

REPORTING CERTAIN UNPROFESSIONAL CONDUCT TO MICHIGAN DEPARTMENT OF EDUCATION

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House Bill 6043 as introduced
Sponsor: Rep. Cara Clemente
Committee: Law and Justice
Complete to 5-21-18

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

SUMMARY:

House Bill 6043 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 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 for purposes of each section 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 (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.

House Bill 6043 would amend Section 1230b to provide that, if a district, ISD, PSA, or nonpublic school received certain 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. Qualifying information includes any of the following:

- An act of immorality, moral turpitude, or inappropriate behavior involving a minor.
- A listed offense involving a minor. (*Listed offense* is defined for purposes of the section 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.)
- The commission of a crime involving a minor.

The bill would require MDE to maintain a copy of the report for at least 6 years.

Additionally, the bill would amend Section 1230b's definition of *unprofessional conduct* (which triggers disclosure) to include a *listed offense* involving a minor.

The bill would also add a Section 1230i to the Code, providing that, if a school official of a district, ISD, PSA, or nonpublic school received information from an authoritative source relating to any *unprofessional conduct* of an individual who is a full- or part-time employee or regular and continuous contract worker, 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 6 years.

Unprofessional conduct would be defined for the purposes of 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 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 6043 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, and any reported information also would be subject to Freedom of Information Act (FOIA) requests, which are time-intensive and could require the addition of 1.0 full-time-equated (FTE) position.

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

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.