

HOUSE BILL NO. 4382

March 14, 2019, Introduced by Reps. Clemente, Pagan, Alexander, Witwer, Pohutsky, Brixie, Ellison, Guerra, Hoadley, Garza, Hammoud, Manoogian, Neeley, Whiteford, LaGrand, Rendon, Kuppa, Sabo, Bolden, Elder, Sowerby, Camilleri, Hertel, Sneller, Tyrone Carter, Whitsett, Cynthia Johnson, Koleszar, Kennedy, Shannon, Hauck, Tate, Lasinski, Greig, Byrd, Garrett, Warren, Wittenberg, Gay-Dagnogo and Jones and referred to the Committee on Judiciary.

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



1 applicant for employment to sign a statement that does both of the
2 following:

3 (a) Authorizes the applicant's current or former employer or
4 employers to disclose to the school district, ~~local act school~~
5 ~~district~~, public school academy, intermediate school district, or
6 nonpublic school any unprofessional conduct by the applicant and to
7 make available to the school district, ~~local act school district~~,
8 public school academy, intermediate school district, or nonpublic
9 school copies of all documents in the employee's personnel record
10 maintained by the current or former employer relating to that
11 unprofessional conduct.

12 (b) Releases the current or former employer, and employees
13 acting on behalf of the current or former employer, from any
14 liability for providing information described in subdivision (a),
15 as provided in subsection (3), and waives any written notice
16 required under section 6 of the Bullard-Plawecki employee right to
17 know act, ~~Act No. 397 of the Public Acts of 1978, being section~~
18 ~~423.506 of the Michigan Compiled Laws.~~ **1978 PA 397, MCL 423.506.**

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

27 (3) Not later than 20 business days after receiving a request
28 under subsection (2), an employer shall provide the information
29 requested and make available to the requesting school district,



1 ~~local act school district~~, public school academy, intermediate
2 school district, or nonpublic school copies of all documents in the
3 employee's personnel record relating to the unprofessional conduct.
4 An employer, or an employee acting on behalf of the employer, that
5 discloses information under this section in good faith is immune
6 from civil liability for the disclosure. An employer, or an
7 employee acting on behalf of the employer, is presumed to be acting
8 in good faith at the time of a disclosure under this section unless
9 a preponderance of the evidence establishes 1 or more of the
10 following:

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

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

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

17 (4) The board, **board of directors**, or governing body of a
18 school district, ~~local act school district~~, public school academy,
19 intermediate school district, or nonpublic school shall not hire an
20 applicant who does not sign the statement described in subsection
21 (1).

22 (5) Information received under this section shall be used by a
23 school district, ~~local act school district~~, public school academy,
24 intermediate school district, or nonpublic school only for the
25 purpose of evaluating an applicant's qualifications for employment
26 in the position for which he or she has applied. Except as
27 otherwise provided by law, a board member or employee of a school
28 district, ~~local act school district~~, public school academy,
29 intermediate school district, or nonpublic school shall not



1 disclose the information to any ~~person,~~**individual**, other than the
2 applicant, who is not directly involved in the process of
3 evaluating the applicant's qualifications for employment. ~~A person~~
4 **An individual** who violates this subsection is guilty of a
5 misdemeanor punishable by a fine of not more than \$10,000.00, but
6 is not subject to the penalties under section 1804.

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

20 (7) If a school district, intermediate school district, public
21 school academy, or nonpublic school receives information under
22 subsection (3) concerning an act that resulted in disciplinary
23 action or the nonrenewal of a contract and that is an act of
24 immorality, moral turpitude, or inappropriate behavior involving a
25 minor; a listed offense involving a minor; or the commission of a
26 crime involving a minor, within 60 days after receiving the
27 information the school district, intermediate school district,
28 public school academy, or nonpublic school shall submit to the
29 department in a form and manner prescribed by the department a



1 report detailing the information received and any action taken as a
2 result by the school district, intermediate school district, public
3 school academy, or nonpublic school. The department shall maintain
4 a copy of this report for at least 6 years.

5 (8) If the department, or an employee acting on behalf of the
6 department, discloses a record under subsection (3) in good faith,
7 the department, or an employee acting on behalf of the department,
8 is immune from civil liability for the disclosure. The department,
9 or an employee acting on behalf of the department, is presumed to
10 be acting in good faith at the time of a disclosure under this
11 section unless a preponderance of the evidence establishes 1 or
12 more of the following:

13 (a) That the department, or employee, knew that the
14 information disclosed was false or misleading.

15 (b) That the department, or employee, disclosed the
16 information with a reckless disregard for the truth.

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

19 (9) If a school district, intermediate school district, public
20 school academy, or nonpublic school, or an employee acting on
21 behalf of a school district, intermediate school district, public
22 school academy, or nonpublic school, discloses information received
23 or a report under subsection (7), in good faith, the school
24 district, intermediate school district, public school academy, or
25 nonpublic school, or an employee acting on behalf of the school
26 district, intermediate school district, public school academy, or
27 nonpublic school, is immune from civil liability for the
28 disclosure. The school district, intermediate school district,
29 public school academy, or nonpublic school, or an employee acting

on behalf of the school district, intermediate school district, public school academy, or nonpublic school, is presumed to be acting in good faith at the time of a disclosure under this section unless a preponderance of the evidence establishes 1 or more of the following:

(a) That the school district, intermediate school district, public school academy, or nonpublic school, or employee, knew that the information disclosed was false or misleading.

(b) That the school district, intermediate school district, public school academy, or nonpublic school, or employee, disclosed the information with a reckless disregard for the truth.

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

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

(11) Information received under subsection (3) and a report submitted to the department under subsection (7) are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(12) ~~(8)~~ As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) ~~(a)~~ "Personnel record" means that term as defined in section 1 of Act No. 397 of the Public Acts of 1978, being section 423.501 of the Michigan Compiled Laws. **The Bullard-Plawecki employee right to know act, 1978 PA 397, MCL 423.501.**



(c) ~~(b)~~ "Unprofessional conduct" means 1 or more acts of misconduct; 1 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 is not an essential element of determining whether or not a particular act constitutes unprofessional conduct.

Sec. 1230i. (1) If a school official of a school district, intermediate school district, public school academy, or nonpublic school receives information relating to any unprofessional conduct of an individual who is either a full-time or part-time employee of the school district, intermediate school district, public school academy, or nonpublic school or is assigned to regularly and continuously work under contract in any of its schools and the conduct resulted in disciplinary action or the nonrenewal of a contract, within 60 days after receiving that information the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information received and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(2) If the department, or an employee acting on behalf of the department, discloses information or a report received under subsection (1) in good faith, the department, or an employee acting on behalf of the department, is immune from civil liability for the disclosure. The department, or an employee acting on behalf of the department, is presumed to be acting in good faith at the time of a disclosure under this section unless a preponderance of the



1 evidence establishes 1 or more of the following:

2 (a) That the department, or employee, knew that the
3 information disclosed was false or misleading.

4 (b) That the department, or employee, disclosed the
5 information with a reckless disregard for the truth.

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

8 (3) If a school district, intermediate school district, public
9 school academy, or nonpublic school, or an employee acting on
10 behalf of a school district, intermediate school district, public
11 school academy, or nonpublic school, discloses information received
12 or a report under subsection (1), in good faith, the school
13 district, intermediate school district, public school academy, or
14 nonpublic school, or an employee acting on behalf of the school
15 district, intermediate school district, public school academy, or
16 nonpublic school, is immune from civil liability for the
17 disclosure. The school district, intermediate school district,
18 public school academy, or nonpublic school, or an employee acting
19 on behalf of the school district, intermediate school district,
20 public school academy, or nonpublic school, is presumed to be
21 acting in good faith at the time of a disclosure under this section
22 unless a preponderance of the evidence establishes 1 or more of the
23 following:

24 (a) That the school district, intermediate school district,
25 public school academy, or nonpublic school, or employee, knew that
26 the information disclosed was false or misleading.

27 (b) That the school district, intermediate school district,
28 public school academy, or nonpublic school, or employee, disclosed
29 the information with a reckless disregard for the truth.



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

3 (4) Information received and a report submitted to the
4 department under subsection (1) are exempt from disclosure under
5 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

6 (5) As used in this section:

7 (a) "At school" means in a classroom, elsewhere on school
8 property, or on a school bus or other school-related vehicle.

9 (b) "Listed offense" means that term as defined in section 2
10 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

11 (c) "Regularly and continuously work under contract" means any
12 of the following:

13 (i) To work at school on a more than intermittent or sporadic
14 basis as an owner or employee of an entity that has a contract with
15 a school district, intermediate school district, public school
16 academy, or nonpublic school to provide food, custodial,
17 transportation, counseling, or administrative services, or to
18 provide instructional services to pupils or related and auxiliary
19 services to special education pupils.

20 (ii) To work at school on a more than intermittent or sporadic
21 basis as an individual under a contract with a school district,
22 intermediate school district, public school academy, or nonpublic
23 school to provide food, custodial, transportation, counseling, or
24 administrative services, or to provide instructional services to
25 pupils or related and auxiliary services to special education
26 pupils.

27 (d) "School property" means that term as defined in section 33
28 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

29 (e) "Unprofessional conduct" means 1 or more acts of



1 immorality, moral turpitude, or inappropriate behavior involving a
2 minor; a listed offense involving a minor; or commission of a crime
3 involving a minor. A criminal conviction is not an essential
4 element of determining whether or not a particular act constitutes
5 unprofessional conduct.

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

