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BILL ANALYSIS



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Senate Bill 223 (as enacted)
Sponsor: Senator Rick Jones
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 128 of 2017

Date Completed: 10-25-17

RATIONALE

The Michigan Commission on Law Enforcement Standards (MCOLES) Act governs the licensure of law enforcement officers, and contains requirements for law enforcement agencies that employ them. Among other things, an agency must maintain an employment history record for each law enforcement officer it employs, and report to MCOLES all personnel transactions affecting employment status and any action taken by the agency that removes the officer's law enforcement authority. In addition, an individual licensed under the Act must report to the Commission if he or she is charged with a criminal offense for which the license may be revoked, or if a personal protection order is imposed against the individual. The Act does not, however, require or permit MCOLES to share this information with law enforcement agencies, or provide for agencies to share an officer's employment history with other agencies. Although law enforcement agencies might do so in practice, it is possible for an officer with a poor employment record to resign from one agency and be hired by another that has no knowledge of the officer's history. In some cases, an officer might repeatedly engage in misconduct, resign, and find employment with a different police department. While this pattern is not common, it is known to occur in Michigan, as well as across the country. In order to address this phenomenon, it was suggested that law enforcement agencies should be required to maintain and share officers' employment records, and be prohibited from hiring an officer without that information.

CONTENT

The bill enacts the "Law Enforcement Officer Separation of Service Record Act" to do the following:

- Require a law enforcement agency to maintain a record of the reasons for, and circumstances surrounding, a law enforcement officer's separation of service with the agency.
- Require an agency to allow a separating officer to review the separation of service record, upon his or her request, and to submit a written statement explaining the officer's disagreement with the record.
- Require a law enforcement officer to sign a waiver allowing a prospective employing agency to contact his or her former employing agency or agencies and seek a copy of the officer's separation of service record.
- Require a former employing agency to give a copy of an officer's separation of service record to the prospective employing agency, upon receiving a waiver.
- Prohibit a prospective employing agency from hiring an officer unless the agency receives the record from his or her former employing agency or agencies.
- Provide that a former employing agency disclosing information in good faith after receiving a waiver will be immune from civil liability for the disclosure; and establish a presumption of good faith.

The bill will take effect on January 15, 2018.

Separation of Service Record

In addition to the employment history record maintained by a law enforcement agency for each officer it employs, or for each officer to whom the chief of police of a city, village, or township or a county sheriff has administered an oath of office, as required by the MCOLES Act, a law enforcement agency must maintain a record regarding the reason or reasons for, and the circumstances surrounding, a separation of service for each officer the agency employs who subsequently separates from the agency or from his or her employment as a law enforcement officer requiring the administration of an oath under Section 9c or 9d of the MCOLES Act (described below).

The agency must allow a separating officer to review his or her separation of service record, upon the officer's request. If an officer disagrees with the accuracy of the contents of a separation of service record, he or she may request the correction or removal of the portion of the record he or she believes to be incorrect. If the agency and the officer cannot reach an agreement on the contents of the record, the officer may submit a written statement explaining his or her position and the basis for his or her disagreement. The statement must be kept with the record and provided with the rest of the contents of the record to a law enforcement agency that is a prospective employer.

(Section 9c of the MCOLES Act applies to individuals who are employed as fire arson investigators from fire departments within cities, villages, townships, or counties, who are sworn and fully empowered by the chiefs of police of those local units. Section 9d applies to individuals who are employed as private college security officers, seek licensure under the Act, and are sworn and fully empowered by a chief of police of a city, village, or township law enforcement agency, or are deputized by a county sheriff. Each section requires the chief of police or the sheriff, as applicable, to administer an oath of office authorizing the individual to enforce the laws of the State. The police chief or sheriff also must maintain an employment history record with respect to the individual.)

Waiver

A law enforcement officer who is licensed under the MCOLES Act, or who was previously licensed or certified under the 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 under Section 9c or 9d of the Act, and who subsequently seeks to become reemployed as an officer in Michigan, must give the prospective employing law enforcement agency a signed waiver, upon an offer of employment. A waiver must expressly allow the prospective employing agency to contact the officer's former employing agency or agencies and seek a copy of the record regarding the reasons for, and circumstances surrounding, the officer's separation of service.

A waiver must be executed on a form provided by MCOLES to all law enforcement agencies in Michigan that employ or administer oaths of office to law enforcement officers licensed under the Act. A prospective employing agency will be responsible for providing an executed waiver to the former employing agency or agencies. Upon receiving the waiver, a former employing agency must give the prospective employing agency a copy of the separation of service record, along with other information required or allowed by law to be provided.

Prohibited Employment

A prospective employing law enforcement agency may not hire a law enforcement officer to whom the waiver requirement applies unless that agency receives the separation of service record from the law enforcement officer's former employing law enforcement agency or agencies.

Civil Immunity

A former employing law enforcement agency that discloses information in good faith after receiving a waiver will be immune from civil liability for the disclosure. A former employing agency will be presumed to be acting in good faith unless a preponderance of the evidence establishes one or more of the following:

- The former employing agency knew that the information disclosed was false or misleading.
- The former employing agency disclosed the information with a reckless disregard for the truth.
- The disclosure was specifically prohibited by a State or Federal statute.

MCL 28.561-28.565

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

As in any other profession, most members of the law enforcement community are law-abiding, honorable individuals, but there are the rare "bad apples". Unlike those exceptions in other occupations, however, dishonest or abusive police officers can have a serious and harmful impact on the lives of ordinary citizens. Police misconduct can result in the loss of a person's property, liberty, reputation, or even life. In some cases, an unfit officer might repeatedly be accused of a violation, such as use of excessive force, resign before being disciplined or terminated, and find work with another law enforcement agency, while retaining his or her licensure. Although it is not common, this practice occurs often enough and widely enough that the term "gypsy cop" is frequently used to describe a problem officer who moves from department to department. In Michigan, the issue received public attention after an Eaton County deputy was accused of making an abusive and improper traffic arrest, resigned, and quickly landed a similar job in Lenawee County.

It is possible that, for reasons of expediency, a law enforcement agency will hire a licensed officer knowing about his or her misdeeds, or allegations of misconduct. Presumably, however, in most cases an agency will hire an unfit officer because it is unaware of his or her employment record. This may occur even though the officer's previous employers know of the person's propensity for misconduct or history of poor performance. The Law Enforcement Officer Separation of Service Record Act is designed to address these situations. By requiring law enforcement agencies to maintain records of the reasons officers' leave their employment, requiring officers to sign waivers that allow hiring agencies to contact previous employers and seek those records, and prohibiting agencies from hiring officers unless they receive the records, the legislation will ensure that police misconduct is not kept secret if an officer leaves one police department and applies for a job with another. In addition, since law enforcement agencies might be reluctant to share employment records due to concerns about litigation and liability, the Act provides civil immunity for an agency that discloses information in good faith, and creates a presumption of good faith. Furthermore, the Act protects the interests of law enforcement officers by giving an officer the opportunity to dispute the contents of his or her separation of service record, request a change, and submit an explanation of the officer's position if an agreement with the agency cannot be reached.

By making it harder for problem officers to be rehired, the Act will protect the public safety, increase the public's trust of law enforcement, and improve morale within police departments. The Act also may save law enforcement agencies the resources they otherwise would use to defend lawsuits that result from police officers' misconduct.

Opposing Argument

The legislation will have the effect of taking away a tool that law enforcement agencies and officers use to resolve disciplinary disputes and, as a result, will lead to costly arbitration. In practice, if an

officer is accused of misconduct, he or she may reach an agreement with the agency that allows the individual to resign. If he or she then applies for a job with another police department, it is that agency's responsibility to perform an adequate background check, and it is the obligation of the previous employer to provide employment history. If agencies took these steps, then unfit officers could not become "gypsy cops". Under the new law, however, officers who are accused of wrongdoing will likely choose to arbitrate the dispute, rather than resign, figuring that they have nothing to lose. The end result might be the same--but not until the parties have gone through an expensive arbitration process.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have a nominal fiscal impact on State and local law enforcement agencies. Local agencies already maintain and share officer employment records and commonly engage in information disclosure agreements with prospective employees. Currently, MCOLES provides "best practices" advice for agencies in hiring matters. Under the bill, the Commission will provide the required waiver forms, using existing resources.

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.