

SENATE BILL NO. 1272

September 16, 1998, Introduced by Senators CISKY, MC MANUS, NORTH, HOFFMAN, ROGERS, SCHWARZ, STILLE, SHUGARS, BYRUM and CONROY and referred to the Committee on Families, Mental Health and Human Services.

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 contact with 1 or more
13 children as a result of that employment. Child-related employee
14 does not include an individual who is providing services commonly
15 known as babysitting for a parent or guardian of a child and who
16 is not required to be licensed or registered under 1973 PA 116,
17 MCL 722.111 to 722.128, to provide those services.

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

24 (f) "Child-related volunteer" means a person who is 17 years
25 of age or older providing regular voluntary services to a
26 child-related employer and who has unsupervised contact with 1 or
27 more children as a result of providing those services.

1 Child-related volunteer does not include a parent or guardian
2 whose child is participating in or attending services or activi-
3 ties offered by that child-related employer. Child-related vol-
4 unteer does not include an individual who is providing services
5 commonly known as babysitting for a parent or guardian of a child
6 and who is not required to be licensed or registered under 1973
7 PA 116, MCL 722.111 to 722.128, to provide those services.

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

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

14 (i) "Employer" means a person who currently employs or uses
15 the services of the applicant as an employee or volunteer or has
16 previously employed or used the services of the applicant as an
17 employee or volunteer.

18 (j) "Law enforcement agency" means a sheriff's department or
19 the police department of a city, village, or township.

20 (k) "Personnel record" means that term as defined in section
21 1 of the Bullard-Plawecki employee right to know act, 1978 PA
22 397, MCL 423.501.

23 (l) "Unprofessional conduct" means 1 or more acts of miscon-
24 duct; 1 or more acts of immorality, moral turpitude, or inappro-
25 priate behavior involving a minor; or commission of a crime
26 involving a minor. A criminal conviction is not an essential

1 element in determining whether a particular act constitutes
2 unprofessional conduct.

3 (m) "Unsupervised contact" means contact with 1 or more
4 children by the child-related volunteer alone or in the presence
5 of only 1 or more other adults who are related to that
6 volunteer. Unsupervised contact does not include contact by a
7 volunteer with 1 or more children in the presence of 1 or more
8 adults who are unrelated to the child-related volunteer.

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

14 (a) A felony violation of part 74 of the public health code,
15 1978 PA 368, MCL 333.7401 to 333.7461, or a violation of
16 section 7455(2) of that act, MCL 333.7455.

17 (b) A violation of the youth employment standards act, 1978
18 PA 90, MCL 409.101 to 409.124, involving the employment of a
19 minor.

20 (c) A violation of section 701 of the Michigan liquor con-
21 trol code of 1998, 1998 PA 58, MCL 436.1701, or section 33 of
22 former 1933 (Ex Sess) PA 8.

23 (d) A violation of section 703(2) of the Michigan liquor
24 control code of 1998, 1998 PA 58, MCL 436.1703, or section 33b(2)
25 of former 1933 (Ex Sess) PA 8, involving furnishing fraudulent
26 identification.

- 1 (e) A violation of 1973 PA 116, MCL 722.111 to 722.128.
- 2 (f) A violation of 1968 PA 296, MCL 722.151 to 722.152.
- 3 (g) A violation of section 13(2) or (5) of the child protec-
4 tion law, 1975 PA 238, MCL 722.633.
- 5 (h) A violation of section 1 of the youth tobacco act, 1915
6 PA 31, MCL 722.641.
- 7 (i) A violation of section 5, 7, or 8 of 1978 PA 33,
8 MCL 722.675, 722.677, and 722.678.
- 9 (j) A violation of section 3 of 1960 PA 41, MCL 722.753.
- 10 (k) A violation of section 28, 72, 73, 75, 82, 83, 84, 86,
11 87, 88, 89, 90, 91, 110, 110a, 111, 112, 135, 136b, 137, 138,
12 140, 141, 141a, 142, 143, 144, 145, 145a, 145c, 145o, 157b(2),
13 157c, 161, 164, 167(1)(a), (b), (c), (f), or (i), 204, 204a, 205,
14 205a, 206, 207, 208, 209, 210, 213, 223(2), 224, 224a, 224b,
15 224c, 226, 227, 227f, 234a, 234b, 234c, 316, 317, 321, 327a, 328,
16 335a, 349, 349a, 350, 397, 397a, 411h, 411i, 436, 448, 449, 449a,
17 450, 452, 454, 455, 456, 457, 458, 459, 462, 520b, 520c, 520d,
18 520e, 520g, 529, 529a, 530, or 531 of the Michigan penal code,
19 1931 PA 328, MCL 750.28, 750.72, 750.73, 750.75, 750.82, 750.83,
20 750.84, 750.86, 750.87, 750.88, 750.89, 750.90, 750.91, 750.110,
21 750.110a, 750.111, 750.112, 750.135, 750.136b, 750.137, 750.138,
22 750.140, 750.141, 750.141a, 750.142, 750.143, 750.144, 750.145,
23 750.145a, 750.145c, 750.145o, 750.157b, 750.157c, 750.161,
24 750.164, 750.167, 750.204, 750.204a, 750.205, 750.205a, 750.206,
25 750.207, 750.208, 750.209, 750.210, 750.213, 750.223, 750.224,
26 750.224a, 750.224b, 750.224c, 750.226, 750.227, 750.227f,
27 750.234a, 750.234b, 750.234c, 750.316, 750.317, 750.321,

1 750.327a, 750.328, 750.335a, 750.349, 750.349a, 750.350, 750.397,
2 750.397a, 750.411h, 750.411i, 750.436, 750.448, 750.449,
3 750.449a, 750.450, 750.452, 750.454, 750.455, 750.456, 750.457,
4 750.458, 750.459, 750.462, 750.520b, 750.520c, 750.520d,
5 750.520e, 750.520g, 750.529, 750.529a, 750.530, and 750.531.

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

8 (m) A violation of section 81 or 81a of the Michigan penal
9 code, 1931 PA 328, MCL 750.81 and 750.81a, involving an assault
10 against a minor.

11 (n) A violation of section 5 of 1984 PA 343, MCL 752.365.

12 (o) A violation of a former law of this state or an ordi-
13 nance or former ordinance of a political subdivision of this
14 state substantially corresponding to a law described in
15 subdivisions (a) to (n).

16 (p) A violation of a law or former law of the United States
17 or another state or an ordinance or former ordinance of a politi-
18 cal subdivision of another state substantially corresponding to a
19 law described in subdivisions (a) to (n).

20 (q) An attempt or conspiracy to commit an offense described
21 in subdivisions (a) to (p).

22 (2) An applicant, child-related employee, or child-related
23 volunteer who knowingly or intentionally makes a false statement
24 or withholds information in connection with the signed statement
25 required under subsection (1) is guilty of a misdemeanor punish-
26 able by imprisonment for not more than 93 days or a fine of not
27 more than \$1,000.00, or both.

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

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

15 (3) The department shall conduct the criminal history check
16 upon a request submitted under subsection (2). The department
17 shall determine the existence of any criminal history in this
18 state through use of the state repository of criminal history
19 record information. The department shall also forward finger-
20 prints to the federal bureau of investigation and request that
21 the federal bureau of investigation make a determination of the
22 existence of any national criminal history. An applicant,
23 child-related employee, or child-related volunteer shall provide
24 the 2 sets of fingerprints necessary for the criminal history
25 check to the department through a law enforcement agency, which
26 shall comply with 1935 PA 120, MCL 28.271 to 28.273, and any
27 applicable procedure established by the department for those

1 checks. The department may charge a fee that is not more than
2 its actual and reasonable cost of conducting the criminal history
3 check.

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

17 (5) The family independence agency shall conduct the central
18 registry check upon a request submitted under subsection (2).
19 The family independence agency shall determine whether the cen-
20 tral registry contains a record of substantiated child abuse or
21 child neglect by the person and provide the results to the
22 child-related employer and to the applicant, child-related
23 employee, or child-related volunteer within 21 days after the
24 request is made. The family independence agency may charge a fee
25 that is not more than its actual and reasonable cost of conduct-
26 ing the central registry check.

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

15 (7) The department shall prescribe the form of the request
16 and necessary information for a criminal history check under this
17 act and the form for providing the results. The family indepen-
18 dence agency shall prescribe the form of the request and neces-
19 sary information for a central registry check under this act and
20 the form for providing the results.

21 (8) If necessary, a child-related employer may employ or use
22 the services of an applicant required to undergo a background
23 check under this act before completion of that background check
24 or the disclosure described in section 5. If a background check
25 reveals a conviction for a crime described in section 3(1) or a
26 record of substantiated child abuse or child neglect, the

1 child-related employer may refuse to hire the applicant or may
2 dismiss that child-related employee or child-related volunteer.

3 (9) The provisions concerning criminal history checks do not
4 apply to an individual required to undergo a criminal history or
5 records check under section 1230 or 1230a of the revised school
6 code, 1976 PA 451, MCL 380.1230 and 380.1230a, if the results of
7 the criminal history and records checks are available to the
8 child-related employer.

9 (10) A child-related employer licensed under 1973 PA 116,
10 MCL 722.111 to 722.128, to operate a children's camp as defined
11 in that act may hire an applicant for seasonal employment at that
12 camp without conducting a background check on that applicant and
13 obtaining a disclosure under section 5 if a background check on
14 the applicant was conducted and a disclosure obtained within the
15 previous year and the results are available to the child-related
16 employer. Section 3 continues to apply to the applicant.

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

19 (a) Authorizes the applicant's current or former employer or
20 employers to disclose to the child-related employer any unprofes-
21 sional conduct by the applicant and to make available to the
22 child-related employer copies of all documents in the applicant's
23 personnel record maintained by the current or former employer
24 relating to that unprofessional conduct.

25 (b) Releases the current or former employer, and employees
26 acting on behalf of the current or former employer, from any
27 liability for providing information described in subdivision (a),

1 as provided in subsection (3), and waives any written notice
2 required under section 6 of the Bullard-Plawecki employee right
3 to know act, 1978 PA 397, MCL 423.506.

4 (2) Before hiring an applicant, a child-related employer
5 shall request at least the applicant's current employer or, if
6 the applicant is not currently employed, the applicant's immedi-
7 ately previous employer to provide the information described in
8 subsection (1)(a), if any. The request shall include a copy of
9 the statement signed by the applicant under subsection (1).

10 (3) Not later than 20 business days after receiving a
11 request under subsection (2), an employer shall provide the
12 information requested and make available to the requesting
13 child-related employer copies of all documents in the applicant's
14 personnel record relating to the unprofessional conduct.

15 (4) A child-related employer shall use information received
16 under this section only for the purpose of evaluating an
17 applicant's qualifications for employment in the position for
18 which he or she has applied. Except as otherwise provided by
19 law, a child-related employer shall not disclose the information
20 to any person, other than the applicant, who is not directly
21 involved in the process of evaluating the applicant's qualifica-
22 tions for employment. A person who violates this subsection is
23 guilty of a misdemeanor punishable by imprisonment for not more
24 than 93 days or a fine of not more than \$1,000.00.

25 (5) This section does not prevent a child-related employer
26 from requesting or requiring an applicant to provide information
27 other than that described in this section.

1 (6) This section does not apply to an applicant required to
2 authorize disclosure of unprofessional conduct under section
3 1230b of the revised school code, 1976 PA 451, MCL 380.1230b, if
4 the results of the disclosure are available to the child-related
5 employer.

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

9 (a) For the calendar year in which this act takes effect,
10 the child-related employer may conduct background checks of
11 applicants who apply in that calendar year, child-related employ-
12 ees and child-related volunteers who begin in that calendar year,
13 and child-related employees and child-related volunteers who
14 began in the 2 preceding calendar years.

15 (b) For each subsequent calendar year, the child-related
16 employer may conduct background checks of applicants who apply in
17 that calendar year, child-related employees and child-related
18 volunteers who begin in that calendar year, and child-related
19 employees and child-related volunteers who began in the 2 calen-
20 dar years preceding the earliest calendar year for which back-
21 ground checks were conducted in the preceding calendar year.

22 (2) To illustrate the operation of subsection (1), if this
23 act takes effect July 1, 1999, the child-related employer may
24 conduct background checks in 1999 of applicants who apply in
25 1999, child-related employees and child-related volunteers who
26 begin in 1999, and child-related employees and child-related
27 volunteers who began in 1997 and 1998. For 2000, the

1 child-related employer may conduct background checks of
2 applicants who apply in 2000 and child-related employees and
3 child-related volunteers who began in 1995 and 1996.

4 Sec. 7. If a parent or guardian of a child hires or intends
5 to hire a person who has or will have the care of, or supervisory
6 or disciplinary powers over, the child in that parent's or
7 guardian's custody, the parent or guardian may request a back-
8 ground check of that person or a modified background check that
9 does not include criminal history in the records of the federal
10 bureau of investigation. Upon request, the department shall con-
11 duct a criminal history check or modified criminal history check
12 and the family independence agency shall conduct a central regis-
13 try check for the parent or guardian upon the same terms as the
14 department or family independence agency would for a
15 child-related employer under section 4.

16 Sec. 8. (1) Except for a knowing or intentional release of
17 false information, the department, the family independence
18 agency, a law enforcement agency, and the employees of the
19 department, the family independence agency, or law enforcement
20 agency have no liability in connection with a background check
21 conducted under this act.

22 (2) An employer, or an employee acting on behalf of the
23 employer, that discloses information under section 5 in good
24 faith is immune from civil liability for the disclosure. An
25 employer, or an employee acting on behalf of the employer, is
26 presumed to be acting in good faith at the time of a disclosure

1 under section 5 unless 1 or more of the following is established
2 by a preponderance of the evidence:

3 (a) The employer or employee knew the information disclosed
4 was false or misleading.

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

7 (c) A state or federal statute specifically prohibited the
8 disclosure.

9 Enacting section 1. This act does not take effect unless
10 Senate Bill No. 1271
11 of the 89th Legislature is enacted into law.