



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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House Bill 5060 (Substitute S-1 as reported)  
 Sponsor: Representative Harold S. Voorhees  
 House Committee: Education  
 Senate Committee: Education

Date Completed: 4-10-96

### **RATIONALE**

In a number of cases that have occurred in recent years, school districts signed confidential settlements with school personnel who were accused of unprofessional conduct, including sexual activity with students. Under these agreements, the employees were allowed to leave the districts rather than be fired and face charges, and the school districts were prohibited from revealing to anyone, including other school districts, the allegations against the employees. These agreements, according to some school officials, are effective ways to remove the alleged perpetrators from the classrooms. Some people believe, however, that this practice puts children at risk, and that school districts and school personnel should be prohibited from entering into agreements that suppress information about an employee's unprofessional conduct.

### **CONTENT**

The bill would amend the School Code to require public and nonpublic schools, public school academies, and intermediate school districts (ISDs) to request an applicant for employment to sign a statement authorizing the applicant's current or former employer to disclose any unprofessional conduct by the applicant and to make available documents relating to that conduct. The bill also would do the following:

- Prohibit the board or governing body of a public or nonpublic school, public school academy, or ISD from hiring an applicant who did not sign the disclosure statement.
- Specify that the information received under the bill could be used only for

**evaluating an applicant's qualifications for employment.**

- Establish misdemeanor penalties for school board members or school employees who disclosed this information to a person not directly involved in evaluating an applicant's qualifications for employment.
- Prohibit a school board or school official from entering into an agreement with an employee or former employee that would suppress information about unprofessional conduct.

"Unprofessional conduct" would mean one or more acts of misconduct, immorality, moral turpitude, or other inappropriate behavior, or commission of a crime involving a minor. A criminal conviction would not be an essential element of determining whether a particular act constituted unprofessional conduct.

Before receiving an application for employment, a school district, local act school district, public school academy, ISD, or nonpublic school would have to request the applicant for employment to sign, as part of the application, a statement that did both of the following:

- Authorized the applicant's current or former employer(s) to disclose to the school district, local act school district, public school academy, ISD, or nonpublic school any unprofessional conduct by the applicant and to make available to that entity copies of all documents in the employee's personnel record maintained by the current or former employer relating to that unprofessional conduct.

- Released the current or former employer, and employees acting on behalf of that employer, from any liability for providing the above information, as described in the bill, and waived any written notice required under the Employee Right to Know Act (which prohibits an employer or former employer from divulging a disciplinary report, letter of reprimand, or other disciplinary action to a third party, without written notice as provided in the Act).

The board or governing body of a school district, local act school district, public school academy, ISD, or nonpublic school could not hire an applicant who did not sign the disclosure statement.

Before hiring an applicant for employment, a school district, local act school district, public school academy, ISD, or nonpublic school would have to request at least the applicant's current employer or, if the applicant were not currently employed, his or her immediately previous employer to provide the information on unprofessional conduct, if any. The request would have to include a copy of the required disclosure statement.

Within 20 business days after receiving a request for this information, an employer would have to provide the requested information and make available to the requesting school copies of all documents relating to the unprofessional conduct. An employer, or an employee acting on behalf of the employer, that disclosed information under these provisions in good faith would be immune from civil liability for the disclosure. An employer, or an employee acting on behalf of the employer, would be presumed to be acting in good faith at the time of a disclosure under this provision unless a preponderance of the evidence established one or more of the following: that the employer, or employee, knew that the disclosed information was false or misleading; that the employer, or employee, disclosed the information with a reckless disregard for the truth; or that the disclosure was specifically prohibited by a State or Federal statute.

Information received under the bill could be used by a school district, public school academy, ISD, or nonpublic school only for evaluating an applicant's qualifications for employment in the position for which he or she had applied. Except as otherwise provided by law, a board member or employee of a school district, public school academy, ISD, or

nonpublic school could not disclose the information to any person, other than the applicant, who was not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violated this provision would be guilty of a misdemeanor punishable by a fine of up to \$10,000, but would not be subject to penalties for neglecting or refusing to perform an act required in the Code. (Under the Code, a school official or member of a school board or ISD board or other person who neglects or refuses to perform an act required by the Code, or who violates or knowingly permits or consents to a violation of the Code, is guilty of a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for up to three months.)

The board or an official of a school district, local act school district, public school academy, ISD, or nonpublic school could not enter into a collective bargaining, individual employment contract, resignation agreement, severance agreement, or any other contract agreement that had the effect of suppressing information about unprofessional conduct of an employee or a former employee or of expunging information about that unprofessional conduct from personal records. Any provision of a contract agreement that was contrary to this provision would be void and unenforceable.

The bill specifies that it would not prevent a school district, local act school district, public school academy, ISD, or nonpublic school from requesting or requiring an applicant for employment to provide information other than that described in the bill.

Proposed MCL 380.1230b

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The School Code requires that upon an offer of initial employment made by the board of a school district, local act school district, or ISD, or the governing body of a public school academy or nonpublic school to an individual for a teaching or administrative position or a position requiring State Board of Education approval, the district, academy, or nonpublic school must request from the State Police criminal records division a criminal history check on the individual and must have received this report before employing the person

as a regular employee. The Code also requires persons, who are to be employed as conditional employees, to sign statements identifying crimes of which they have been convicted and requires a subsequent criminal history check to be conducted. In addition, if a person who holds a valid teaching certificate or administrator's certificate is convicted of certain criminal sexual conduct offenses, child abuse offenses, various controlled substances offenses, and certain assault offenses, the State Board must notify the person that his or her teaching certificate could be suspended because of the conviction and of his or her right to a hearing before the State Board. The Code permits the State Board to suspend a person's teaching or administrator certificate based on the issues and evidence presented at a hearing. While the Code authorizes the State Board to revoke a certificate for a teacher or administrator who has been *convicted* of one of the specified crimes, there apparently is no mechanism in the Code for dealing with persons who have been *accused*, but not convicted, of certain inappropriate actions, such as child abuse. In these situations, some school districts have signed settlements that require an employee to resign but prohibit a district from revealing this information, which quickly removes the employee from the school setting and reduces the potential liability of both the employee and the district. The bill would close this loophole by preventing teachers and administrators, as well as other school personnel, accused of unprofessional conduct from concealing this information about their employment history with a school district.

#### **Supporting Argument**

Many school officials contend that firing teachers and administrators accused of various offenses is time-consuming and expensive, and it is difficult to prove the allegations. Consequently, some school districts have entered into settlements that result in these employees' terminating employment instead of proceeding through a dismissal process. Unfortunately, these agreements usually prohibit a school district from releasing information about the person's misconduct to prospective employers, including other school districts. This practice, commonly referred to in education circles as "passing the trash", has resulted in suspected child abusers' quietly leaving one school district and seeking employment in another, where school personnel officials are unable to determine if the person was accused of sexual misconduct in another school district in Michigan or other states. Under the bill, school districts, academies, and nonpublic schools would have to request job

applicants to sign statements authorizing the disclosure of unprofessional conduct and would be prohibited from hiring a person who refused to sign the disclosure statement. In addition, the bill specifies that employers who acted in good faith in disclosing this information would be immune from civil liability. This protection from liability, according to the bill's proponents, should serve as an incentive to school districts (including out-of-State districts, which would not be subject to the bill's disclosure requirement) that are requested to send employment records to another district. If a district did not comply with the request, it potentially could be held liable if a child subsequently were harmed by the former employee. Consequently, the bill would help to protect children by keeping out of schools educators and other school employees who had records of unprofessional conduct while employed in school districts across Michigan or in other states.

#### **Supporting Argument**

A March 26, 1996, ruling by the Michigan Court of Appeals bolsters the concept inherent in the bill that information in the personnel files of teachers and administrators should be subject to public scrutiny. In two consolidated cases involving Freedom of Information Act requests, the Court ruled that neither the Michigan Constitution nor common law requires these files to be kept secret, and that teachers and administrators have no right of privacy protecting files from disclosure (*Lansing Association of School Administrators v Lansing School District Board of Education, et al.*, and *Bradley v Board of Education of the Saranac Community Schools, et al.*, Docket Nos. 163316 and 168371).

#### **Opposing Argument**

Some school districts have signed secret pacts with school personnel accused of sexual misconduct in order to remove the person from a school setting as quickly as possible and to avoid protracted and expensive removal procedures. One likely effect of the bill would be more lengthy and costly litigation for school districts that wanted to terminate these employees. In addition, the bill would require the disclosure of a school employee's unprofessional conduct, including acts of misconduct, immorality, moral turpitude, or other inappropriate behavior, or commission of a crime involving a minor. The bill, however, does not specify what actions would constitute "misconduct", "immorality", "moral turpitude", or "inappropriate behavior". Given these circumstances, there is concern that a teacher's or

administrator's personnel file could include information falsely accusing the employee of unprofessional conduct. Thus, the bill provides no protections for school employees who could have been accused falsely or whose behavior was being judged erroneously. Under the House-passed version, at least, "unprofessional conduct" referred to an action that constituted a threat to the health or safety of another and resulted in separation from employment.

**Response:** It is not certain if the bill would lead to more litigation. By prohibiting secret settlements, however, the bill would give an employee who was accused of unprofessional conduct only two options: sue or resign. The bill's supporters believe that many individuals previously sought a settlement merely because they were available and as a means of hiding the accusations contained in the employment records. Precluding the option of settlement could compel these persons to resign instead of going to court in a case they could very well lose. In addition, the bill's proponents point out that its definition of "unprofessional conduct" is based on terms that have application in case law.

Legislative Analyst: L. Arasim

### **FISCAL IMPACT**

The bill would have no fiscal impact on State government. A public or nonpublic school, public school academy, or intermediate school district could incur additional administrative or legal expenses in complying with the bill.

Fiscal Analyst: E. Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.