

HOUSE BILL No. 4801

May 20, 1997, Introduced by Reps. Anthony, Schermesser, Quarles, Bogardus, Rison, Leland, Oxender, McBryde, Goschka, Martinez, Hale, Tesanovich, Callahan, Prusi, Schauer, Brackenridge and Jaye and referred to the Committee on Education.

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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1230b. (1) Before hiring an applicant for employment,
2 a school district, local act school district, public school acad-
3 emy, intermediate school district, or nonpublic school shall
4 request the applicant for employment to sign a statement that
5 does both of the 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
10 to make available to the school district, local act school

1 district, public school academy, intermediate school district, or
2 nonpublic school copies of all documents in the employee's per-
3 sonnel record maintained by the current or former employer relat-
4 ing to that unprofessional conduct.

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

13 (2) ~~Before~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
14 BEFORE hiring an applicant for employment, a school district,
15 local act school district, public school academy, intermediate
16 school district, or nonpublic school shall request at least the
17 applicant's current employer or, if the applicant is not cur-
18 rently employed, the applicant's immediately previous employer to
19 provide the information described in subsection (1)(a), if any.
20 The request shall include a copy of the statement signed by the
21 applicant under subsection (1). IF THE REQUESTING SCHOOL DIS-
22 TRICT, LOCAL ACT SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, INTERME-
23 DIATE SCHOOL DISTRICT, OR NONPUBLIC SCHOOL DOES NOT RECEIVE A
24 REPLY WITHIN THE TIME PERIOD SPECIFIED UNDER SUBSECTION (3), THE
25 REQUESTING SCHOOL DISTRICT, LOCAL ACT SCHOOL DISTRICT, PUBLIC
26 SCHOOL ACADEMY, INTERMEDIATE SCHOOL DISTRICT, OR LOCAL ACT SCHOOL

1 DISTRICT SHALL MAIL A SECOND REQUEST TO THE EMPLOYER BY
2 REGISTERED MAIL.

3 (3) Not later than 20 business days after receiving a
4 request under subsection (2), an employer shall provide the
5 information requested and make available to the requesting school
6 district, local act school district, public school academy,
7 intermediate school district, or nonpublic school copies of all
8 documents in the employee's personnel record relating to the
9 unprofessional conduct. An employer, or an employee acting on
10 behalf of the employer, that discloses information under this
11 section in good faith is immune from civil liability for the
12 disclosure. An employer, or an employee acting on behalf of the
13 employer, is presumed to be acting in good faith at the time of a
14 disclosure under this section unless a preponderance of the evi-
15 dence establishes 1 or more of the following:

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

18 (b) That the employer, or employee, disclosed the informa-
19 tion with a reckless disregard for the truth.

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

22 (4) The board or governing body of a school district, local
23 act school district, public school academy, intermediate school
24 district, or nonpublic school shall not hire an applicant who
25 does not sign the statement described in subsection (1).

26 (5) IF THE BOARD OF A SCHOOL DISTRICT, LOCAL ACT SCHOOL
27 DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT OR THE GOVERNING BODY

1 OF A PUBLIC SCHOOL ACADEMY OR NONPUBLIC SCHOOL DETERMINES IT
2 NECESSARY TO EMPLOY AN INDIVIDUAL FOR A PARTICULAR SCHOOL YEAR
3 DURING THAT SCHOOL YEAR OR WITHIN 30 DAYS BEFORE THE BEGINNING OF
4 THAT SCHOOL YEAR, THE BOARD OR GOVERNING BODY MAY EMPLOY THE
5 INDIVIDUAL AS A CONDITIONAL EMPLOYEE UNDER THIS SUBSECTION IF ALL
6 OF THE FOLLOWING APPLY:

7 (A) THE INDIVIDUAL SIGNS THE STATEMENT REQUIRED UNDER
8 SUBSECTION (1) BEFORE THE INDIVIDUAL IS CONDITIONALLY EMPLOYED.

9 (B) THE INDIVIDUAL SIGNS A STATEMENT THAT IDENTIFIES ALL
10 UNPROFESSIONAL CONDUCT BY THE APPLICANT IN A PREVIOUS JOB, IF
11 ANY, AND AGREEING THAT, IF INFORMATION DESCRIBED IN
12 SUBSECTION (3) DESCRIBES UNPROFESSIONAL CONDUCT THAT IS NOT DIS-
13 CLOSED IN THE INDIVIDUAL'S STATEMENT, HIS OR HER EMPLOYMENT CON-
14 TRACT WILL BE VOIDABLE AT THE OPTION OF THE BOARD OR GOVERNING
15 BODY. THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE TO DISTRICTS
16 AND NONPUBLIC SCHOOLS A MODEL FORM FOR THE STATEMENT REQUIRED
17 UNDER THIS SUBDIVISION. THE DEPARTMENT SHALL MAKE THE MODEL FORM
18 AVAILABLE TO PUBLIC SCHOOL ACADEMIES. A SCHOOL DISTRICT, LOCAL
19 ACT SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, INTERMEDIATE SCHOOL
20 DISTRICT, OR NONPUBLIC SCHOOL SHALL USE THE MODEL FORM FOR THE
21 PURPOSES OF THIS SUBSECTION.

22 (6) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE
23 UNDER SUBSECTION (5) AND THE INFORMATION DESCRIBED IN
24 SUBSECTION (3) DISCLOSES UNPROFESSIONAL CONDUCT THAT IS NOT DIS-
25 CLOSED IN THE INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5), THE
26 BOARD OR GOVERNING BODY MAY VOID THE INDIVIDUAL'S EMPLOYMENT
27 CONTRACT. IF AN EMPLOYMENT CONTRACT IS VOIDED UNDER THIS

1 SUBSECTION, THE INDIVIDUAL'S EMPLOYMENT IS TERMINATED, A
2 COLLECTIVE BARGAINING AGREEMENT THAT WOULD OTHERWISE APPLY TO THE
3 INDIVIDUAL'S EMPLOYMENT DOES NOT APPLY TO THE TERMINATION, AND
4 THE SCHOOL DISTRICT, LOCAL ACT SCHOOL DISTRICT, PUBLIC SCHOOL
5 ACADEMY, INTERMEDIATE SCHOOL DISTRICT, OR NONPUBLIC SCHOOL OR THE
6 BOARD OR GOVERNING BODY IS NOT LIABLE FOR THE TERMINATION.

7 (7) FOR AN APPLICANT FOR A POSITION AS A SUBSTITUTE TEACHER,
8 INSTEAD OF REQUESTING INFORMATION UNDER SUBSECTION (2), A SCHOOL
9 DISTRICT, LOCAL ACT SCHOOL DISTRICT, INTERMEDIATE SCHOOL DIS-
10 TRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL MAY USE INFOR-
11 MATION RECEIVED BY ANOTHER SCHOOL DISTRICT, LOCAL ACT SCHOOL DIS-
12 TRICT, PUBLIC SCHOOL ACADEMY, INTERMEDIATE SCHOOL DISTRICT, OR
13 NONPUBLIC SCHOOL OR MAINTAINED BY THE DEPARTMENT. ALSO, AN
14 INTERMEDIATE SCHOOL DISTRICT THAT MAINTAINS A LIST OF SUBSTITUTE
15 TEACHERS FOR ITS CONSTITUENT SCHOOL DISTRICTS MAY REQUEST THE
16 INFORMATION UNDER SUBSECTION (2) FOR INDIVIDUALS ON THAT LIST ON
17 BEHALF OF ITS CONSTITUENT SCHOOL DISTRICTS AND MAINTAIN THE
18 INFORMATION FOR USE BY ITS CONSTITUENT SCHOOL DISTRICTS.

19 (8) IF AN APPLICANT AGREES IN WRITING TO ALLOW A SCHOOL DIS-
20 TRICT, LOCAL ACT SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, INTERME-
21 DIATE SCHOOL DISTRICT, OR NONPUBLIC SCHOOL TO SHARE INFORMATION
22 RECEIVED UNDER SUBSECTION (3) WITH ANOTHER SCHOOL DISTRICT, LOCAL
23 ACT SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, INTERMEDIATE SCHOOL
24 DISTRICT, OR NONPUBLIC SCHOOL, THEN A SCHOOL DISTRICT, LOCAL
25 SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, INTERMEDIATE SCHOOL DIS-
26 TRICT, OR NONPUBLIC SCHOOL MAY SATISFY THE REQUIREMENTS OF
27 SUBSECTION (2) BY OBTAINING A COPY OF THE INFORMATION DESCRIBED

1 IN SUBSECTION (3) FROM ANOTHER SCHOOL DISTRICT, LOCAL ACT SCHOOL
2 DISTRICT, PUBLIC SCHOOL ACADEMY, INTERMEDIATE SCHOOL DISTRICT, OR
3 NONPUBLIC SCHOOL.

4 (9) ~~(5)~~ Information received under this section shall be
5 used by a school district, local act school district, public
6 school academy, intermediate school district, or nonpublic school
7 only for the purpose of evaluating an applicant's qualifications
8 for employment in the position for which he or she has applied.
9 Except as otherwise provided by law, a board member or employee
10 of a school district, local act school district, public school
11 academy, intermediate school district, or nonpublic school shall
12 not disclose the information to any person, other than the appli-
13 cant, who is not directly involved in the process of evaluating
14 the applicant's qualifications for employment. A person who vio-
15 lates this subsection is guilty of a misdemeanor punishable by a
16 fine of not more than \$10,000.00, but is not subject to the pen-
17 alties under section 1804.

18 (10) ~~(6)~~ The board or an official of a school district,
19 local act school district, public school academy, intermediate
20 school district, or nonpublic school shall not enter into a col-
21 lective bargaining agreement, individual employment contract,
22 resignation agreement, severance agreement, or any other contract
23 or agreement that has the effect of suppressing information about
24 unprofessional conduct of an employee or former employee or of
25 expunging information about that unprofessional conduct from per-
26 sonnel records. Any provision of a contract or agreement that is
27 contrary to this subsection is void and unenforceable. This

1 subsection does not restrict the expungement from a personnel
2 file of information about alleged unprofessional conduct that has
3 not been substantiated.

4 (11) ~~(7)~~ This section does not prevent a school district,
5 local act school district, public school academy, intermediate
6 school district, or nonpublic school from requesting or requiring
7 an applicant for employment to provide information other than
8 that described in this section.

9 (12) ~~(8)~~ As used in this section:

10 (a) "Personnel record" means that term as defined in section
11 1 of ~~Act No. 397 of the Public Acts of 1978, being~~
12 ~~section 423.501 of the Michigan Compiled Laws~~ THE
13 BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT, 1978 PA 397, MCL
14 423.501.

15 (b) "Unprofessional conduct" means 1 or more acts of miscon-
16 duct; 1 or more acts of immorality, moral turpitude, or inappro-
17 priate behavior involving a minor; or commission of a crime
18 involving a minor. A criminal conviction is not an essential
19 element of determining whether or not a particular act consti-
20 tutes unprofessional conduct.