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CRIMINAL RECORDS CHECKS; HAZARDOUS MATERIALS LICENSE

House Bill 5504 (Substitute H-2)
Sponsor: Rep. Rich Brown
Committee: Transportation

Senate Bill 943 as passed by the Senate
Sponsor: Sen. Ken Sikkema
Senate Committee: Judiciary
House Committee: Transportation

First Analysis (2-26-02)

THE APPARENT PROBLEM:

On Tuesday morning September 11, 2001, nineteen terrorists hijacked four east coast passenger jets fueled for transcontinental flights, and flew three of them into two targets: the twin towers of the 110-story World Trade Center in New York City; and, the Pentagon military headquarters located in Alexandria, Virginia near the nation's capitol. A fourth jet crashed in rural Pennsylvania, 80 miles southeast of Pittsburgh, seemingly enroute to Washington, D.C. The fiery suicide missions killed more than 3,000 people, collapsing the skyscrapers and a wing of the Pentagon. The hijackers have been linked to an international network of Muslim extremists called Al Qaeda, whose leader is Osama bin Laden, a Saudi Arabian citizen unwelcome in his country and now thought to be hiding from military forces in Afghanistan.

Since these attacks, the president of the United States and the country's secretary of state and attorney general have called on leaders throughout the world to unite in a global network of effective surveillance and intelligence-gathering that would eliminate terrorism. Further, the president has called for international cooperation as the United States moves to apprehend known terrorists and to bring them to justice. Finally, the president promised military action against the governments of countries that harbor terrorists, and a military campaign was launched by American and British forces against the Taliban government of Afghanistan, beginning on October 7, 2001 and continuing to this time.

In addition to these international initiatives, the U.S. president has called for more vigilance and heightened internal security throughout the nation. To that end he has created a new cabinet-level post

called the Secretary for Homeland Security, and appointed the former governor of Pennsylvania to fill it. In addition, the U.S. Congress has pledged \$40 billion in federal aid to rebuild the New York City crash site, and established the Victims Compensation Fund to protect family members whose claims are settled by a special master appointed from the judiciary. More than 16 agencies of the federal government have received appropriations to fund programs that are designed to help recovery. [Descriptions of the Homeland Security and Defense programs are available at www.usinfo.state.gov/topical/pol/terror/homeland.]

In addition, to bolster the air transportation system, the U.S. Congress has provided favorable loans to the airline industry to prevent bankruptcies caused by the declining number of passengers. Further, the Congress has enacted a new airport security law, the Aviation and Transportation Security Act, that puts responsibility for the country's airport security into the hands of national law enforcers at the U.S. Department of Transportation, and that requires the inspection of all bags for weapons, as well as assigns armed air marshals on long-distance flights.

To identify and restrict the movement of illegal aliens and other newcomers to America, a more nuanced debate also is underway to consider the need for broader or more effective law enforcement powers that might infringe on the customary civil liberties of the American people, the constitutionality of which have been challenged at times by the American Civil Liberties Association. Finally, efforts to patrol the nation's borders have been increased in order to prevent illegal immigrants and known terrorists from crossing into the United States from Canada and

House Bill 5504 and Senate Bill 943 (2-26-02)

Mexico (although 11 of the 19 terrorists entered the United States via Britain, while four others entered via Germany).

In response to the attack of the terrorists on September 11, the U.S. Congress passed an omnibus anti-terrorist act commonly referred to as the USA P.A.T.R.I.O.T Act (which stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism"-H.R. 3162). The president signed the bill into law on October 26, 2001. Among the act's many provisions are those found in section 1012, which concern licensing commercial drivers to transport hazardous materials (sometimes referred to as the Haz-Mat provisions). The federal government has long regulated the transport of hazardous materials throughout the country, aware that there are about 300 million hazardous materials shipments in the nation each year. The regulation of the transports is undertaken to improve highway safety. For example, in 1998, there were 15,322 incidents, including 429 serious incidents, 13 deaths, and 198 injuries recorded by the U.S. Department of Transportation and reported in its March 2000 "Department-wide Program Evaluation of the Hazardous Materials Transportation Programs."

A move to expand the U.S. Department of Transportation's regulatory authority followed the terrorist attack, as the grim possibility of a previously unimagined threat--terrorists seizing control over trucks and railcars full of hazardous materials--became apparent. For example, the Federal Motor Carrier Safety Administration, heretofore primarily concerned with preventing commercial vehicle accidents, sent out more than 400 field agents to check the security of about 80,000 companies that haul hazardous materials. At the same time, thousands of truck drivers carrying such materials were subjected to increased security checks at weight stations. And almost immediately following the attacks, the Department of Energy pulled trucks carrying radioactive waste off the road and placed a moratorium on further shipments.

In addition to these regulatory functions, the USA PATRIOT Act established a federal role in monitoring the *licensing of drivers*, a role generally reserved for the states. However, concern about lax licensing security increased after September 11, when Attorney General John Ashcroft announced that 20 people had been arrested and charged with fraudulently obtaining licenses to haul hazardous waste materials. Included in the group were some individuals suspected of having links to the terrorists

who staged the attack. The 20 arrests followed the arrest and cooperation of one man, an illegal alien who had been recently licensed to haul hazardous waste in Michigan, and who is alleged to have ties with al Qaeda. The license held by the arrested man permitted him to haul hazardous materials including dynamite, gases, and toxic and radioactive materials.

In Michigan, several proposals to increase security would limit the use of the ground transportation system (in particular, automobile travel and hazardous materials transports), as well as screen those who would pilot aircraft. For example, one proposal which recently passed the House of Representatives, House Bill 5497, would restrict the movement of those who enter the country illegally by denying them a Michigan drivers license. Other proposals--Senate Bills 934 and 1006--have been offered to make air transportation more secure, requiring that applicants for flight training undergo criminal history and criminal records checks through the Department of State Police and the Federal Bureau of Investigation. Yet other proposals--House Bill 5504 and Senate Bill 943--would require applicants for licenses to haul hazardous materials to submit their fingerprints for investigation, and also would stiffen penalties for violation of the hazardous materials transport laws. See *BACKGROUND INFORMATION* below.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Vehicle Code and the Motor Carrier Safety Act, respectively, to require that a set of fingerprints be submitted for investigation by all applicants who apply for a license to transport hazardous materials, as well as increase the penalty for those who transport hazardous material without the proper license. A more detailed explanation of each bill follows.

House Bill 5504 would amend the Michigan Vehicle Code (MCL 257.307 et al.) to require an applicant for an operator's or chauffeur's license with a vehicle group designation and a hazardous material indorsement (H vehicle indorsement), to provide his or her fingerprints. The fingerprints would have to be taken by a law enforcement official (or a designated representative) for investigation, as required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (more commonly known as the USA P.A.T.R.I.O.T Act, enacted by the U. S. Congress on October 26, 2001).

The bill also would require that court clerks forward an abstract of the court record to the secretary of state, following a person's conviction for a violation of Chapter LXXXIII-A of the Michigan Penal Code. (Chapter LXXXIII-A of the Penal Code is embodied in legislation currently before the legislature that will form a new chapter of the code entitled "Terrorism.") Further and under the bill, the secretary of state would be required to revoke, for life, all vehicle group designations on drivers licenses, if any licensee were convicted of (or found responsible for) a conviction under the new "Terrorism" chapter of the Penal Code.

In addition, House Bill 5504 specifies that the secretary of state would immediately revoke for life the hazardous material indorsement (H vehicle indorsement) on the operator's or chauffeur's license of a person with a vehicle group designation, after receiving notice from the U.S. Department of Transportation that the person posed a security risk warranting denial under the USA PATRIOT Act.

Finally, under the bill the secretary of state would be prohibited from issuing a first-time vehicle group designation, or a first-time vehicle indorsement under section 312e (which concerns among other things the vehicle designations and indorsement necessary to transport hazardous materials), if the applicant were subject to a suspension or revocation under section 319b (which concerns among other things, violations of the Terrorism Chapter of the Michigan Penal Code, and security risks posed under the USA PATRIOT Act).

Senate Bill 943 would amend the Motor Carrier Safety Act (MCL 480.17c) to do both of the following:

-specify a penalty of imprisonment for violating the act while transporting a package that is required to be marked or labeled under federal regulations that govern the transport of hazardous materials (49 C.F.R. parts 100 and 180); and,

-prohibit the transport of hazardous materials for which a placard is required under federal regulations (49 C.F.R. parts 100 and 199), if the person transporting the hazardous material did not have the appropriate endorsement on his or her driver's license.

Currently under the law, a person is subject to a maximum fine of \$500 for operating or driving a bus, truck, truck tractor, or trailer, or certain other motor vehicles in violation of the act, or a rule promulgated

under it, if the vehicle is transporting a package required to be marked or labeled under federal regulations that govern the transport of hazardous materials. Further, a person would be prohibited from transporting hazardous material if he or she had no hazardous material endorsement on his or her operator's or chauffeur's license. Under the bill, the violation of both provisions would be misdemeanors, and each misdemeanor would be punishable by up to one year's imprisonment, a maximum fine of \$500, or both.

BACKGROUND INFORMATION:

Criminal history and criminal records checks. Currently, there are several mechanisms for conducting a criminal history check.

- LEIN. The Law Enforcement Information Network can be used by law enforcement agencies and the state police to run a name search for convictions in the state of Michigan. However, only the state police can access LEIN for non-criminal justice purposes. A \$5 fee is charged for name searches for a civil purpose, such as for employment purposes, but is generally waived for nonprofit agencies such as nursing homes. If a person uses a false name or birth date, the information provided by LEIN would be inaccurate.

- NCIC. The National Crime Information Center maintains a national database of convictions. Terminals linked to the database can be set up in law enforcement agencies such as local police stations and prosecutor's offices. A national name search can be conducted in a matter of minutes, but is only available for criminal justice purposes. As with the state LEIN system, an NCIC search cannot guarantee an accurate identification, especially if an alias is used. According to staff at the Department of State Police, recent Federal Bureau of Investigation (FBI) statistics report that 11.7 percent of name checks reflected the use of a different name, resulting in approximately 70,000 false hits a year.

- Fingerprint checks. The only way to accurately verify a person's identity, and therefore establish his or her criminal background, is to do a fingerprint check at the national level. Only the FBI can process fingerprints and conduct such a search (several states retain their own database of fingerprints and those states will run a search and report back to the FBI). Under current state law, only the Criminal Justice Information Center within the Department of State Police can submit fingerprints to the FBI for non-criminal justice purposes and receive the FBI report.

Upon a request for a national fingerprint search, the department first runs a fingerprint check for Michigan convictions, then sends the report and fingerprints to the FBI. According to a representative of the FBI, there is a 24-hour turn around on criminal background checks for civil purposes (two hours for criminal investigations), with a few extra days needed to search the records maintained by individual states.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that with regard to House Bill 5504, the Department of State estimates that 5,000 individuals initially apply for licenses with a hazardous material indorsement annually.

While the bill does not specifically authorize the Department of State Police to charge a fee for the required background check, the department routinely charges a fee of \$39 (\$15 for the state-level check and \$24 for the federal-level check). Annual fee revenue and associated expenditures by the department would therefore increase by an estimated \$195,000 under the bill.

The agency also notes that Executive Order 2001-9 raised the state-level portion of the fee from \$15 to \$30, effective for fiscal year 2001-02 only. If that higher fee level were to stay in effect, the revenue/expenditure estimate would increase to \$270,000. (2-20-02)

The Senate Fiscal Agency notes that with regard to Senate Bill 943, there would be no impact on state government and an indeterminate impact on local government. There are no data to indicate how many offenders are convicted for violating this section of the Motor Carrier Safety Act, and no way to know how many people might be convicted under the bill. However, offenders would be guilty of a misdemeanor and could receive up to one year's imprisonment and a maximum fine of \$500, or both. Offenders would be subject to probation or incarceration in a local facility. Local units would incur the cost of probation as well as incarceration, which may vary between \$27 and \$65 a day. (1-30-02)

ARGUMENTS:

For:

According to committee testimony, two weeks after the September 11 terrorist attacks, the FBI took into custody as a material witness a man suspected as an

al Qaeda operative who had been living in the Detroit area. He was an illegal alien in the United States; nonetheless he had obtained a hazardous material indorsement on his driver's license, granted from the secretary of state's office in Dearborn. In all, about 20 people were charged nationwide with fraudulently obtaining hazardous materials licenses. The licensing system must use protocols to detect fraudulent applications in order to ensure greater security.

These bills would require applicants for hazardous material licenses to submit fingerprints to a law enforcement official, so that federal background checks could be performed, as required by the USA PATRIOT Act. In addition, the bills would require the secretary of state to revoke for life a driver's hazardous materials license, if a background check determined that a person posed a security risk, or if a person had been convicted of a violation of Michigan's Anti-Terrorism Act. Finally, the bills also would increase the penalties for violation of the hazardous materials transport laws.

The bills would help licensing officials detect applicants who have histories of terrorist activities. In this way, known members of terrorist groups whose violent behavior poses a risk to the health and safety of citizens throughout the world community can be denied opportunities to move hazardous materials.

Against:

These bills should go further. As originally introduced, *all* current and future applicants for commercial drivers licenses would have been screened, not only those applicants who will make application for the hazardous materials indorsement in the future.

Against:

New criminal record check requirements to thwart terrorists will add tens of thousands of criminal checks to the workload of the Michigan State Police crime lab each year. There is the possibility that the increase in the requests will overwhelm the system, causing delays in receiving reports from the FBI. The possibility of delay is especially great given that fingerprints must be digitally scanned before they are transmitted electronically to the FBI for identification. Currently many fingerprints are not taken in a "live scan" format, and so they must be converted before they can be transmitted.

Response:

In order to meet the new requirements for criminal record checks, the Department of State Police designates private vendors to assist the department in the conversion of ink fingerprints to digitized formats. The private vendors take the "live scans" directly from applicants for licenses who are required to provide fingerprints, and they are paid by the applicants for the service. Those prints are then relayed to the Department of State Police, and the department then forwards them to the FBI.

POSITIONS:

The Office of the Secretary of State supports House Bill 5504. (2-22-02)

The Department of State Police supports the bills. (2-22-02)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.