

LAW ENFORCEMENT OFFICER SEPARATION OF SERVICE RECORD ACT

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Senate Bill 223 (passed by the Senate as S-1)
Sponsor: Sen. Rick Jones
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 6-4-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 223 would create the Law Enforcement Officer Separation of Service Record Act to mandate that law enforcement agencies maintain a record of the reasons for separation of service for each law enforcement officer.

Employment record

In addition to the employment history record a law enforcement agency is already required to maintain under the Michigan Commission on Law Enforcement Standards Act (MCOLES Act), the bill would require an agency to also maintain a record regarding the reason(s) for, and circumstances surrounding, a separation of service for each law enforcement officer. An agency must also allow a separating law enforcement officer to review the record, upon request of the separating officer. A separating officer who disagrees with the accuracy of the report may request correction or removal of the portion he or she believes is incorrect. If the agency and officer cannot reach an agreement on the accuracy of the report, then the officer may submit a written statement explaining his or her position and beliefs, which must be kept with the record and provided to any subsequent law enforcement employer.

Waiver to release employment record

A law enforcement officer who seeks subsequent employment at another law enforcement agency in this state must provide a signed waiver to the prospective agency that expressly allows the prospective agency to contact a former employing law enforcement agency and gain a copy of the record regarding the reason(s) for, and circumstances surrounding, the separation of service. The waiver must be on a form created by the MCOLES, and the prospective employing law enforcement agency would be responsible for providing the waiver.

When the former employing law enforcement agency receives the waiver, it would have to provide a copy of the record to the prospective agency. A prospective agency would not be able to hire the officer without receipt of the record.

A former employing law enforcement agency that discloses information, upon receipt of the waiver, under this provision is presumed to be acting in good faith and would thus be immune from civil liability. To rebut the presumption, a plaintiff would have to show, by a preponderance of the evidence, one or more of the following:

- That the former employing law enforcement agency knew that the information disclosed was false or misleading.
- That the former employing law enforcement agency disclosed the information with a reckless disregard for the truth.
- That disclosure was specifically prohibited by a state or federal statute.

In the new act, "former employing law enforcement agency" would mean a law enforcement agency in this state that was the employer of, or that issued an oath of office to, a law enforcement officer licensed under the MCOLES Act, and that was required to maintain an employment history record for that officer under the same act.

FISCAL IMPACT:

Senate Bill 223 would have no fiscal impact on the Michigan Commission on Law Enforcement Standards, and could have a minor fiscal impact on local law enforcement agencies resulting from administrative costs, depending on the extent to which local law enforcement agencies do not already maintain records of previous employees' separation or share those records with other law enforcement agencies.

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