

HOUSE BILL No. 5522

January 29, 1998, Introduced by Rep. McNutt and referred to the Committee on Human Services and Children.

A bill to require disclosures of criminal convictions and certain conduct by certain persons; to require criminal history checks of certain persons; to require disclosure of child abuse or child neglect records of certain persons; to regulate the employment of certain persons; to prescribe the powers and duties and limit the liability of certain state and local departments and agencies; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "child-related employment background check act".

3 Sec. 2. As used in this act:

4 (a) "Applicant" means a person seeking to become a
5 child-related employee or child-related volunteer of a
6 child-related employer whom that employer intends to employ or
7 use the services of following completion of a background check

1 and, if applicable, a disclosure under section 5, that is
2 satisfactory to the child-related employer.

3 (b) "Background check" means both a criminal history check
4 and a central registry check of an individual.

5 (c) "Central registry check" means a determination by the
6 family independence agency of whether the central registry con-
7 tains a record of substantiated child abuse or child neglect by a
8 person, as provided in section 7 of the child protection law,
9 1975 PA 238, MCL 722.627.

10 (d) "Child-related employee" means a child-related
11 employer's full-time, part-time, or temporary paid employee who
12 is 17 years of age or older and who has unsupervised contact with
13 1 or more children as a result of that employment.

14 (e) "Child-related employer" means a business, organization,
15 or association that employs or uses the services of a
16 child-related employee or child-related volunteer and has the
17 care of, or supervisory or disciplinary powers over, 1 or more
18 children, including but not limited to providers of educational,
19 recreational, or similar activities.

20 (f) "Child-related volunteer" means a person who is 17 years
21 of age or older providing regular voluntary services to a
22 child-related employer and who has unsupervised contact with 1 or
23 more children as a result of providing those services.
24 Child-related volunteer does not include a parent or guardian
25 whose child is participating in or attending services or activi-
26 ties offered by that child-related employer. As used in this
27 subdivision, "regular" means more than once per year.

1 (g) "Criminal history check" means a determination, through
2 fingerprints and use of the state repository of criminal history
3 record information and the records of the federal bureau of
4 investigation, of whether a person has been convicted of a crime
5 or has a pending charge for a crime that is a felony.

6 (h) "Department" means the department of state police.

7 (i) "Law enforcement agency" means a sheriff's department or
8 the police department of a city, village, or township.

9 (j) "Unsupervised contact" means contact with 1 or more
10 children by the child-related employee or child-related volunteer
11 alone or in the presence of only 1 or more other adults who are
12 related to that employee or volunteer. Unsupervised contact does
13 not include contact by an employee or volunteer with 1 or more
14 children in the presence of 1 or more adults who are unrelated to
15 the child-related employee or child-related volunteer.

16 Sec. 3. (1) A child-related employer shall obtain from each
17 applicant, child-related employee, or child-related volunteer a
18 signed statement of whether that applicant, employee, or volun-
19 teer has ever been convicted of any of the following offenses
20 and, if so, the details of the conviction:

21 (a) A felony violation of part 74 of the public health code,
22 1978 PA 368, MCL 333.7401 to 333.7461, or a violation of
23 section 7455(2) of that act, MCL 333.7455.

24 (b) A violation of the youth employment standards act, 1978
25 PA 90, MCL 409.101 to 409.124, involving the employment of a
26 minor.

1 (c) A violation of section 33 of the Michigan liquor control
2 act, 1933 (Ex Sess) PA 8, MCL 436.33, or a violation of
3 section 33b(2) of that act, MCL 436.33b, involving furnishing
4 fraudulent identification.

5 (d) A violation of 1973 PA 116, MCL 722.111 to 722.128.

6 (e) A violation of 1968 PA 296, MCL 722.151 to 722.152.

7 (f) A violation of section 13(2) or (5) of the child protec-
8 tion law, 1975 PA 238, MCL 722.633.

9 (g) A violation of section 1 of the youth tobacco act, 1915
10 PA 31, MCL 722.641.

11 (h) A violation of section 5, 7, or 8 of 1978 PA 33,
12 MCL 722.675, 722.677, and 722.678.

13 (i) A violation of section 3 of 1960 PA 41, MCL 722.753.

14 (j) A violation of section 28, 72, 73, 75, 82, 83, 84, 86,
15 87, 88, 89, 90, 91, 110, 110a, 111, 112, 135, 136b, 137, 138,
16 140, 141, 141a, 142, 143, 144, 145, 145a, 145c, 145o, 157b(2),
17 157c, 161, 164, 167(1)(a), (b), (c), (f), or (i), 204, 204a, 205,
18 205a, 206, 207, 208, 209, 210, 213, 223(2), 224, 224a, 224b,
19 224c, 226, 227, 227f, 234a, 234b, 234c, 316, 317, 321, 327a, 328,
20 335a, 349, 349a, 350, 397, 397a, 411h, 411i, 436, 448, 449, 449a,
21 450, 452, 454, 455, 456, 457, 458, 459, 462, 520b, 520c, 520d,
22 520e, 520g, 529, 529a, 530, or 531 of the Michigan penal code,
23 1931 PA 328, MCL 750.28, 750.72, 750.73, 750.75, 750.82, 750.83,
24 750.84, 750.86, 750.87, 750.88, 750.89, 750.90, 750.91, 750.110,
25 750.110a, 750.111, 750.112, 750.135, 750.136b, 750.137, 750.138,
26 750.140, 750.141, 750.141a, 750.142, 750.143, 750.144, 750.145,
27 750.145a, 750.145c, 750.145o, 750.157b, 750.157c, 750.161,

1 750.164, 750.167, 750.204, 750.204a, 750.205, 750.205a, 750.206,
2 750.207, 750.208, 750.209, 750.210, 750.213, 750.223, 750.224,
3 750.224a, 750.224b, 750.224c, 750.226, 750.227, 750.227f,
4 750.234a, 750.234b, 750.234c, 750.316, 750.317, 750.321,
5 750.327a, 750.328, 750.335a, 750.349, 750.349a, 750.350, 750.397,
6 750.397a, 750.411h, 750.411i, 750.436, 750.448, 750.449,
7 750.449a, 750.450, 750.452, 750.454, 750.455, 750.456, 750.457,
8 750.458, 750.459, 750.462, 750.520b, 750.520c, 750.520d,
9 750.520e, 750.520g, 750.529, 750.529a, 750.530, and 750.531.

10 (k) A felony violation of section 74 or 145n of the Michigan
11 penal code, 1931 PA 328, MCL 750.74 and 750.145n.

12 (l) A violation of section 81 or 81a of the Michigan penal
13 code, 1931 PA 328, MCL 750.81 and 750.81a, involving an assault
14 against a minor.

15 (m) A violation of section 5 of 1984 PA 343, MCL 752.365.

16 (n) A violation of a former law of this state or an ordi-
17 nance or former ordinance of a political subdivision of this
18 state substantially corresponding to a law described in
19 subdivisions (a) to (m).

20 (o) A violation of a law or former law of the United States
21 or another state or an ordinance or former ordinance of a politi-
22 cal subdivision of another state substantially corresponding to a
23 law described in subdivisions (a) to (m).

24 (p) An attempt or conspiracy to commit an offense described
25 in subdivisions (a) to (o).

26 (2) An applicant, child-related employee, or child-related
27 volunteer who knowingly or intentionally makes a false statement

1 or withholds information in connection with the signed statement
2 required under subsection (1) is guilty of a misdemeanor punish-
3 able by imprisonment for not more than 6 months or a fine of not
4 more than \$1,000.00, or both.

5 (3) A child-related employee or child-related volunteer who
6 violates subsection (2) is also subject to immediate disciplinary
7 action, including, but not limited to, discharge.

8 Sec. 4. (1) An applicant, child-related employee, or
9 child-related volunteer of a child-related employer shall give
10 written consent for that employer to conduct a background check.
11 The applicant, child-related employee, or child-related volunteer
12 giving written consent shall also provide to the department any
13 information necessary for the criminal history check portion of
14 the background check, including, but not limited to, 2 sets of
15 fingerprints and date of birth, and to the family independence
16 agency any information necessary for the central registry check.

17 (2) A child-related employer shall request the department to
18 conduct a criminal history check and the family independence
19 agency to conduct a central registry check on an applicant,
20 child-related employee, or child-related volunteer who has given
21 written consent for a background check under subsection (1).

22 (3) The department shall conduct the criminal history check
23 upon a request submitted under subsection (2). The department
24 shall determine the existence of any criminal history in this
25 state through use of the state repository of criminal history
26 record information. The department shall also forward
27 fingerprints to the federal bureau of investigation and request

1 that the federal bureau of investigation make a determination of
2 the existence of any national criminal history. An applicant,
3 child-related employee, or child-related volunteer shall provide
4 the 2 sets of fingerprints necessary for the criminal history
5 check to the department through a law enforcement agency, which
6 shall comply with 1935 PA 120, MCL 28.271 to 28.273, and any
7 applicable procedure established by the department for those
8 checks.

9 (4) The department shall complete the criminal history check
10 and, except as otherwise provided in this subsection, provide the
11 results of its determination and that of the federal bureau of
12 investigation to the child-related employer and to the applicant,
13 child-related employee, or child-related volunteer within 21 days
14 after the request is made. For a child-related employer that is
15 not a governmental entity, the department shall not provide the
16 results of the determination made through the federal bureau of
17 investigation to that employer, but shall only notify the
18 child-related employer whether the determination disclosed any
19 criminal history for the applicant, child-related employee, or
20 child-related volunteer in addition to that disclosed by the
21 department's determination.

22 (5) The family independence agency shall conduct the central
23 registry check upon a request submitted under subsection (2).
24 The family independence agency shall determine whether the cen-
25 tral registry contains a record of substantiated child abuse or
26 child neglect by the person and provide the results to the
27 child-related employer and to the applicant, child-related

1 employee, or child-related volunteer within 21 days after the
2 request is made.

3 (6) A child-related employer may request a background check
4 of a parent or guardian who otherwise meets the definition of
5 child-related volunteer but whose child is participating in or
6 attending services or activities offered by that employer if the
7 parent or guardian has or will have care of, or supervisory or
8 disciplinary powers over, another child. The parent or guardian
9 shall give consent for the background check if requested by the
10 child-related employer. The local law enforcement agency or the
11 department shall conduct the criminal history check upon the same
12 terms as it would for a child-related employer under
13 subsections (1), (2), (3), and (4) and the family independence
14 agency shall conduct the central registry check upon the same
15 terms as it would for a child-related employer under subsection
16 (5).

17 (7) A child-related employer shall refuse to hire an appli-
18 cant or may dismiss a child-related employee or child-related
19 volunteer who does not comply with subsection (1).

20 (8) The department shall prescribe the form of the request
21 and necessary information for a criminal history check under this
22 act and the form for providing the results. The family indepen-
23 dence agency shall prescribe the form of the request and neces-
24 sary information for a central registry check under this act and
25 the form for providing the results.

26 (9) The provisions concerning criminal history checks do not
27 apply to an individual required to undergo a criminal history or

1 records check under section 1230 or 1230a of the revised school
2 code, 1976 PA 451, MCL 380.1230 and 380.1230a, if the results of
3 the criminal history and records checks are available to the
4 child-related employer.

5 Sec. 5. (1) A child-related employer shall obtain from each
6 applicant a signed statement that does both of the following:

7 (a) Authorizes the applicant's current or former employer or
8 employers to disclose to the child-related employer any unprofes-
9 sional conduct by the applicant and to make available to the
10 child-related employer copies of all documents in the applicant's
11 personnel record maintained by the current or former employer
12 relating to that unprofessional conduct.

13 (b) Releases the current or former employer, and employees
14 acting on behalf of the current or former employer, from any
15 liability for providing information described in subdivision (a),
16 as provided in subsection (3), and waives any written notice
17 required under section 6 of the Bullard-Plawecki employee right
18 to know act, 1978 PA 397, MCL 423.506.

19 (2) Before hiring an applicant, a child-related employer
20 shall request at least the applicant's current employer or, if
21 the applicant is not currently employed, the applicant's immedi-
22 ately previous employer to provide the information described in
23 subsection (1)(a), if any. The request shall include a copy of
24 the statement signed by the applicant under subsection (1).

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

1 child-related employer copies of all documents in the applicant's
2 personnel record relating to the unprofessional conduct.

3 (4) A child-related employer shall not hire an applicant who
4 does not sign the statement described in subsection (1).

5 (5) A child-related employer shall use information received
6 under this section only for the purpose of evaluating an
7 applicant's qualifications for employment in the position for
8 which he or she has applied. Except as otherwise provided by
9 law, a child-related employer shall not disclose the information
10 to any person, other than the applicant, who is not directly
11 involved in the process of evaluating the applicant's qualifica-
12 tions for employment. A person who violates this subsection is
13 guilty of a misdemeanor punishable by a fine of not more than
14 \$10,000.00.

15 (6) A child-related employer shall not enter into a collec-
16 tive bargaining agreement, individual employment contract, resig-
17 nation agreement, severance agreement, or any other contract or
18 agreement that has the effect of suppressing information about
19 unprofessional conduct of an employee or former employee or of
20 expunging information about that unprofessional conduct from per-
21 sonnel records. Any provision of a contract or agreement con-
22 trary to this subsection is void and unenforceable. This subsec-
23 tion does not restrict expunging from a personnel file informa-
24 tion about alleged unprofessional conduct that has not been
25 substantiated.

1 (7) This section does not prevent a child-related employer
2 from requesting or requiring an applicant to provide information
3 other than that described in this section.

4 (8) This section does not apply to an applicant required to
5 authorize disclosure of unprofessional conduct under section
6 1230b of the revised school code, 1976 PA 451, MCL 380.1230b, if
7 the results of the disclosure are available to the child-related
8 employer.

9 (9) As used in this section:

10 (a) "Employer" means a person who currently employs or uses
11 the services of the applicant as an employee or volunteer or has
12 previously employed or used the services of the applicant as an
13 employee or volunteer.

14 (b) "Personnel record" means that term as defined in section
15 1 of the Bullard-Plawecki employee right to know act, 1978 PA
16 397, MCL 423.501.

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

23 Sec. 6. (1) A child-related employer may conduct the back-
24 ground checks required under this act according to the following
25 schedule:

26 (a) For the calendar year in which this act takes effect,
27 the child-related employer may conduct background checks of

1 applicants who apply in that calendar year, child-related
2 employees and child-related volunteers who begin in that calendar
3 year, and child-related employees and child-related volunteers
4 who began in the 2 preceding calendar years.

5 (b) For each subsequent calendar year, the child-related
6 employer may conduct background checks of applicants who apply in
7 that calendar year, child-related employees and child-related
8 volunteers who begin in that calendar year, and child-related
9 employees and child-related volunteers who began in the 2 calen-
10 dar years preceding the earliest calendar year for which back-
11 ground checks were conducted in the preceding calendar year.

12 (2) To illustrate the operation of subsection (1), if this
13 act takes effect July 1, 1998, the child-related employer may
14 conduct background checks in 1998 of applicants who apply in
15 1998, child-related employees and child-related volunteers who
16 begin in 1998, and child-related employees and child-related vol-
17 unteers who began in 1996 and 1997. For 1999, the child-related
18 employer may conduct background checks of applicants who apply in
19 1999 and child-related employees and child-related volunteers who
20 began in 1994 and 1995.

21 Sec. 7. If a parent or guardian of a child hires or intends
22 to hire a person who has or will have the care of, or supervisory
23 or disciplinary powers over, the child in that parent's or
24 guardian's custody, the parent or guardian may request a back-
25 ground check of that person or a modified background check that
26 does not include criminal history in the records of the federal
27 bureau of investigation. Upon request, the department shall

1 conduct a criminal history check or modified criminal history
2 check and the family independence agency shall conduct a central
3 registry check for the parent or guardian upon the same terms as
4 the department or family independence agency would for a
5 child-related employer under section 4.

6 Sec. 8. A child-related employer may employ or use the
7 services of an applicant required to undergo a background check
8 under this act before completion of that background check. If a
9 background check reveals a conviction for a crime described in
10 section 3(1) or a record of substantiated child abuse or child
11 neglect, the child-related employer shall refuse to hire the
12 applicant or may dismiss that child-related employee or
13 child-related volunteer. If a child-related employer retains a
14 child-related employee or child-related volunteer whose back-
15 ground check reveals a conviction for a crime listed in section
16 3(1) or a record of substantiated child abuse or child neglect,
17 the child-related employer shall notify the parent or guardian of
18 each child who uses that employer's services of the fact of the
19 conviction or record and its nature.

20 Sec. 9. (1) Except for a knowing or intentional release of
21 false information, the department, the family independence
22 agency, a law enforcement agency, and the employees of the
23 department, the family independence agency, or law enforcement
24 agency have no liability in connection with a background check
25 conducted under this act.

26 (2) An employer, or an employee acting on behalf of the
27 employer, that discloses information under section 5 in good

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

6 (a) The employer or employee knew the information disclosed
7 was false or misleading.

8 (b) The employer or employee disclosed the information with
9 a reckless disregard for the truth.

10 (c) The disclosure was specifically prohibited by a state or
11 federal statute.

12 Enacting section 1. This act takes effect July 1, 1998.

13 Enacting section 2. This act does not take effect unless
14 Senate Bill No. _____ or House Bill No. _____ (request
15 no. 03707'97 a *) of the 89th Legislature is enacted into law.