

# SENATE BILL No. 381

April 13, 2005, Introduced by Senators BERNERO, JACOBS, SWITALSKI, GARCIA, SCHAUER, TOY, BARCIA, PRUSI, CHERRY, OLSHOVE, BRATER, EMERSON, CLARKE and BISHOP and referred to the Committee on Government Operations.

A bill to prohibit employers from making employment decisions based upon certain conduct that is unrelated to employment; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "employee privacy protection act".

3           Sec. 3. As used in this act:

4           (a) "Employee" means an individual who receives compensation  
5 for performing services for an employer under an express or implied  
6 contract of hire.

7           (b) "Employer" means an individual or entity that permits 1 or  
8 more individuals to work, or that accepts applications for  
9 employment, or is an agent of an employer.

10           Sec. 5. (1) Except as provided in this section, an employer

1 shall not fail or refuse to hire or recruit, discharge, or  
2 otherwise discriminate against an individual with respect to  
3 employment, compensation, or a term, condition, or privilege of  
4 employment because the employee engages in, or is regarded as  
5 engaging in, a lawful activity that is both off the employer's  
6 premises and during nonwork hours.

7 (2) The prohibition in subsection (1) does not apply to any of  
8 the following:

9 (a) An activity that directly impairs an established bona fide  
10 occupational requirement or an employment activity or  
11 responsibility of a particular employee or a particular group of an  
12 employer's employees.

13 (b) An activity that creates a substantial conflict of  
14 interest with the core mission of the employer or violates a  
15 written bona fide conflict of interest policy that has been  
16 disseminated to employees.

17 (c) An activity that involves use of property that the  
18 employer owns or leases in violation of an established company  
19 policy.

20 (d) An activity that is addressed under state or federal law,  
21 regulation, or rule regulating the particular type of employment,  
22 if the employee's action is not in accord with the law, regulation,  
23 or rule.

24 Sec. 7. A person shall not retaliate or discriminate against a  
25 person because the person has done or was about to do any of the  
26 following:

27 (a) File a complaint under this act.

1           (b) Testify, assist, or participate in an investigation,  
2 proceeding, or action concerning a violation of this act.

3           (c) Oppose a violation of this act.

4           Sec. 9. An employer shall not require an applicant or employee  
5 to waive any right under this act. An agreement by an applicant or  
6 employee to waive any right under this act is invalid and  
7 unenforceable.

8           Sec. 11. (1) A person who is injured by a violation of this  
9 act may bring a civil suit in a court of competent jurisdiction to  
10 obtain injunctive relief and damages.

11           (2) The court shall award costs and reasonable attorney fees  
12 to a person who prevails as a plaintiff in a suit authorized under  
13 subsection (1).