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House Bill 5216 (Substitute H-2 as passed by the House)
House Bill 5217 (Substitute H-4 as passed by the House)
House Bill 5218 (as passed by the House)
Sponsor: Representative Klint Kesto (H.B. 5216)
Representative John Walsh (H.B. 5217)
Representative Harvey Santana (H.B. 5218)
House Committee: Commerce
Senate Committee: Judiciary

Date Completed: 5-6-14

CONTENT

House Bill 5216 (H-2) would amend the Corrections Code to do the following:

- Require the Department of Corrections (DOC) to give a released prisoner certain documents regarding his or her record and behavior.
- Require the DOC to give a prisoner a certificate of employability within 30 days before he or she was paroled, if the prisoner met certain requirements.
- Specify that a certificate of employability would be valid for four years, but provide for its revocation under certain circumstances.
- Require the DOC to confirm a request as to whether a certificate of employability had been issued to a person and was valid at the time of the inquiry.
- Establish a misdemeanor penalty for a falsely stating or otherwise representing that a person had a valid certificate of employability.
- Provide that the DOC would not be civilly liable for damages based on its decision to issue or deny issuance of a certificate of employability to any prisoner or for revoking or failing to revoke a certificate.

House Bill 5217 (H-4) would amend the Revised Judicature Act to do the following:

- Allow a certificate of employability issued by the DOC to be introduced as evidence of a person's due care in hiring or other activities regarding the holder of the certificate.
- Specify that a certificate would establish that an employer did not act negligently in hiring a person if a claim against the employer required proof that the employer was negligent by disregarding a prior criminal conviction.

House Bill 5218 would amend Public Act 381 of 1974, which pertains to the issuance of occupational license to former offenders, to require a licensing board or agency to consider a person's certificate of employability issued by the DOC if a judgment of guilt were used as evidence in the determination of the person's good moral character.

House Bill 5217 (H-4) is tie-barred to House Bill 5216. House Bill 5218 is tie-barred to House Bills 5216 and 5217.

House Bill 5216 (H-2)

Documentation Upon Release

The bill would require the DOC, when a prisoner was released, to give the prisoner documents regarding all of the following:

- The prisoner's criminal convictions.
- The prisoner's institutional history, including any record of institutional misconduct; whether he or she successfully completed programming provided by the DOC or a contractor; whether he or she obtained a GED or other educational degree; and the prisoner's institutional work record.
- Other information the DOC considered relevant.

In addition, the DOC would have to issue a certificate of employability to a prisoner who met all of the following:

- Successfully completed a career and technical education course.
- Had no major misconducts during the two years immediately preceding release.
- Had not more than three minor misconducts during the two years immediately preceding release.
- Received a silver level or better on the National Work Readiness Certificate, or a similar score as determined by the DOC on an alternative job skills assessment test administered by the Department.

Certificate of Employability

A certificate of employability could be issued only within 30 days before the prisoner was released on parole from a correctional facility and would be valid for four years after the date of issue unless the DOC revoked it. A certificate of employability would have to be issued on a form provided by the DOC.

Upon request, the DOC would have to confirm whether a certificate of employability had been issued to a named individual and whether the certificate was valid at the time of the inquiry and the Department's response to it.

The Department would have to revoke a certificate of employability if the prisoner committed any criminal offense during the 30-day period before release, and could revoke it if the prisoner had any institutional misconduct during that period. The DOC would have to revoke the certificate of a person who committed a felony after receiving it and was then placed under the DOC's jurisdiction for committing that felony.

The DOC would have to give an individual an opportunity for a hearing before revoking a certificate of employability. The hearing would have to occur within 60 days after the Department determined that the individual was no longer a proper candidate for a certificate. The revocation of a certificate would be effective when the person was notified of the revocation.

Penalty for False Certificate

The bill would prohibit a person from intentionally stating or otherwise representing that he or she had a valid certificate of employability issued by the DOC, knowing that the

statement or representation was false. A violation would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500.

The revocation of a certificate of employability would be for purposes of this prohibition only and would not affect the right of an employer to rely on the validity of a certificate of employability unless the employer knew before the person was employed that the certificate was fraudulent.

House Bill 5217 (H-4)

Under the bill, in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, a certificate of employability issued to an individual under the Corrections Code could be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued. That evidence could be introduced if the person knew of the certificate at the time of hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual.

In an action described above, if a claim against an employer required proof that the employer was negligent in hiring an individual by disregarding a prior criminal conviction, a certificate of employability would conclusively establish that the employer did not act negligently in hiring the individual, if the employer knew of the certificate at the time of hire. If an individual who had been issued a certificate of employability were hired and subsequently demonstrated that he or she was a danger to individuals or property or was convicted of or pleaded guilty to a felony, an employer who retained the person as an employee would not be liable in a civil action that required proof that the employer was negligent in retaining the employee unless a preponderance of the evidence established that the person with hiring and firing responsibility for the employer had actual knowledge that the individual was dangerous or had been convicted of or pleaded guilty to the subsequent felony, and the person was willful in retaining the individual as an employee.

The section proposed by the bill would not relieve an employer from a duty or requirement established in another law concerning a background check or verification that an individual was qualified for a position, and would not relieve the employer of liability arising from failure to comply with any such law.

The proposed section also would not create any affirmative duty or otherwise alter an employer's obligation to or regarding an employee with a certificate of employability issued under the Corrections Code.

House Bill 5218

Under Public Act 381 of 1974, a judgment of guilt in a criminal prosecution or a judgment in a civil action may not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character, but may be used as evidence in the determination of good moral character. The person must be notified and permitted to rebut the evidence by showing that he or she has the ability, and is likely, to serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which the person seeks a license.

Under the bill, if a licensing board or agency used a judgment of guilt as evidence in the determination of an individual's good moral character, the board or agency also would have to consider that person's certificate of employability issued under the Corrections Code as evidence in the determination, if he or she had a certificate.

Proposed MCL 791.234d (H.B. 5216)
Proposed MCL 600.2956a (H.B. 5217)
MCL 338.42 (H.B. 5218)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5216 (H-2)

The bill would require the Department of Corrections to issue a certificate of employability to a prisoner before his or her release from a correctional facility if specified conditions were met. This certificate-granting process would result in additional costs to State government. Also, since the bill would allow a four-year window for the withdrawal of a certificate, as well as other administrative checks on those with certificates, there could be added costs in the review of those whose certificate came under question. In addition, the bill would create a new misdemeanor penalty for an individual who misrepresented his or her possession of a valid certificate of employability. The possible increase in misdemeanors could increase the demands on local court systems. Any fine revenue from the additional misdemeanors would go to public libraries.

House Bills 5217 (H-4) and 5218

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

Fiscal Analyst: John Maxwell
Josh Sefton

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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.