

## REPORTING CERTAIN UNPROFESSIONAL CONDUCT TO MICHIGAN DEPARTMENT OF EDUCATION

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**House Bill 4382 as introduced**  
**Sponsor: Rep. Cara Clemente**  
**Committee: Judiciary**  
**Complete to 5-14-19**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4382 would amend the Revised School Code to require reporting to the Michigan Department of Education (MDE) of certain unprofessional conduct by a job applicant, employee, or contract worker.

Under current law, in order to be employed by a school district, intermediate school district (ISD), public school academy (PSA, or charter school), or nonpublic school, an applicant is subject to the following background checks:

- Section 1230 of the School Code requires the board of a district or ISD or the governing board of a PSA or nonpublic school to request a criminal history check from the Michigan State Police (MSP) upon offering full- or part-time employment or learning that a contract worker is being assigned to regularly and continuously work in a school.
- Section 1230a requires the board or governing body to request that MSP conduct a criminal records check through the FBI on potential employees and contract workers, in addition to the criminal history check. A board or governing body must include fingerprinting as part of this check.

The board or governing body may not employ the applicant or allow him or her to work under contract before receiving the report of the criminal history check and criminal records check (with certain provisions in case of emergency). Among other provisions, sections 1230 and 1230a both state that if the report shows that the applicant has been convicted of a ***listed offense***, the board or governing body may not employ the applicant or allow him or her to work under contract in its schools.

***Listed offense*** is defined as a Tier I, II, or III sexual offense under the Sex Offenders Registration Act. (See descriptions of offenses that fall under those classifications in **Background**, below.)

- Section 1230b (proposed to be amended by the bill) currently requires a district, ISD, PSA, or nonpublic school to request that an applicant sign a statement that (1) authorizes the applicant's current or former employers to disclose any ***unprofessional conduct*** by the applicant, and make any records of that conduct available, to the hiring district, ISD, PSA, or nonpublic school, and (2) releases the employer from liability for providing that information. The hiring district, ISD, PSA, or nonpublic school must

request this information from at least the applicant's current or most recent employer, and the employer must provide it within 20 days.

***Unprofessional conduct*** is defined for purposes of section 1230b as one or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; or commission of a crime involving a minor. A criminal conviction would not be an essential element of determining whether or not a particular act constitutes unprofessional conduct.

**House Bill 4382** would amend section 1230b add "a ***listed offense*** involving a minor" to the definition of ***unprofessional conduct***, above.

The bill would provide that, if a district, ISD, PSA, or nonpublic school received certain qualifying information from the applicant's current or most recent employer, it must submit a report detailing the information received and any action taken as a result to MDE within 60 days. MDE would have to maintain a copy of the report for at least six years. Qualifying information would include any of the following:

- An act that resulted in disciplinary action or the nonrenewal of a contract and that is an act of immorality, moral turpitude, or inappropriate behavior involving a minor.
- A ***listed offense*** involving a minor.
- The commission of a crime involving a minor.

The bill would provide immunity from civil liability to the MDE, or an employee acting on behalf of the MDE, from civil liability for disclosure made in good faith to a district, ISD, PSA, or nonpublic school of a record concerning ***unprofessional conduct***. The bill would further provide immunity to a district, ISD, PSA, or nonpublic school, or an employee acting on behalf of a district, ISD, PSA, or nonpublic school, from civil liability for good-faith disclosure of information received or a report received concerning qualifying information as described in the above paragraph. In both cases, good faith would be presumed unless a preponderance of the evidence established one or more of the following:

- The MDE or its employee or the district, ISD, PSA, or nonpublic school, as appropriate, knew that the information disclosed was false or misleading.
- The MDE or its employee or the district, ISD, PSA, or nonpublic school, as appropriate, disclosed the information with a reckless disregard for the truth.
- The disclosure was specifically prohibited by a state or federal statute.

Information received from a district, ISD, PSA, or nonpublic school and a report submitted to the MDE would be exempt from disclosure under the Freedom of Information Act (FOIA).

House Bill 4382 would also add section 1230i to the School Code to provide that, if a school official of a district, ISD, PSA, or nonpublic school received information relating to any ***unprofessional conduct*** of an individual who is a full- or part-time employee or regular and continuous contract worker, and the conduct resulted in disciplinary action or the nonrenewal of a contract, the district, ISD, PSA, or nonpublic school must submit a

report detailing the information received and any action taken as a result to MDE within 60 days. The bill would require MDE to maintain a copy of the report for at least six years.

***Unprofessional conduct*** would be defined for the purposes of section 1230i as one or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; a ***listed offense*** involving a minor; or commission of a crime involving a minor. A criminal conviction would not be an essential element of determining whether or not a particular act constitutes unprofessional conduct.

The new section would also include the same immunity from civil liability for good-faith disclosure as described above, as well as the exemption from disclosure under FOIA.

The bill would take effect 90 days after enactment.

MCL 380.1230b and proposed MCL 380.1230i

## **BACKGROUND:**

Tier I offenses include possession of child pornography; indecent exposure while fondling genitalia (if the victim is a minor); unlawful imprisonment (if the victim is a minor); prostitution with a minor; criminal sexual conduct in the fourth degree (if the victim is an adult); certain crimes associated with surveilling another when the person has the expectation of privacy (if the victim is a minor); any other violations of law that constitute a sexual offense (if the victim is a minor); or attempting or conspiring to do any of the above.

Tier II offenses include accosting, enticing, or soliciting a child for an immoral purpose; producing or distributing child pornography; committing, attempting to commit, or soliciting another to commit various sexual offenses in which the victim or intended victim is or is believed to be a minor; sodomy or gross indecency (if the victim is a minor, with some exceptions for consensual acts based on the ages of the victim and the perpetrator); human trafficking of a minor for the commercial sex trade; accosting or soliciting a minor to commit prostitution; inducing another to become a prostitute; criminal sexual conduct in the second or fourth degree (if the victim is 13 to 17 years of age); criminal sexual conduct in the second degree (if the victim is an adult); or attempting or conspiring to do any of the above.

Tier III offenses include gross indecency (if the victim is 12 years of age or younger); kidnapping (if the victim is a minor); taking or enticing away a child under 14 years of age; criminal sexual conduct in the first or third degree (with some exceptions for consensual acts based on the ages of the victim and the perpetrator); criminal sexual conduct in the second degree (if victim is 12 years old or younger); criminal sexual conduct in the fourth degree (if the victim is 12 years old or younger and the perpetrator is at least 17 years old); or attempting or conspiring to do any of the above.

A conviction for a Tier I offense requires registration under the Sex Offenders Registration Act for 15 years, a conviction for a Tier II offense requires registration for 25 years, and a conviction for a Tier III offense requires lifetime registration.

**FISCAL IMPACT:**

House Bill 4382 would increase costs for the state and could increase costs for local units of government.

MDE would incur additional administrative costs to create the reporting guidelines and maintain those reports of certain unprofessional conduct by a job applicant, employee, or contract worker. According to MDE, the cost of maintaining these reports could vary from negligible if reported via email to up to \$150,000 if reported through a database system. However, criminal information must be encrypted or sent by mail, which could create postage costs.

Local school districts, ISDs, and PSAs could incur additional administrative and postage costs to submit the required reports to MDE.

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