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BILL ANALYSIS

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Senate Bill 943 (as enrolled)  
House Bill 5478 (as enrolled)  
Sponsor: Senator Wayne Kuipers (S.B. 943)  
Representative John Stahl (H.B. 5748)  
Senate Committee: Education  
House Committee: Education

**PUBLIC ACT 165 of 2004**  
**PUBLIC ACT 166 of 2004**

Date Completed: 2-2-05

### **RATIONALE**

Some people were concerned that the teaching of abstinence in sex education courses was not a significant part of the public schools' curriculum. Since 1993, the Revised School Code has required a public school, if it offers a course in human sexuality, to teach that abstinence is an effective prevention against disease and unwanted pregnancy, and that it is a positive lifestyle. Reportedly, in some districts, teachers and sex education advisory boards were overshadowing this message by strongly emphasizing contraception and healthy sexual relationships. Further, some parents reported that their districts' sex education advisory boards were not meeting the needs of those who desired a more abstinence-based curriculum taught in their children's schools. It was suggested that schools be required to emphasize abstinence in their sex education curriculum; that the make-up and goals of sex education boards be revised; and that a formal complaint process be established to address districts' noncompliance with statutory requirements governing sex education.

### **CONTENT**

**Senate Bill 943 amended the Revised School Code to require that public school instruction on HIV, AIDS, and sex education emphasize abstinence, the consequences of sexual behavior, refusal skills, and other content. The bill also prescribes the membership, terms, and responsibilities of each**

**district's "sex education advisory board".**

**House Bill 5478 amended the State School Aid Act to provide for a complaint process for those who believe a district is not complying with statutory sex education requirements or the advisory board provisions of Senate Bill 943. Also, House Bill 5478 reduces the percentage of State aid a district must forfeit if it fails to comply with requirements for sex education instruction, but includes violations of the advisory board provisions among those subject to the penalty.**

House Bill 5478 was tie-barred to Senate Bill 943. The bills took effect June 24, 2004. They are described below in further detail.

### **Senate Bill 943**

#### **Sex Education Instruction**

The Code permits a school district to offer an elective class in sex education, including family planning, human sexuality, reproductive health, and the recognition, prevention and treatment of sexually transmitted diseases. A district is required, however, to teach its pupils about HIV, AIDS, and other communicable diseases. The Superintendent of Public Instruction must provide for the development and distribution to school districts of material on HIV and AIDS; under the bill, this material must be medically accurate.

Previously, instruction on communicable diseases and sex education had to include the teaching of abstinence from sex as a responsible method of preventing disease and unwanted pregnancies, and as a positive lifestyle for unmarried young people. Under the bill, this instruction must stress that abstinence from sex is a responsible and effective method of preventing unplanned or out-of wedlock pregnancy, and emphasize that it is the only protection that is 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted HIV infection and AIDS. The instruction also must stress that abstinence is a positive lifestyle for unmarried young people.

Under the bill, material and instruction in the sex education curriculum that discusses sex must be age appropriate, may not be medically inaccurate, and must do at least all of the following:

- Discuss the benefits of abstaining from sex until marriage and the benefits of ceasing sex if a pupil is sexually active.
- Include a discussion of the possible emotional, economic, and legal consequences of sex.
- Stress that unplanned pregnancy and sexually transmitted diseases are serious possibilities of sexual intercourse that are not fully preventable except by abstinence.
- Advise pupils of the laws pertaining to their responsibility as parents to children born in and out of wedlock.
- Teach pupils how to say "no" to sexual advances and that is wrong to take advantage of, harass, or exploit another person sexually.
- Teach refusal skills and encourage pupils to resist pressure to engage in risky behavior.
- Teach that the pupil has the power to control personal behavior, and teach pupils to base their actions on reasoning, self-discipline, a sense of responsibility, self-control, and ethical considerations such as respect for self and others.
- Provide instruction on healthy dating relationships and on how to set limits and recognize a dangerous environment
- Provide information for pupils about how young parents can learn more about adoption services and about the provisions of the Safe Delivery of Newborns Law.

The sex education material also must ensure that pupils are not taught in a way that condones the violation of the laws of the State pertaining to sexual activity, including, but not limited to, those relating to sodomy, lewd and lascivious cohabitation or behavior, indecent exposure, gross indecency, and criminal sexual conduct in the first, second, third, and fourth degrees. Further, the material must include information clearly informing pupils that having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment and that one of the other results of being convicted of this crime is to be listed on the sex offender registry on the internet for up to 25 years.

The bill provides that these requirements do not prohibit a public school from offering sex education with behavioral risk reduction strategies, as defined by law, that are not 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted HIV infection and AIDS.

#### Sex Education Advisory Board

Under the Code, a district providing a course in sex education must have in place an advisory board to review the material and instructional methods used for the course, and to make recommendations to the district regarding changes in the course materials or methods. The board must consist of parents with children in the district's schools, pupils in the district's schools, educators, local clergy, and community health professionals.

Under the bill, this board is called the "sex education advisory board". The district's school board must determine the advisory board members' terms of service, the number of members who will serve on it, and a membership selection process that reasonably reflects the school district's population. The school board must appoint two co-chairs for the sex education advisory board, at least one of whom is a parent of a child attending a school operated by the school district. At least 50% of the members of the advisory board must be parents who have a child attending a school operated by the school district, and a majority of the parent members must be individuals who are not employed by a school district. The board of a school district

must include pupils of the school district, educators, local clergy, and community health professionals on the sex education advisory board. Written or electronic notice of a sex education advisory board meeting must be sent to each member at least two weeks before the date of the meeting.

A sex education advisory board must establish program goals and objectives for pupil knowledge and skills that are likely to reduce the rates of sex, pregnancy, and sexually transmitted diseases. (The bill states that this does not prohibit a school district from establishing additional program goals and objectives, as long as they are not contrary to the program goals and objectives and the Code's other requirements for sex education and HIV/AIDS instruction.) The board also must review the materials and methods of instruction used, and make recommendations to the school board for implementation. The advisory board must take into consideration the school district's needs, demographics, and trends, including teenage pregnancy rates, sexually transmitted disease rates, and incidents of student sexual violence and harassment.

At least once every two years, the board must evaluate, measure, and report the attainment of its program goals and objectives. The board must make the resulting report available to parents in the district.

#### Family Planning Drug or Device

The Code prohibits a person from dispensing or distributing a family planning drug or device in a public school. The bill extends this to public school property.

#### Sex Education "Class"

Previously, "class" meant an instructional period of limited duration, not to exceed two hours, within a course of instruction. Under the bill, the term means an instructional period of limited duration within a course of instruction and includes an assembly or small group presentation.

## **House Bill 5478**

### Penalties

Under Section 166a of the State School Aid Act, in order to avoid forfeiture of State aid, the board of a district or intermediate district providing reproductive health or other sex education instruction under Section 1169, 1506, or 1507 of the Revised School Code, or under any other provision of law, must ensure that certain requirements are met. (These requirements include informing pupils that sex with a person under 16 is a crime; notifying parents of the content of the instruction; and notifying parents of their right to excuse their child from instruction.) Previously, a district that failed to comply had to forfeit 5% of its total State school aid allocation.

Under the bill, if an investigation conducted by the Department of Education (as described below) reveals that the district has violated Section 166a of the Act or Section 1169, 1506, or 1507 of the Code, the district must forfeit 1% of its total State school aid allocation. (Section 1169 includes the requirements for instruction in communicable diseases. Section 1506 provides for instruction in reproductive health. Section 1507 includes the provisions for instruction in sex education and the requirements for sex education advisory boards.)

### Complaint Process

The bill provides that, if a parent or legal guardian of a pupil enrolled in a district or intermediate district believes that the district has violated Section 1169, 1506, or 1507 of the Revised School Code or Section 166a of the State School Aid Act, the person may file a complaint with the superintendent or chief administrator of the district or intermediate district in which the pupil is enrolled. The superintendent or chief administrator then must investigate the complaint and, within 30 days of the date of the complaint, provide a written report of his or her findings to the complainant and to the Superintendent of Public Instruction. If the investigation reveals that one or more violations has occurred, the written report must contain a description of each violation and of corrective action the district will take to correct the situation to ensure that there is no further violation. The district must

take the corrective action within 30 days after the date of the report.

If a parent who has filed a complaint with a school district believes that the district still is not in compliance with law based on the findings made by the district superintendent or chief administrator, the parent may appeal the findings to the intermediate district in which the district is located. The intermediate superintendent must investigate the complaint and, within 30 days after the date of the appeal, provide a written report of his or her findings to the parent or guardian and to the Superintendent of Public Instruction. If the intermediate superintendent's investigation reveals that one or more violations has occurred, he or she must develop, in consultation with the local district, a plan for the district to take corrective action to ensure that there is no further violation. The intermediate superintendent must include this plan with the written report provided to the parent or legal guardian and the Superintendent of Public Instruction. The district must take the corrective action described in the plan within 30 days.

If a parent who has filed a complaint or an appeal with an intermediate district believes that the district or intermediate district still is not in compliance with law based on the findings made by the intermediate superintendent, the parent may appeal the findings to the Michigan Department of Education (MDE). The MDE must investigate the complaint and, within 90 days after the date of the appeal, provide a written report of its findings to the parent or guardian, to the Superintendent of Public Instruction, and to the district and intermediate district. If, as a result of the investigation, the MDE finds one or more violations, the Department must develop a plan for the district or intermediate district to take action to correct the situation to ensure that there is no further violation, and must include this plan for corrective action with the written report provided to the parent or legal guardian, the Superintendent of Public Instruction, and the district or intermediate district. The district must take the corrective action within 30 days after the date of the written report.

In addition to withholding State aid (as described above), the MDE may assess a fee to the district or intermediate district, in an

amount not to exceed the actual cost to the Department of conducting the investigation and making the reports that the bill requires.

With the approval of the Superintendent, the MDE must establish a reasonable procedure for appealing to the Department. The process may not place an undue burden on the complainant, the district, or the Department.

#### MDE Report

The bill requires the Department to track the number of complaints and appeals it receives for the 2004-2005 school year and, by the end of that school year, submit a report to the Legislature detailing the number and nature of those complaints and appeals and the cost to the MDE of handling them.

MCL 380.1169 et al. (S.B. 943)  
388.1766a (H.B. 5478)

#### **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**

Senate Bill 943 provides a balance to the emphasis in schools on condom use and sexual relationships by requiring that a specific, consistent abstinence message be delivered to all students enrolled in sex education courses. Abstinence from sexual activity is, after all, the only 100% effective method of preventing pregnancy and sexually transmitted infections and diseases (STDs), including HIV (which is the cause of AIDS), herpes, syphilis, gonorrhea, Chlamydia, and HPV (Human Papilloma Virus), some strains of which are the recognized cause of cervical cancer. Too many students seemed to be getting the message from the media, their peers, and their schools that indulging in sexual activity is safe, fun, and a part of being a teenager. The consequences of this behavior can be dire. A 1995 study published by the Heritage Foundation in 2003 reported that early initiation of sexual activity and high numbers of nonmarital sex partners are linked, among women, to increased rates of STDs, out-of-wedlock pregnancy and birth, single parenthood, maternal and child

poverty, abortion, and depression; and to decreased rates of happiness and marital stability. In Michigan, a criminal record also can result from engaging in sexual intercourse with someone 15 or younger.

According to the Heritage Foundation, a successful abstinence program teaches that human sexuality is primarily emotional and psychological, not physical, in nature; that, in proper circumstances, sexual activity leads to long-term emotional bonding between two people; and that sexual happiness is inherently linked to intimacy, love, and commitment--qualities primarily found within marriage. Senate Bill 943 requires the teaching of similar content: that sex has emotional consequences, that young people have the power to control personal behavior, and that there are benefits to abstaining from sex until marriage. Teaching young people these values does them a great service, and reflects what most parents evidentially want for their children. A telephone study designed by Focus on the Family and conducted by Zogby International in December 2003, of 1,004 parents with children under 18, found that 47% of respondents wanted teens to be taught that "young people should not engage in sexual activity until they are married". Another 32% wanted teens to be taught that "young people should not engage in sexual intercourse until they have, at least, finished high school and are in a relationship with someone they feel they would like to marry".

During Senate Education Committee testimony, many young people testified that they, too, wanted more instruction on abstinence. Several said the topic was glossed over or not discussed in their sex education classes. According to these youths, practicing abstinence has given them a powerful sense of freedom: from fear, emotional distress, worry, disease, pregnancy, and parenthood. Adding more abstinence instruction into the classroom will only benefit students and their families.

### **Supporting Argument**

The sex education advisory board requirements under Senate Bill 943 and the complaint process under House Bill 5478 will empower parents, especially those who felt that their wishes were not being heard by previous sex education advisory boards.

The complaint process will provide for a tiered approach, where a parent with a complaint about a district policy or a teacher's instruction on HIV/AIDS or sex education first contacts local district officials. If the complaint is not resolved to the parent's satisfaction, he or she may appeal to the intermediate district and then, if the issue still is not settled, to the Michigan Department of Education. This process will encourage problem-solving at the local level but ultimately allow for an outside objective agency to investigate, if needed. The House bill will provide for fair, timely investigations, written reports, and a logical appeals process.

### **Opposing Argument**

The 2003 Michigan Youth Risk Behavior Survey revealed that 50% of Michigan high school seniors reported having had sexual intercourse in the previous three months. No matter how alarming this statistic or how much parents wish it were not true, the number points to a truth: Abstinence from sexual intercourse is hardly the norm for unmarried young people. Sex education programs, therefore, must address the needs of all students--those who have abstained from sexual activity, those who have engaged in sexual activity but are currently abstaining, those who are engaging in sexual activity, and those who will decide to engage in sexual activity in the future.

While most agree that teaching about abstinence is vital, and that teens are safer when they practice it, an overemphasis on abstinence will alienate a great number of today's teens. For example, an abstinence message disregards pregnant teenagers and young parents attending alternative high school programs. Further, while Senate Bill 943 does not require teachers to "preach" abstinence until marriage, it does require them to discuss the benefits of abstaining until marriage. This discussion will further alienate gay students who, under Michigan law, may not marry.

According to the State Board of Education's "Policy to Promote Health and Prevent Disease and Pregnancy", evidence on current best practice methods for teaching a comprehensive sexual education course are "centered on a positive, healthy definition of sexual health, rather than one that focuses only on avoiding negative outcomes". A

teenager at a Senate Committee hearing reported that much of what drives teens' sexual activity is curiosity; if an adult simply tells them not to have sex, they will remain curious and likely to pursue it.

Because very few students will take another course on human sexuality and reproductive health once they leave high school, it is imperative that students are educated for a lifetime. Since the bill prescribes a dozen additional requirements for sex education courses, its practical effect will be to limit other information that could be taught in a short, sometimes nine-week, course. Adolescents need plenty of accurate, current information that teaches them how to reduce the risk of HIV, other STDs, and unintended pregnancy--information that parents, peers, and the media often are not able to provide.

**Response:** The bill does not prohibit the teaching of contraception, healthy sexual relationships, or other information schools already might have taught.

#### **Opposing Argument**

Senate Bill 943 requires teachers to inform students about the consequences of breaking certain Michigan laws prohibiting sodomy, cohabitation before marriage, and "gross indecency", which has been defined in the courts as including same-sex masturbation and fellatio. Some of these laws are outdated or have been ruled unconstitutional in other states. Further, they seem to have no place in a high school classroom, let alone in a middle school, where reproductive health often is taught.

#### **Opposing Argument**

The provisions in Senate Bill 943 concerning the sex education advisory boards might limit the ability of many advisory boards to function at top efficiency. For example, the bill requires that parents comprise at least half of the board members, and that a parent co-chair the board. Finding enough parents who are willing, able, and knowledgeable enough to co-chair and serve on the board might be difficult, especially in smaller districts or those that struggle with parent participation. Also, parents by nature tend to be interested primarily in the welfare of their own child, and tend to stop volunteering once their child leaves the school. A co-chair of such a board should be objective and willing to serve long-term. The bill also requires a sex education

advisory board to give a two-week notice before each meeting; this might prove to be difficult if a meeting must be canceled and then rescheduled due to inclement weather, school closings, or other unforeseen circumstances.

#### **Opposing Argument**

Michigan's public schools' sex education programs seemed to be working before the bills were enacted. Births to Michigan teenagers aged 15-19 decreased by 41% from 1991 to 2002, according to the National Vital Statistics Reports (Volume 52, No. 10, 12-17-03). Since 1993, Michigan has consistently ranked below the national average in teen birth rates: In 1993, the State's rate was 12.6% and the U.S. average was 12.8%; in 2001, those numbers were 10.2% and 11.3%, respectively, according to Kids Count: The Right Start Reports Online (updated 1- 29-04). Michigan's abortion rate for women aged 15-44 is also down, according to the Michigan Department of Community Health--from 14.9% in 1992 to 12.6% in 2001 (Critical Health Indicators, August 2003). These trends suggest that Michigan teens already were getting the right message about either abstaining from sex or practicing safe sex.

**Response:** While pregnancy and abortion rates were down slightly, STDs among teens were rapidly rising. According to the Michigan Department of Community Health's Critical Health Indicators, from 1997 to 2002, the rates of Chlamydia, gonorrhea, and syphilis increased for those between the ages of 15 and 19. For example, in 1997, the total number of cases of syphilis was 36; five years later, this number was 53. Perhaps this is an indication that teens increasingly were getting the message that it is safe to have sex, as long as a condom is used. Condoms often are used ineffectively, however, and sometimes not used at all, despite the person's intent. While condoms may reduce the risk of contracting some STDs, teenagers need to know that having sex always poses a risk to their health.

#### **Opposing Argument**

The bills attempt to fix a problem that seems to concern only a minority of parents. At Senate Committee hearings, many parents testified that they were satisfied with the way their district handled sex education. Some parents reported that,

while they felt it was their responsibility to teach their children as much as they could about abstinence and risk-avoidance, their knowledge and skills were limited. Schools, they felt, did a better job of providing up-to-date medical information and using techniques such as role-playing and peer discussion. A February 2004 poll by the Kaiser Family Foundation, National Public Radio, and Harvard's Kennedy School of Government supports this anecdotal evidence. That study reported that 42% of parents with children in sex education programs felt that their school's program had been very helpful to their children in dealing with sexual issues. More than three out of four parents of children who had taken a sex education course (77%) said that they were at least somewhat familiar with the sex ed programs in their community's schools. Also, 46% of parents believed that the most appropriate approach for sex education was the "abstinence-plus" approach: an approach that teaches that abstinence is the best practice, but, since some teens do not abstain, also teaches about condoms and contraception (the approach Michigan schools took, according to some parents and educators who spoke during Committee hearings). Only 15% of American parents believed that schools should teach only about abstinence from sexual intercourse and should not provide information on how to obtain and use condoms and other contraception. If these findings can be specifically applied to Michigan, parents in the State were generally satisfied with the approach taken by their schools.

Legislative Analyst: Julie Koval  
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## **FISCAL IMPACT**

### **Senate Bill 943**

The bill will have no fiscal impact on State or local government.

### **House Bill 5478**

The bill may result in minor increased costs for the Department of Education related to the required tracking of complaints and appeals for 2004-2005, and the associated report to the Legislature. Further, the Department might see increased costs for the assignment of departmental personnel

to investigate complaints under the public complaint procedure. However, the bill allows the Department to assess a fee to a district or intermediate school district (ISD) that committed a violation in an amount up to the actual cost to the MDE of conducting the investigation and issuing the required reports.

Under the former law, the penalty to a local district or ISD that did not comply with sex education requirements in the School Aid Act or School Code was 5% of its total State aid. This bill lowers that financial penalty to 1% of a district's or ISD's State aid, if the district or ISD is found to have violated Section 166a of the School Aid Act or Section 1169, 1506, or 1507 of the Revised School Code (which contain the requirements for reproductive health and sex education instruction).

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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.