

Act No. 99  
Public Acts of 1992  
Approved by the Governor  
June 23, 1992  
Filed with the Secretary of State  
June 23, 1992

**STATE OF MICHIGAN  
86TH LEGISLATURE  
REGULAR SESSION OF 1992**

Introduced by Reps. London, Munsell, Trim, Bankes and Oxender

# **ENROLLED HOUSE BILL No. 4569**

AN ACT to amend sections 1535a and 1539a of Act No. 451 of the Public Acts of 1976, entitled as amended "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and classify the laws relating to elementary and secondary education; to provide for the classification, organization, regulation, and maintenance of schools, school districts, and intermediate school districts; to prescribe rights, powers, duties, and privileges of schools, school districts, and intermediate school districts; to provide for the regulation of school teachers and school administrators; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal certain acts and parts of acts," section 1535a as amended and section 1539a as added by Act No. 35 of the Public Acts of 1990, being sections 380.1535a and 380.1539a of the Michigan Compiled Laws; and to add sections 1230 and 1539b.

*The People of the State of Michigan enact:*

Section 1. Sections 1535a and 1539a of Act No. 451 of the Public Acts of 1976, section 1535a as amended and section 1539a as added by Act No. 35 of the Public Acts of 1990, being sections 380.1535a and 380.1539a of the Michigan Compiled Laws, are amended and sections 1230 and 1539b are added to read as follows:

Sec. 1230. (1) Beginning with hiring for the 1993-94 school year and subject to subsection (2), before the board of a school district, local act school district, or intermediate school district or the governing body of a nonpublic school makes an offer of initial employment to an individual for a position as a teacher or a school administrator or for a position requiring state board approval, the district or nonpublic school shall request from the criminal records division of the department of state police a criminal history check on the individual and receive from the department the report described in subsection (5).

(2) For an applicant for a position as a substitute teacher, instead of requesting a criminal history check under subsection (1), a school district, local act school district, intermediate school district, or nonpublic school may use a report received by another district or intermediate district or maintained by the department to confirm that the individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to an applicant for a position as a substitute teacher.

(3) An applicant for a position described in subsection (1) shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal history check required under this section.

(4) A school district, local act school district, or intermediate school district or a nonpublic school shall make a request to the criminal records division of the department of state police for a criminal history check required under this section on a form and in a manner prescribed by the criminal records division of the department of state police.

(5) Upon proper request by a school district, local act school district, or intermediate school district or a nonpublic school for a criminal history check on an applicant under this section, the criminal records division of the department of state police shall conduct the criminal history check. After conducting a criminal history check under this section, the criminal records division of the department of state police shall provide a report to the district or nonpublic school. The report shall contain any criminal history record information on the applicant maintained by the criminal records division of the department of state police.

(6) Criminal history record information received from the criminal records division of the department of state police under subsection (5) shall be used by a school district, local act school district, or intermediate school district or a nonpublic school only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. A member of the board of a district or governing body of a nonpublic school or an employee of a district or nonpublic school shall not disclose the report or its contents except any felony conviction or a misdemeanor conviction involving sexual or physical abuse to any person who is not directly involved in evaluating the applicant's qualifications for employment. However, for the purposes of subsection (2), a person described in this subsection may confirm to an employee of another district or nonpublic school that a report under subsection (5) has revealed that an individual does not have any criminal history or may disclose that no report under subsection (5) has been received concerning the individual. 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.

(7) As used in this section:

(a) "Criminal history record information" means that term as defined in section 1a of Act No. 289 of the Public Acts of 1925, being section 28.241a of the Michigan Compiled Laws.

(b) "State board approval" means that term as defined in section 1539b.

Sec. 1535a. (1) If a person who holds a teaching certificate that is valid in this state is convicted of criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, an attempt to commit criminal sexual conduct in any degree, felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree; cruelty, torture, or indecent exposure involving a child; or a violation of section 7410 or 7416 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7410 and 333.7416 of the Michigan Compiled Laws, the state board shall notify the person in writing that his or her teaching certificate may be suspended because of the conviction and of his or her right to a hearing before the state board. If the person does not avail himself or herself of this right to a hearing within 30 working days after receipt of this written notification, the teaching certificate of that person shall be suspended. If a hearing takes place, the state board may suspend the person's teaching certificate based upon the issues and evidence presented at the hearing.

(2) After the completion of a person's sentence, the person may request a hearing before the state board on reinstatement of his or her teaching certificate. Based upon the issues and evidence presented at the hearing, the state board may reinstate, continue the suspension of, or permanently revoke the person's teaching certificate.

(3) A person described in this section whose conviction is reversed upon final appeal:

(a) Shall have his or her teaching certificate reinstated upon his or her notification of that fact to the state board.

(b) Shall be reinstated, upon his or her notification of that fact to the appropriate local or intermediate school board, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed if the suspension of the teaching certificate was the sole cause of his or her discharge from employment.

(4) The prosecuting attorney of the county in which a person who holds a teaching certificate was convicted of a crime described in subsection (1) shall notify the state board of that conviction. The prosecuting attorney of each county shall inquire of each person convicted in the county of a crime described in subsection (1) whether the person holds a teaching certificate.

(5) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified by a prosecuting attorney or learns through an authoritative source that a person who holds a teaching certificate and who is employed at the time by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in

subsection (1), the superintendent, chief administrative officer, or board president shall notify the state board of that conviction.

(6) This section shall not be construed to do any of the following:

(a) Prohibit a person who holds a teaching certificate from seeking monetary compensation from a school board or intermediate school board if that right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds a teaching certificate.

(c) Exempt a person who holds a teaching certificate from the operation of section 1539a if the person also holds a school administrator's certificate.

(7) The state board may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 1539a. (1) If a person who holds a school administrator's certificate that is valid in this state is convicted of criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, an attempt to commit criminal sexual conduct in any degree, felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree; cruelty, torture, or indecent exposure involving a child; or a violation of section 7410 or 7416 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7410 and 333.7416 of the Michigan Compiled Laws, the state board shall notify the person in writing that his or her school administrator's certificate may be suspended because of the conviction and of his or her right to a hearing before the state board. If the person does not avail himself or herself of this right to a hearing within 30 working days after receipt of this written notification, the school administrator's certificate of that person shall be suspended. If a hearing takes place, the state board may suspend the person's school administrator's certificate based upon the issues and evidence presented at the hearing.

(2) After the completion of the person's sentence, the person may request a hearing before the state board on reinstatement of his or her school administrator's certificate. Based upon the issues and evidence presented at the hearing, the state board may reinstate, continue the suspension of, or permanently revoke the person's school administrator's certificate.

(3) A person described in this section whose conviction is reversed upon final appeal:

(a) Shall have his or her school administrator's certificate reinstated upon his or her notification of that fact to the state board.

(b) Shall be reinstated, upon his or her notification of that fact to the appropriate local or intermediate school board, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed if the suspension of the school administrator's certificate was the sole cause of his or her discharge from employment.

(4) The prosecuting attorney of the county in which a person who holds a school administrator's certificate was convicted of a crime described in subsection (1) shall notify the state board of that conviction. The prosecuting attorney of each county shall inquire of each person convicted in the county of a crime described in subsection (1) whether the person holds a school administrator's certificate.

(5) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified by a prosecuting attorney or learns through an authoritative source that a person who holds a school administrator's certificate and who is employed at the time by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1), the superintendent, chief administrative officer, or board president shall notify the state board of that conviction.

(6) This section shall not be construed to do any of the following:

(a) Prohibit a person who holds a school administrator's certificate from seeking monetary compensation from a school board or intermediate school board if that right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds a school administrator's certificate.

(c) Exempt a person who holds a school administrator's certificate from the operation of section 1535a.

(7) The state board may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 1539b. (1) If a person who holds state board approval is convicted of criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, an attempt to commit criminal sexual conduct in any degree, felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree; cruelty, torture, or indecent exposure involving a child; or a violation of section 7410 or 7416 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7410 and 333.7416 of the Michigan Compiled Laws, the state board shall notify the person in writing that his or her state board approval may be suspended because of the conviction and of his or her right to a hearing before the state board. If the person does not avail himself or herself of this right to a hearing within 30 working days after receipt of this written notification, the person's state board approval shall be suspended. If a hearing takes place, the state board may suspend the person's state board approval, based upon the issues and evidence presented at the hearing.

(2) After the completion of the person's sentence, the person may request a hearing before the state board on reinstatement of his or her state board approval. Based upon the issues and evidence presented at the hearing, the state board may reinstate, continue the suspension of, or permanently revoke the person's state board approval.

(3) A person described in this section whose conviction is reversed upon final appeal:

(a) Shall have his or her state board approval reinstated upon his or her notification of that fact to the state board.

(b) If the suspension of the state board approval was the sole cause of his or her discharge from employment, shall be reinstated upon his or her notification of that fact to the appropriate local or intermediate school board, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed.

(4) The prosecuting attorney of the county in which a person who holds state board approval was convicted of a crime described in subsection (1) shall notify the state board of that conviction. The prosecuting attorney of each county shall inquire of each person convicted in the county of a crime described in subsection (1) whether the person holds state board approval. The state board shall make available to prosecuting attorneys a list of school occupations that commonly require state board approval.

(5) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified by a prosecuting attorney or learns through an authoritative source that a person who holds state board approval and who is employed at the time by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1), the superintendent, chief administrative officer, or board president shall notify the state board of that conviction.

(6) This section shall not be construed to do any of the following:

(a) Prohibit a person who holds state board approval from seeking monetary compensation from a school board or intermediate school board if that right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds state board approval.

(c) Exempt a person who holds state board approval from the operation of section 1535a or 1539a, or both, if the person holds a certificate subject to 1 or both of those sections.

(d) Limit the ability of a state licensing body to take action against a person's license or registration for the same conviction.

(7) The state board may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(8) As used in this section, "state board approval" means a license, certificate, endorsement, permit, approval, or other evidence of qualifications to hold a particular position in a school district or intermediate school district or in a nonpublic school, other than a teacher's certificate subject to section 1535a or a school administrator's certificate subject to section 1539a, that is issued to a person by the state board under this act or a rule promulgated under this act.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.