PA 397, MCL 423.501.**

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

10 SEC. 1230I. (1) IF A SCHOOL OFFICIAL OF A SCHOOL DISTRICT,
11 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC
12 SCHOOL RECEIVES INFORMATION RELATING TO ANY UNPROFESSIONAL CONDUCT
13 OF AN INDIVIDUAL WHO IS EITHER A FULL-TIME OR PART-TIME EMPLOYEE OF
14 THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL
15 ACADEMY, OR NONPUBLIC SCHOOL OR IS ASSIGNED TO REGULARLY AND
16 CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS SCHOOLS AND THE
17 CONDUCT RESULTED IN DISCIPLINARY ACTION OR THE NONRENEWAL OF A
18 CONTRACT, WITHIN 60 DAYS AFTER RECEIVING THAT INFORMATION THE
19 SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL
20 ACADEMY, OR NONPUBLIC SCHOOL SHALL SUBMIT TO THE DEPARTMENT IN THE
21 FORM AND MANNER PRESCRIBED BY THE DEPARTMENT A REPORT DETAILING THE
22 INFORMATION RECEIVED AND ANY ACTION TAKEN AS A RESULT BY THE SCHOOL
23 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR
24 NONPUBLIC SCHOOL. THE DEPARTMENT SHALL MAINTAIN A COPY OF THIS
25 REPORT FOR AT LEAST 6 YEARS.

26 (2) IF THE DEPARTMENT, OR AN EMPLOYEE ACTING ON BEHALF OF THE
27 DEPARTMENT, DISCLOSES INFORMATION OR A REPORT RECEIVED UNDER

1 SUBSECTION (1) IN GOOD FAITH, THE DEPARTMENT, OR AN EMPLOYEE ACTING
2 ON BEHALF OF THE DEPARTMENT, IS IMMUNE FROM CIVIL LIABILITY FOR THE
3 DISCLOSURE. THE DEPARTMENT, OR AN EMPLOYEE ACTING ON BEHALF OF THE
4 DEPARTMENT, IS PRESUMED TO BE ACTING IN GOOD FAITH AT THE TIME OF A
5 DISCLOSURE UNDER THIS SECTION UNLESS A PREPONDERANCE OF THE
6 EVIDENCE ESTABLISHES 1 OR MORE OF THE FOLLOWING:

7 (A) THAT THE DEPARTMENT, OR EMPLOYEE, KNEW THAT THE
8 INFORMATION DISCLOSED WAS FALSE OR MISLEADING.

9 (B) THAT THE DEPARTMENT, OR EMPLOYEE, DISCLOSED THE
10 INFORMATION WITH A RECKLESS DISREGARD FOR THE TRUTH.

11 (C) THAT THE DISCLOSURE WAS SPECIFICALLY PROHIBITED BY A STATE
12 OR FEDERAL STATUTE.

13 (3) IF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC
14 SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR AN EMPLOYEE ACTING ON
15 BEHALF OF A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC
16 SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, DISCLOSES INFORMATION RECEIVED
17 OR A REPORT UNDER SUBSECTION (1), IN GOOD FAITH, THE SCHOOL
18 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR
19 NONPUBLIC SCHOOL, OR AN EMPLOYEE ACTING ON BEHALF OF THE SCHOOL
20 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR
21 NONPUBLIC SCHOOL, IS IMMUNE FROM CIVIL LIABILITY FOR THE
22 DISCLOSURE. THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
23 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR AN EMPLOYEE ACTING
24 ON BEHALF OF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
25 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, IS PRESUMED TO BE
26 ACTING IN GOOD FAITH AT THE TIME OF A DISCLOSURE UNDER THIS SECTION
27 UNLESS A PREPONDERANCE OF THE EVIDENCE ESTABLISHES 1 OR MORE OF THE

1 FOLLOWING:

2 (A) THAT THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
3 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR EMPLOYEE, KNEW THAT
4 THE INFORMATION DISCLOSED WAS FALSE OR MISLEADING.

5 (B) THAT THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
6 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL, OR EMPLOYEE, DISCLOSED
7 THE INFORMATION WITH A RECKLESS DISREGARD FOR THE TRUTH.

8 (C) THAT THE DISCLOSURE WAS SPECIFICALLY PROHIBITED BY A STATE
9 OR FEDERAL STATUTE.

10 (4) INFORMATION RECEIVED AND A REPORT SUBMITTED TO THE
11 DEPARTMENT UNDER SUBSECTION (1) ARE EXEMPT FROM DISCLOSURE UNDER
12 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

13 (5) AS USED IN THIS SECTION:

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

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

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

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

27 (ii) TO WORK AT SCHOOL ON A MORE THAN INTERMITTENT OR SPORADIC

1 BASIS AS AN INDIVIDUAL UNDER A CONTRACT WITH A SCHOOL DISTRICT,
2 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC
3 SCHOOL TO PROVIDE FOOD, CUSTODIAL, TRANSPORTATION, COUNSELING, OR
4 ADMINISTRATIVE SERVICES, OR TO PROVIDE INSTRUCTIONAL SERVICES TO
5 PUPILS OR RELATED AND AUXILIARY SERVICES TO SPECIAL EDUCATION
6 PUPILS.

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

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

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