



**House
Legislative
Analysis
Section**

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**AMEND FINGERPRINTING
REQUIREMENTS FOR STATE BAR
APPLICANTS**

**House Bill 5778 with committee
amendment
First Analysis (4-17-02)**

**Sponsor: Rep. Jennifer Faunce
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Lawyers and the practice of law in Michigan are regulated by the state supreme court. The court has the authority to adopt rules for admission to the bar and the discipline of members, and has authority over the State Bar of Michigan. Two boards within the state bar handle the processing of applications for admission to the bar – the Standing Committee on Character and Fitness and the State Board of Law Examiners. Before admission is granted, the Committee on Character and Fitness investigates the background of each applicant and then makes a recommendation based on its finding as to whether or not the applicant meets the requisite character and fitness requirements to practice law in the state. Besides submitting a detailed affidavit of personal history, an applicant for admission to the state bar must also submit fingerprint cards so that a state and national criminal history background check can be conducted. If the criminal history background check reveals disqualifying conduct, the candidate’s application for admittance to the bar would be rejected and the person could not practice law within the state.

Currently, the Revised Judicature Act states that it is “the duty of all state, county, and city law enforcement officers to aid the State Bar of Michigan and the Board of Law Examiners in any investigation of the conduct of members of the bar, and the character and fitness of persons who apply for admission or reinstatement to the bar, and to furnish all available information about the members or persons.” Though the act requires the Board of Law Examiners to require that each applicant be fingerprinted for the purpose of a criminal record check, the act does not detail a process by which the criminal record check is to be conducted. Instead, the process is prescribed by the Michigan Supreme Court in the Rules for the Board of Law Examiners.

This practice did not seem to pose any problems until recently. According to information supplied by the Department of State Police (DSP) and the State Bar of Michigan, the Access and Integrity Unit of the Federal Bureau of Investigation (FBI) conducted a review of the Michigan statute concerning criminal background checks of bar applicants and determined that the statute does not comply with federal requirements under Public Law 92-544. In particular, the federal law requires that a state statute expressly or impliedly authorize the use of FBI records for the screening of applicants. Further, FBI policy requires that fingerprints be submitted initially to a state’s identification bureau for a check of that state’s criminal database and then be forwarded to the FBI for a check of the national database. Federal regulations also restrict the dissemination of the information revealed by the national criminal history check.

Last fall, the DSP was notified by the FBI that as of May 1, 2002, it would no longer honor fingerprints submitted under the current state statute (although reportedly the FBI may extend the grace period to accommodate the time necessary to amend the statute). Legislation has therefore been offered to amend the state statute to comply with the parameters established by federal law and policy.

THE CONTENT OF THE BILL:

The Revised Judicature Act requires the Board of Law Examiners to require that applicants to the state bar be fingerprinted to determine whether the applicant has a criminal record in Michigan or in other states. The information obtained from the criminal background check is restricted to official use by the board and the state bar’s committee on character and fitness in determining the character and fitness of the applicant for admission to the state bar. After an applicant is approved, the act requires the

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fingerprint records and cards to be returned to the applicant or destroyed.

House Bill 5778 would amend the Revised Judicature Act to add to the above provision that the Board of Law Examiners would have to submit the fingerprints to the Department of State Police (DSP) for a state criminal history check. The DSP could then forward the fingerprints to the FBI for a national criminal history check. In addition, the bill would specify that the appropriate state and federal fees for the fingerprint checks would be paid by the applicant to the state bar; these fees would have to be submitted along with the fingerprints by the Board of Law Examiners.

MCL 600.949

BACKGROUND INFORMATION:

Section 949 of the Revised Judicature Act (MCL 600.949) was last amended by Public Act 69 of 1980. Public Act 69 was initiated after a congressional action restricted state access to FBI records to those agencies required by state statute to obtain the information. Michigan's statute was deemed insufficiently explicit at that time because it did not specifically require fingerprinting; therefore, the State Board of Law Examiners was denied access to the FBI records for the purpose of national criminal history checks until the statute was amended.

Under State Bar of Michigan rules, it is the applicant's responsibility to pay for the cost of the state and FBI criminal history checks. The FBI portion of the criminal history check is \$24; usually the cost for the state criminal history check is \$15, but due to the current economic downturn and state budget shortfalls, the fee was raised to \$30 for fiscal year 2001-2002 by Executive Order No. 2001 – 9.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state or on local governments. (4-12-02)

ARGUMENTS:

For:

Considering the role that lawyers play in the lives of their clients, it is essential that the State Bar of Michigan be able to conduct criminal history checks in order to screen out those whose past behaviors demonstrate a less than desirable character.

However, unless the statute is amended in a timely manner to comply with federal laws, regulations, and policies, the FBI could deny access to its criminal database for the purpose of screening state bar applicants. The bill would make no substantive changes in current practice; rather, it would codify current practice.

Further, the bill would specify that the Department of State Police could forward an applicant's fingerprints to the FBI. Under current practice and FBI policy, the state police must first run a criminal history check on the state's criminal database before forwarding the prints to the FBI. Under the bill's language, the state police would not have to forward the prints to the FBI if the state criminal history check revealed a criminal conviction that would disqualify an applicant from admission to the bar.

POSITIONS:

The Michigan Supreme Court supports the bill. (4-15-02)

The State Bar of Michigan supports the bill. (4-16-02)

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■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.