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BILL ANALYSIS



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House Bills 6572 and 6573 (as passed by the House)
Sponsor: Representative Jim Runestad
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-17-18

CONTENT**House Bill 6572 would amend the Employee Right to Know Act to do the following:**

- Specify that a provision requiring an employer to review a personnel record and delete certain records of disciplinary action before releasing it to a third party would not apply if the release were part of a record regarding a separation of service under the Law Enforcement Officer Separation of Service Record Act, or was requested by Michigan Commission on Law Enforcement Standards (MCOLES), a law enforcement training academy, or a law enforcement agency.
- Allow an employer to release information in a separate confidential file if the information were part of a record regarding a separation of service.
- Require an employer to release to MCOLES information in a separate confidential file, upon the Commission's request.

House Bill 6573 would amend the Law Enforcement Separation of Service Record Act to require a prospective employing law enforcement agency that received, and a law enforcement agency that was required to maintain, a record regarding the reason or reasons for, and circumstances surrounding, a law enforcement officer's separation of service to submit to MCOLES a copy of the record, upon the Commission's written request.

Each bill would take effect 90 days after its enactment.

House Bill 6572

The Employee Right to Know Act generally allows an employee to review his or her personnel records, and prescribes the information that may be contained in those records.

An employer must review a personnel record before releasing information to a third party and, except when the release is ordered in a legal action or arbitration to a party in that legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than four years old. Under the bill, this provision also would not apply to the following circumstances:

- The release was part of a record regarding the reason or reasons for, and circumstances surrounding, a separation of service under the Law Enforcement Officer Separation of Service Record Act.

-- The release was requested by MCOLES, a law enforcement training academy, or a law enforcement agency for the purpose of determining compliance with licensing standards and procedures under the Michigan Commission on Law Enforcement Standards Act.

The Act also requires an employer that is a criminal justice agency and that is involved in the investigation of an alleged criminal activity or the violation of an agency rule by an employee to maintain a separate confidential file of information relating to the investigation. After completing the investigation, if disciplinary action is not taken, the employee must be notified that an investigation was completed. If the investigation reveals that the allegations are unfounded or unsubstantiated or if disciplinary action is not taken, the separate file must contain a notation of the final disposition of the investigation and information in the file must not be used in any future consideration for promotion, transfer, additional compensation, or disciplinary action.

Under the bill, an employer could release information in the separate file to a prospective employing law enforcement agency if the information were part of a record regarding the reason or reasons for, and circumstances surrounding, a separation of service under the Law Enforcement Officer Separation of Service Record Act. The employer also would have to release information in the separate file to MCOLES upon the Commission's request.

House Bill 6573

Under the Law Enforcement Separation of Service Record Act, a law enforcement officer who is licensed or who was previously licensed or certified under the Michigan Commission on Law Enforcement Standards Act and was previously employed as a law enforcement officer in Michigan, who separates from his or her employing law enforcement agency or from employment as a law enforcement officer to whom an oath of office has been administered, and who subsequently seeks to become reemployed as a law enforcement officer in Michigan, must provide to a prospective employing law enforcement agency, upon offer of employment, a signed waiver. The bill would refer to *receiving a conditional* offer of employment.

The Act specifies that a waiver must expressly allow the prospective employing law enforcement agency to contact the officer's former employing law enforcement agency or agencies and seek a copy of the record regarding the reason or reasons for, and circumstances surrounding, his or her separation of service created by his or her former employing agency under Section 3 of the Act. (Under Section 3, a law enforcement agency must maintain a record regarding the reason or reasons, and circumstances surrounding, a separation of service for each officer it employs and who subsequently separates from the agency.)

After receiving a waiver, a former employing agency must provide, along with other information required or allowed to be provided by law, a copy of the record described above to the prospective employing agency.

The bill would require a prospective employing agency that received a record described above from a law enforcement officer's former employing agency or agencies, and a law enforcement agency that was required to maintain the record, to provide, upon written request of MCOLES, a copy of the record requested to the Commission for the purpose of determining compliance with licensing standards and procedures under the Michigan Commission on Law Enforcement Standards Act.

MCL 423.507 & 423.509 (H.B. 6572)
28.565 (H.B. 6573)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

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

Fiscal Analyst: Bruce Baker

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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.