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BILL ANALYSIS

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Senate Bill 943 (as reported without amendment)  
Senate Bill 944 (Substitute S-1 as reported)  
Sponsor: Senator Wayne Kuipers  
Committee: Education

Date Completed: 3-16-04

### **RATIONALE**

Some people are concerned that the teaching of abstinence in sex education courses is not a significant part of the public schools' curriculum. Since 1993, the Revised School Code has required a public school, if it offers a course in human sexuality, to teach that abstinence is an effective prevention against disease and unwanted pregnancy, and that it is a positive lifestyle. Reportedly, in some districts, teachers and sex education advisory boards are overshadowing this message by strongly emphasizing contraception and healthy sexual relationships. Further, some parents have reported that their districts' sex education advisory boards are not meeting the needs of those who would like a more abstinence-based curriculum taught in their children's schools. It has been suggested that schools be required to emphasize abstinence in their sex education curriculum; that the make-up and goals of sex education boards be revised; and that a formal complaint process be established to address districts' noncompliance with statutory requirements governing sex education.

### **CONTENT**

**Senate Bill 943 would amend the Revised School Code to require that public school instruction on HIV, AIDS, and sex education emphasize abstinence, respect for marriage, personal responsibility, adoption, and other content. The bill also would prescribe the membership, terms, and responsibilities of each district's "health education advisory board".**

**Senate Bill 944 (S-1) would amend the State School Aid Act to include**

**instruction under Senate Bill 943 in provisions that require a district to forfeit 5% of its State aid if it fails to comply with requirements for sex education instruction. Senate Bill 944 (S-1) also would provide for a complaint process for those who believed a district was not complying with sex education requirements under the Act or the Revised School Code (including Senate Bill 943).** The bill is tie-barred to Senate Bill 943.

### **Senate Bill 943**

#### Sex Education Instruction

The Code permits a school district to offer an elective class in sex education, including family planning, human sexuality, reproductive health, and the recognition, prevention and treatment of sexually transmitted diseases. (A district is required, however, to teach its pupils about HIV, AIDS, and other communicable diseases.) Any teaching on communicable diseases and sex education must include the teaching of abstinence from sex as a responsible method of preventing disease and unwanted pregnancies, and as a positive lifestyle for unmarried young people. The bill would retain these provisions, but would refer to the teaching of abstinence from sexual activity as a responsible and effective method of preventing unplanned or out-of-wedlock pregnancy.

In addition, the bill would require that HIV, AIDS, and sex education instruction emphasize that "abstinence from sexual intercourse is the expected behavioral norm for unmarried people because abstinence is the only protection that is 100% effective

against unplanned pregnancy, sexually transmitted disease, and sexually transmitted [HIV infection and AIDS]".

Sex education material discussing sexual intercourse would have to meet all of the following requirements:

- Be age appropriate.
- Teach honor and respect for marriage.
- Stress that pupils should abstain from sexual intercourse until marriage.
- Include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual activity outside of marriage, and the consequences of teenage pregnancy.
- Stress that unplanned pregnancy and sexually transmitted diseases are serious possibilities of sexual intercourse that are not fully preventable except by abstinence.
- Advise pupils of the laws pertaining to their responsibility as parents to children born in and out of wedlock.
- Teach pupils not to initiate physical and verbal sexual advances and how to say "no" to sexual advances. Pupils would have to be taught that it was wrong to take advantage of, harass, or exploit another person sexually.
- Teach refusal skills and encourage pupils to resist pressure to engage in risky behavior.
- Teach that the pupil had the power to control personal behavior, and teach pupils to base their actions on reasoning, self-discipline, a sense of responsibility, self-control, and ethical considerations such as respect for self and others.
- Provide instruction in parental responsibility and marriage.
- Teach that adoption should be considered as a positive and healthy outcome for teenage mothers and their children, and inform pupils about how young parents could obtain adoption information.

The sex education material also would have to ensure that pupils would not be addressed, individually or as a group, in a way that could encourage or condone the violation of laws of the State pertaining to sexual activity, including, but not limited to sodomy, lewd and lascivious cohabitation, indecent exposure, gross indecency, and criminal sexual conduct in the first, second,

third, and fourth degrees. Further, the material would have to include information clearly informing pupils that having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment and that one of the other results of being convicted of this crime is to be listed on the sex offender registry on the Internet for at least 25 years.

#### Health Education Advisory Board

Under the Code, a district providing a course in sex education must have in place an advisory board to review the material and instructional methods used for the course, and to make recommendations to the district regarding changes in the course materials or methods. The board must consist of parents with children in the district's schools, pupils in the district's schools, educators, local clergy, and community health professionals.

Under the bill, this board would be called the "health education advisory board". The district's school board would have to determine the advisory board's terms of service, the number of members who would serve on it, and a membership selection process that reasonably reflected the school district's population. The school board would have to appoint a parent to chair the health education advisory board. A majority of the members of the advisory board would have to be parents who were not employed by or at the school district, or any of the schools it operated, and who had a child attending a school operated by the school district. The remainder of the board would have to consist of pupils enrolled in the district's schools, educators, local clergy, and community health professionals. Written notice of a health education advisory board meeting would have to be sent to each member at least two weeks before the date of the meeting.

A health education advisory board would have to establish program goals and objectives for pupil knowledge and skills that likely would reduce the levels of adolescent sexual intercourse. The board also would have to review the materials and methods of instruction used, and make recommendations to the school board for implementation.

At least once every two years, the board would have to develop procedures for evaluating, measuring, and reporting the attainment of its program goals and objectives. The board would have to make the resulting report available to parents in the district.

#### Family Planning Drug or Device

The Code prohibits a person from dispensing or distributing a family planning drug or device in a public school. The bill would extend this to public school property.

#### **Senate Bill 944 (S-1)**

The State School Aid Act requires a district or intermediate district providing instruction on reproductive health or other sex education under particular sections of the Revised School Code, or under any other provision of law, to comply with certain requirements, or forfeit of 5% of its total State aid allocation. (These requirements include informing pupils that sex with a person under 16 is a crime; notifying parents of the content of the instruction; and notifying parents of their right to excuse their child from instruction.) Under the bill, this also would apply to districts providing instruction as set forth in Senate Bill 943.

Senate Bill 944 (S-1) provides that, if a person who resided in a district believed that the district had violated these requirements or the requirements contained in the Revised School Code pertaining to AIDS/HIV and sex education (including those proposed by Senate Bill 943), the person could file a complaint with the Superintendent of Public Instruction. Upon receiving the complaint, the Superintendent would have to order the Department of Education to investigate it and to determine within 90 days whether or not the district would have to forfeit 5% of its total state aid allocation.

The Department of Education, with the approval of the Superintendent, would have to establish a reasonable procedure for filing these complaints, so that they did not place an undue burden on the complainant, the school district, or the Department.

Under the Act, sex education instruction must include information clearly informing pupils that having sex or sexual contact with

a person under 16 is a crime punishable by imprisonment and a listing on the sex offender registry on the Internet for at least 25 years. Under the bill, the instruction would have to include age-appropriate information at one or more age-appropriate grade levels.

MCL 380.1169 et al. (S.B. 943)

MCL 388.1766a (S.B. 944)

#### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Senate Bill 943 would provide a balance to the current emphasis in schools on condom use and sexual relationships by requiring that a specific, consistent abstinence message be delivered to all students enrolled in sex education courses. Abstinence from sexual activity is, after all, the only 100% effective method of preventing pregnancy and sexually transmitted infections and diseases (STDs), including HIV (which is the cause of AIDS), herpes, syphilis, gonorrhea, Chlamydia, and HPV (Human Papilloma Virus), some strains of which are the recognized cause of cervical cancer. Too many students seem to be getting the message from the media, from their peers, and now from their schools that indulging in sexual activity is safe, fun, and a part of being a teenager. Yet the consequences of this behavior can be dire. A 1995 study published by the Heritage Foundation in 2003 reported that early initiation of sexual activity and higher numbers of nonmarital sex partners are linked, among women, to increased rates of STDs, out-of-wedlock pregnancy and birth, single parenthood, maternal and child poverty, abortion, and depression; and to decreased rates of happiness and marital stability. In Michigan, a criminal record also can result from engaging in sexual intercourse with someone 15 or younger.

According to the Heritage Foundation, a successful abstinence program teaches that human sexuality is primarily emotional and psychological, not physical, in nature; that, in proper circumstances, sexual activity leads to long-term emotional bonding between two people; and that sexual

happiness is inherently linked to intimacy, love, and commitment--qualities primarily found within marriage. Senate Bill 943 would require the teaching of similar content: honor and respect for marriage, the power to control personal behavior, and the possible emotional and psychological consequences of sexual activity outside of marriage. Teaching young people these values does them a great service.

Further, most parents evidently want their schools to teach about abstinence. A telephone study designed by Focus on the Family and conducted by Zogby International in December 2003, of 1,004 parents with children under 18 found that 47% of respondents wanted teens to be taught that "young people should not engage in sexual activity until they are married". Another 32% wanted teens to be taught that "young people should not engage in sexual intercourse until they have, at least, finished high school and are in a relationship with someone they feel they would like to marry". The bill would require that young people be taught to abstain from sexual activity until they married, thus meeting the desires of many parents.

During Senate Education Committee testimony, many young people testified that they, too, wanted more instruction on abstinence. Several said the topic was glossed over or not discussed in their sex education classes. According to these youths, practicing abstinence has given them a powerful sense of freedom: from fear, emotional distress, worry, disease, pregnancy, and parenthood. Adding more abstinence instruction into the classroom could only benefit students and their families.

#### **Supporting Argument**

The health education advisory board requirements under Senate Bill 943 and the complaint process proposed by Senate Bill 944 (S-1) would empower parents, especially those who feel that their wishes are not being heard by current sex education advisory boards. The complaint process, which would allow a parent to go directly to the Michigan Department of Education if a school were not complying with the law, would allow for an objective group of decision-makers to investigate and resolve problems in a particular school

district. Currently, if parents have a concern about a school's sex education methods or content, they usually have no choice but to go to the principal or school board--yet these people may agree with the school's policy, and not do enough to resolve the concern. Parents are entitled to have an outside agency investigate their complaints when they believe their district is out of compliance with Michigan law.

#### **Opposing Argument**

The 2003 Michigan Youth Risk Behavior Survey revealed that 50% of Michigan high school seniors reported having had sexual intercourse in the previous three months. No matter how alarming this statistic or how much parents wish it were not true, the number points to a truth: Abstinence from sexual intercourse is not the behavioral norm for unmarried young people. Sex education programs, therefore, must address the needs of all students--those who have abstained from sexual activity, those who have engaged in sexual activity but are currently abstaining, those who are engaging in sexual activity, and those who will decide to engage in sexual activity in the future.

While most agree that teaching about abstinence is vital, and that teens are safer when they practice it, the strict message in Senate Bill 943 that sex must be saved for marriage borders on preaching a set of values that many students cannot and will not accept. For example, the bill disregards pregnant teenagers and young parents attending alternative high school programs, as well as the gay population who, under Michigan law, may not marry. The bill also disregards the 39% of Michigan adults who never have been married, are divorced, or are separated, according to the 2002 Michigan Census. The bill's strict message of abstinence would send a negative, moralistic message to students, one that many may hold in contempt as hypocritical and unrealistic. According to the State Board of Education's "Policy to Promote Health and Prevent Disease and Pregnancy", evidence on current best practice methods for teaching a comprehensive sexual education course are "centered on a positive, healthy definition of sexual health, rather than one that focuses only on avoiding negative outcomes". A teenager at a Committee hearing reported that much

of what drives teens' sexual activity is curiosity, and an adult simply telling them not to have sex would continue to leave them curious and likely to pursue it.

Even those who do pledge to abstain from sex before marriage fail to do so 88% of the time, according to a recent study undertaken by the National Longitudinal Study of Adolescent Health and published in the *Lansing State Journal* (3-10-04) and CBS.com (3-9-04). More troubling, those who pledge to abstain are less likely to use condoms than those who do not pledge to abstain, according to the study, and are as likely to contract STDs as those who do not pledge.

Because very few students will take another course on human sexuality and reproductive health once they leave high school, it is imperative that students are educated for a lifetime. Adolescents should be given medically accurate, current information that teaches them how to reduce the risk of HIV, other STDs, and unintended pregnancy--information that parents, peers, and the media often are not able to provide.

**Response:** Senate Bill 943 would not prohibit the teaching of contraception, healthy sexual relationships, or other information schools currently teach. It simply would require an enhanced teaching of abstinence.

### **Opposing Argument**

The bills would strip local control from school districts and impose a top-down approach that would not be successful in every Michigan community. The State's demographics and values vary widely from region to region, and parents, teachers, principals, and local clergy--those currently on advisory boards--are best suited to make decisions about their schools' sex education curriculum. A school with reported rates of pregnancy higher than the State average may wish to emphasize contraception more than these bills would allow, for example. (Since Senate Bill 943 prescribes 13 additional requirements for sex education courses, its practical effect would be to limit other information that could be taught in a short, often nine-week, course.) The current practice, in which each community is empowered to evaluate its district's needs and implement the appropriate curriculum, should be allowed to continue.

### **Opposing Argument**

The provisions in Senate Bill 943 concerning the proposed health education advisory boards could limit the ability of many advisory boards to function at top efficiency. For example, the bill would require that parents comprise a majority of the board members, and that a parent chair the board. Finding enough parents who are willing, able, or knowledgeable enough to chair and serve on the board could be difficult, especially in smaller districts or those that struggle with parent participation. Also, parents by nature tend to be interested primarily in the welfare of their own child, and tend to stop volunteering once their child leaves the school. The chair of such a board should be objective and willing to serve long-term. Finding willing and able parents could be made more difficult by another provision in the bill--one that would prohibit a parent employed by the district from serving on the board. In many rural areas, a school district is the largest employer in the area. Furthermore, parents who work in school districts often do so because they are committed to children's well-being. To discriminate against them by excluding them from membership would be unfair and problematic. The bill also would require a health advisory board to give a two-week notice before each meeting; this could prove to be difficult if a meeting had to be canceled and then rescheduled due to inclement weather, school closings, or other unforeseen circumstances.

### **Opposing Argument**

Michigan's public schools' sex education programs seem to be working. Births to Michigan teenagers aged 15-19 have decreased by 41% from 1991 to 2002, according to the National Vital Statistics Reports (Volume 52, No. 10, 12-17-03). Since 1993, Michigan has consistently ranked below the national average in teen birth rates: In 1993, the State's rate was 12.6% and the U.S. average was 12.8%; in 2001, those numbers were 10.2% and 11.3%, respectively, according to Kids Count: The Right Start Reports Online (updated January 29, 2004). Michigan's abortion rate for women aged 15-44 is also down, according to the Michigan Department of Community Health--from 14.9% in 1992 to 12.6% in 2001 (Critical Health Indicators, August 2003). These trends suggest that Michigan teens are getting the right

message about either abstaining from sex or practicing safe sex.

**Response:** While pregnancy and abortion rates are down slightly, STDs among teens are rapidly rising. According to the Michigan Department of Community Health's Critical Health Indicators, from 1997 to 2002, the rates of Chlamydia, gonorrhea, and syphilis increased for those between the ages of 15 and 19. For example, in 1997, the total number of cases of syphilis was 36; five years later, this number was 53. Perhaps this is an indication that teens increasingly are getting the message that it is safe to have sex, as long as a condom is used. Condoms often are used ineffectively, however, and sometimes not used at all, despite the person's intent. While condoms may reduce the risk of contracting some STDs, teenagers need to know that having sex always poses a risk to their health.

#### **Opposing Argument**

The bills would attempt to fix a problem that seems to concern only a minority of parents. At Committee hearings, many parents testified that they were satisfied with the way their district handled sex education. Some parents reported that, while they felt it was their responsibility to teach their children as much as they could about abstinence and risk-avoidance, their knowledge and skills were limited. Schools, they felt, did a better job of providing up-to-date medical information and using techniques such role-playing and peer discussion. A recent poll (February 2004) by the Kaiser Family Foundation, National Public Radio, and Harvard's Kennedy School of Government supports this anecdotal evidence. That study reported that 42% of parents with children in sex education programs felt that their school's program had been very helpful to their children in dealing with sexual issues. More than three out of four parents of children who had taken a sex education course (77%) said that they were at least somewhat familiar with the sex ed programs in their community's schools. Also, 46% of parents believed that the most appropriate approach for sex education is the "abstinence-plus" approach: an approach that teaches that abstinence is the best practice, but, since some teens do not abstain, also teaches about condoms and contraception (the approach Michigan schools take, according

to some parents and educators who spoke during Committee hearings). Only 15% of American parents believed that schools should teach only about abstinence from sexual intercourse and should not provide information on how to obtain and use condoms and other contraception. If these findings can be specifically applied to Michigan, parents in the State are generally satisfied with the approach taken by their schools.

Legislative Analyst: Claire Layman

#### **FISCAL IMPACT**

##### **Senate Bill 943**

The bill would have no fiscal impact on State or local government.

##### **Senate Bill 944 (S-1)**

The bill could result in minor increased costs for the Department of Education related to the assignment of departmental personnel to investigate complaints under the proposed public complaint procedure. The bill would have no fiscal impact on local government.

Fiscal Analyst: Kathryn Summers-Coty

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.