



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 915 (Substitute S-1 as passed by the Senate)
Senate Bill 916 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Tom George
Committee: Judiciary

Date Completed: 8-21-08

RATIONALE

Michigan law allows a person to secure a legal name change from the Family Division of Circuit Court (family court) if the individual has been a resident of the county for at least one year and shows both sufficient reason for the name change and that it is not sought with fraudulent intent. There is no requirement in State law, however, that a person be a U.S. citizen to have his or her name legally changed. The issues of citizenship and legal presence of noncitizens in the United States have received widespread attention nationwide, especially since the September 11, 2001, terrorist attacks on the Pentagon and the World Trade Center. In this State, recent revisions to the Michigan Vehicle Code prohibit the Secretary of State from issuing a driver license to a person who is not a U.S. citizen unless the applicant supplies photographic identification and other sufficient documents to verify his or her identity and legal presence in the country. Some people believe that a person should have to be a U.S. citizen in order to secure a legal name change in a Michigan court of law.

CONTENT

Senate Bills 915 (S-1) and 916 (S-1) would amend the Probate Code and the Code of Criminal Procedure, respectively, to do all of the following:

- Require a petitioner for a legal name change to be a citizen of the United States.**

- Specify that the petitioner would have the burden of proving that he or she was a U.S. citizen and had been a resident of the county where he or she sought the name change for at least one year.**
- Require an individual who petitioned to have his or her name changed and who was 18 years of age or older, rather than at least 22, to provide fingerprints for a criminal background check.**
- Revise the sentencing guidelines designations for intentionally making a false statement in a name change petition, and committing repeat violations involving adoption or a court order under the juvenile code.**

The bills are tie-barred and would take effect 90 days after their enactment.

Senate Bill 915 (S-1)

U.S. Citizenship

Under the Probate Code, the family court may enter an order to change the name of an individual who has been a resident of the county for not less than one year and who petitions the court in writing for that purpose, showing a sufficient reason for the proposed change and that the change is not sought with a fraudulent intent.

The bill would allow the family court to enter an order for a name change only if the person were a citizen of the United States. The bill specifies that, at the hearing on a

petition for a name change, the petitioner would have the burden of proving that he or she was a U.S. citizen and had been a county resident for at least one year.

Fingerprints

Under the Probate Code, an individual who is at least 22 who petitions to have his or her name changed must have two complete sets of his or her fingerprints taken at a local police agency. The fingerprints, a copy of the petition, and the required processing fees, must be forwarded to the Michigan Department of State Police (MSP). The MSP must compare the prints with its records and forward a complete set of fingerprints to the FBI for comparison with records available to it. The MSP must report to the court with respect to any pending charges or record of conviction against the petitioner. If there are no pending charges or record of conviction, the MSP must destroy its copy of the petitioner's fingerprints. The court may not act upon the name-change petition until the MSP reports the required information.

Under the bill, the fingerprinting requirement would apply to a petitioner who was at least 18, rather than 22, years old.

Senate Bill 916 (S-1)

False Statement

Under the section of the Probate Code that Senate Bill 915 proposes to amend, intentionally including a false statement in a petition for a name change constitutes perjury under the Michigan Penal Code. Perjury is a felony punishable by up to 15 years' imprisonment, as a rule. The bill would change the Michigan Compiled Law (MCL) reference for an intentional false statement in a name-change petition (making it consistent with Senate Bill 915).

Adoption Code: Subsequent Violation

The Michigan Adoption Code prohibits the placement of a child for adoption until an order terminating parental rights has been entered and the court formally has approved placement. A violation of this prohibition is a misdemeanor and a subsequent conviction is a felony. The sentencing guidelines description of the felony violation refers to a Michigan adoption law subsequent offense. The bill would refer instead to a subsequent

offense of unlawful placement of a child for adoption.

Juvenile Code: Subsequent Violation

The juvenile code allows the court to issue an order that affects a nonparent adult and does one or more of the following:

- Requires the nonparent adult to participate in the development of a case service plan for a juvenile under the family court's jurisdiction.
- Requires the nonparent adult to comply with a case service plan.
- Permanently removes the nonparent adult from the home of the child.
- Permanently restrains the nonparent adult from coming into contact with or within close proximity of the child.

A nonparent adult who violates an order is guilty of a misdemeanor. A violation after one or more prior convictions for violating an order is a felony punishable by up to two year's imprisonment and/or a maximum fine of \$2,000. The sentencing guidelines description of the felony violation refers to a subsequent conviction for a violation of a court order. The bill would refer to a subsequent conviction for a violation of a court order regarding a child by a nonparent adult.

MCL 711.1 (S.B. 915)
777.15f (S.B. 916)

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

United States citizenship and foreign nationals' legal presence in the country have become increasingly important issues in recent years. Michigan's provisions regarding legal name change, however, do not address a person's citizenship. If a person who is not a U.S. citizen seeks to change his or her legal name, it is possible that the person might be trying to deceive someone as to his or her true identity. Courts should not be placed in the position of being an unwitting participant in the perpetration of such fraud. Requiring U.S. citizenship in order to get a name change in a Michigan court of law would be reasonable,

as well as consistent with recent changes prohibiting the issuance of a driver license to a noncitizen unless he or she can document his or her legal presence in the country. Senate Bill 915 (S-1) would offer a measure of protection against foreign nationals who seek to change their identity in order to stay in the country illegally and/or commit other crimes without being accurately identified.

In addition, it should be incumbent upon the person petitioning the court for a name change to demonstrate his or her citizenship and county residence. Senate Bill 915 (S-1) would require that the petitioner prove at a hearing that he or she was a U.S. citizen and had lived in the county for at least one year.

Supporting Argument

It is unclear why the requirement in current law that name-change applicants submit fingerprints for a criminal background check applies only to those who are at least 22 years of age. Since the age of majority in Michigan is 18, applicants who are at least that old should have to submit fingerprints for a check of pending charges or a record of conviction against the applicant. Senate Bill 915 (S-1) would apply the fingerprint requirement to applicants who were at least 18.

Supporting Argument

The sentencing guidelines contained in the Code of Criminal Procedure describe felony violations, classify the felony level of each violation, categorize each listed crime, list the statutory maximum penalty for each violation, and refer to the MCL number of each crime. Since Senate Bill 915 (S-1) would revise the subsection of the Probate Code that prohibits an intentional false statement in a petition for a name change, Senate Bill 916 (S-1) would make the sentencing guidelines MCL citation for that violation consistent with the proposed change.

Senate Bill 916 (S-1) also includes some sentencing guidelines revisions that are unrelated to name-change petitions. Descriptions of violations are included in the sentencing guidelines only to provide informative assistance in applying the guidelines. The descriptions regarding subsequent offenses under the Michigan Adoption Code and the juvenile code are considered inadequate and should be

replaced with more appropriate descriptions of the violations.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many more offenders, if any, would be convicted of intentionally including a false statement in a name change petition, if citizenship were required. An offender convicted of the Class E offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. To the extent that the bills resulted in increased convictions, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

The bills would have no fiscal impact on the judiciary. In 2006, 2,845 petitions for name changes were filed. Costs associated with any increase in fingerprinting and background checks would be borne by the applicant.

Fiscal Analyst: Lindsay Hollander
Stephanie Yu

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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.