



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5060 (Substitute H-2 as passed by the House)
Sponsor: Representative Harold S. Voorhees
House Committee: Education
Senate Committee: Education

Date Completed: 3-20-96

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 an action that the applicant knew, or had reason to know, constituted a threat to the health or safety of another person and that resulted in separation from employment, including circumstances in which the applicant began seeking other employment before an investigation into the conduct was completed.

Upon receiving an employment application, 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.

Upon 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 any agreement with an employee or former employee that had the effect of suppressing information about unprofessional conduct of the employee or former employee.

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

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

S9596\S5060SA

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.