

# HOUSE BILL No. 6043

May 17, 2018, Introduced by Rep. Clemente and referred to the Committee on Law and Justice.

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

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

6 (b) Releases the current or former employer, and employees  
7 acting on behalf of the current or former employer, from any  
8 liability for providing information described in subdivision (a),  
9 as provided in subsection (3), and waives any written notice  
10 required under section 6 of the Bullard-Plawecki employee right to  
11 know act, ~~Act No. 397 of the Public Acts of 1978, being section~~  
12 ~~423.506 of the Michigan Compiled Laws.~~ **1978 PA 397, MCL 423.506.**

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

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

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

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

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

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

13 (4) The board, **BOARD OF DIRECTORS**, or governing body of a  
14 school district, ~~local act school district~~, public school academy,  
15 intermediate school district, or nonpublic school shall not hire an  
16 applicant who does not sign the statement described in subsection  
17 (1).

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

1 evaluating the applicant's qualifications for employment. ~~A person~~  
2 **AN INDIVIDUAL** who violates this subsection is guilty of a  
3 misdemeanor punishable by a fine of not more than \$10,000.00, but  
4 is not subject to the penalties under section 1804.

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

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

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

4 (8) ~~(7)~~—This section does not prevent a school district, ~~local~~  
 5 ~~act school district,~~ public school academy, intermediate school  
 6 district, or nonpublic school from requesting or requiring an  
 7 applicant for employment to provide information other than that  
 8 described in this section.

9 (9) ~~(8)~~—As used in this section:

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

12 (B) ~~(a)~~—"Personnel record" means that term as defined in  
 13 section 1 of Act No. 397 of the Public Acts of 1978, being section  
 14 423.501 of the Michigan Compiled Laws. **THE BULLARD-PLAWECKI EMPLOYEE**  
 15 **RIGHT TO KNOW ACT, 1978 PA 397, MCL 423.501.**

16 (C) ~~(b)~~—"Unprofessional conduct" means 1 or more acts of  
 17 misconduct; 1 or more acts of immorality, moral turpitude, or  
 18 inappropriate behavior involving a minor; **A LISTED OFFENSE**  
 19 **INVOLVING A MINOR;** or commission of a crime involving a minor. A  
 20 criminal conviction is not an essential element of determining  
 21 whether or not a particular act constitutes unprofessional conduct.

22 **SEC. 1230I. (1) IF A SCHOOL OFFICIAL OF A SCHOOL DISTRICT,**  
 23 **INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC**  
 24 **SCHOOL RECEIVES INFORMATION FROM AN AUTHORITATIVE SOURCE RELATING**  
 25 **TO ANY UNPROFESSIONAL CONDUCT OF AN INDIVIDUAL WHO IS EITHER A**  
 26 **FULL-TIME OR PART-TIME EMPLOYEE OF THE SCHOOL DISTRICT,**  
 27 **INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC**

1 SCHOOL OR IS ASSIGNED TO REGULARLY AND CONTINUOUSLY WORK UNDER  
2 CONTRACT IN ANY OF ITS SCHOOLS, WITHIN 60 DAYS AFTER RECEIVING THAT  
3 INFORMATION THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,  
4 PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL SHALL SUBMIT TO THE  
5 DEPARTMENT IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT A  
6 REPORT DETAILING THE INFORMATION RECEIVED AND ANY ACTION TAKEN AS A  
7 RESULT BY THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC  
8 SCHOOL ACADEMY, OR NONPUBLIC SCHOOL. THE DEPARTMENT SHALL MAINTAIN  
9 A COPY OF THIS REPORT FOR AT LEAST 6 YEARS.

10 (2) AS USED IN THIS SECTION:

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

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

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

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

24 (ii) TO WORK AT SCHOOL ON A MORE THAN INTERMITTENT OR SPORADIC  
25 BASIS AS AN INDIVIDUAL UNDER A CONTRACT WITH A SCHOOL DISTRICT,  
26 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC  
27 SCHOOL TO PROVIDE FOOD, CUSTODIAL, TRANSPORTATION, COUNSELING, OR

1 ADMINISTRATIVE SERVICES, OR TO PROVIDE INSTRUCTIONAL SERVICES TO  
2 PUPILS OR RELATED AND AUXILIARY SERVICES TO SPECIAL EDUCATION  
3 PUPILS.

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

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

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