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BILL ANALYSIS



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Senate Bill 924 (Substitute S-1 as reported)
Sponsor: Senator Mike Kowall
Committee: Government Operations

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RATIONALE

Michigan's Private Security Business and Security Alarm Act provides for the licensure and regulation of various types of security-related professions, including "private security police". That term refers to the part of a business organization or educational institution primarily responsible for the protection of property on the business's or institution's premises, but does not include a private college security force (which is subject to separate regulations). The Act requires a person to be licensed by the Department of State Police in order to engage in the business of private security police. Officers employed by private security police have the authority to make arrests for misdemeanors as well as felonies. In order to provide for additional security options, some people believe that the Act also should allow the licensure of private security police that could enter into contracts with private businesses, nonprofits, or educational institutions to provide protection on their premises. Although these entities may contract with security guard agencies for protection, security guards do not have arrest authority. It has been suggested that contracting with private security police would enhance the safety of businesses, schools, and others, which would not have to incur the related costs and responsibilities of establishing their own private security police.

CONTENT

The bill would amend the Private Security Business and Security Alarm Act to:

- Include in the definition of "private security police" a licensee that is engaged by a legally organized entity to provide protection on its premises.**
- Require private security police to be licensed under the Act.**
- Extend arrest authority to an officer of private security police engaged by a legally organized entity.**
- Prohibit licensed private security police from entering into a mutual aid agreement with a city, county, village, township, metropolitan district, public university, community college, or other entity described in the bill.**

The bill would take effect 90 days after its enactment.

Licensed Private Security Police

Under the Act, the Department of State Police is responsible for the regulation of private security police and private college security forces. "Private security police" means that part of a business organization or educational institution primarily responsible for the protection of property on the premises of the business organization or educational institution, but does not include a private college security force.

The bill would include in the definition a licensee that is engaged by a legally organized entity to provide protection on the premises of the entity. "Legally organized entity" would include, but not be limited to, an association, corporation, partnership, proprietorship, trust, foundation, not-for-

profit, school district, federally recognized Indian tribe, or institution of higher education. The term would not include a city, county, village, township, or metropolitan district, or any authority, district, board, public university, or community college, or any other entity created by the authorization of one or more cities, counties, villages, or townships.

The bill would require a private security police to obtain a license under the Act in order to provide protection of the premises of a legally organized entity that engaged it to provide that protection.

Currently, a person, business organization, educational institution, or corporation maintaining a private security police organization may voluntarily apply for licensure under the Act. The bill provides, instead, that any business organization or educational institution employing private security police officers could voluntarily apply for licensure.

Arrest Authority

The Act provides that a private security police officer who is licensed has the authority to arrest an individual without a warrant as set forth for public peace officers in the Code of Criminal Procedure, when the officer is on the employer's premises. The arrest authority is limited to the officer's hours of employment and does not extend beyond the boundaries of the employer's property, and applies when the officer is in the full uniform of his or her employer.

Under the bill, instead, an officer of private security police of a business organization or educational institution would have the authority to arrest an individual without a warrant as set forth for public peace officers in the Code of Criminal Procedure, if all of the following were met:

- The officer was properly licensed under the Act.
- The arrest occurred on the premises of the licensee that employed the officer.
- The arrest was made during the officer's hours of employment as a private security police officer.
- The officer was in the full uniform of his or her employer at the time of the arrest.

In addition, under the bill, an officer of a private security police engaged by a legally organized entity to provide protection on its premises would have the same authority to arrest an individual without a warrant, if all of the following conditions were met:

- The officer's employer was licensed as private security police under the Act.
- The arrest occurred on the premises of the legally organized entity that engaged the officer's employer to provide protection on those premises.
- The arrest was made during the hours the officer was assigned to work as a private security police officer on the premises of the legally organized entity.
- The officer was in the full uniform of his or her employer at the time of the arrest.

(The Code of Criminal Procedure lists situations in which a peace officer has the authority to arrest a person without a warrant. These include the following, among others:

- A felony, misdemeanor, or ordinance violation is committed in the officer's presence.
- The person committed a felony although not in the officer's presence.
- A felony has been committed and the officer has reasonable cause to believe the person committed it.
- The officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.
- The officer has received positive information by written, telephonic, radio, electronic, or other authoritative source that another peace officer or a court holds a warrant for the person's arrest.

- The officer has reasonable cause to believe that the person is an escaped convict, has violated a condition of parole from a prison, or has violated a condition of a conditional release order or probation order.)

Mutual Aid Agreement

The bill would prohibit licensed private security police from entering into a mutual aid agreement with a city, county, village, township, or metropolitan district, or any authority, district, board, public university, or community college, or any other entity created in whole or in part by the authorization of one or more cities, counties, villages, or townships, whether created by statute, ordinance, contract, resolution, delegation, or any other mechanism.

MCL 338.1052 et al.

BACKGROUND

The Private Security Business and Security Alarm Act originally was enacted in 1968 as the Private Security Guard Act. The Act authorized the Department of State Police to issue licenses to private police, special police, patrol services, and private security guard agencies. The Act also applied to businesses providing alarm systems for protection. Legislation enacted in 2002 transferred the regulation of private security guard agencies, private investigators, and alarm system businesses from the State Police to another department, which is now the Department of Licensing and Regulatory Affairs. Responsibility for the licensure and regulation of private security police remained with the State Police and was assigned to the Michigan Commission on Law Enforcement Standards (MCOLES).

The Act establishes criteria for the licensure of private security police, including requirements that an applicant be at least 21 years old, have a high school education or the equivalent, and not have been convicted of a felony. The Act also requires applicants and their employees to comply with training requirements established by the Department.

According to the MCOLES website, training is required in the following areas:

- Legal - criminal law and procedure; civil law and diversity.
- Special Curriculum - including either firearms familiarization or firearms proficiency if carrying firearms and defensive tactics.
- Critical Incident Curriculum - CPR/first aid; nonviolent intervention, and emergency preparedness.
- Patrol Operation
- Annual, Mandatory Maintenance Curriculum - first aid, emergency preparedness; legal update; defensive tactics and firearms range qualifications or strategic video training for those who carry firearms.

The website lists 13 entities that are licensed as private security police. They primarily include businesses in the health care industry, but also several other private businesses, two school districts, and one community college district.

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 discussed above, a hospital, school, or other entity may obtain its own private security police license in order to protect its premises, and hire employees who have arrest powers. Doing so, however, brings the entity into the realm of law enforcement, with the associated costs and responsibilities. A hospital, school, or business also may contract with a security guard agency for

protection, but security guards cannot make arrests. The bill proposes another alternative for a business, nonprofit, school district, community college, or other legally organized entity to enhance its protection. The bill would create an opportunity for a separate entity to become licensed private security police that could enter into a contract with a legally organized entity and hire employees who could exercise arrest powers on that entity's premises.

Expanding the scope of private security police licensing would complement the work that public law enforcement agencies and officers do, especially in municipalities with strained resources. Private security police would have a contractual responsibility to protect their clients and could be held liable for failing to do so. Private security police would not compete with public law enforcement, and would be prohibited from entering into a mutual aid agreement with a municipality, community college, or public university.

Opposing Argument

The bill would allow virtually anyone to become licensed as private security police, which are not accountable to the public, do not have the transparency of public law enforcement agencies, and can hire employees with vastly less training than law enforcement officers. According to information provided by MCOLES, law enforcement officers who are licensed by the Commission must undergo a minimum of 594 hours of training, all of the police academies in Michigan provide at least 720 hours, and the Michigan State Police requires more than 1,000 hours in basic training alone. In contrast, private security police receive approximately 90 hours of training. Also, unlike law enforcement officers, private police are not fingerprinted, do not undergo criminal history checks, and do not have the ability to run background or fingerprint checks on others.

Furthermore, although private security police would have to be licensed in order to enter into a contract with a legally organized entity, the licensure of their employees would be voluntary, and *any* officer employed by a licensee would have the authority to make arrests, even if the officer were not licensed himself or herself.

Evidently, employees of licensed private security police currently may make arrests without being licensed, despite the language of the Act. The bill, however, would re-enact the licensure requirement for employees of business organizations and educational institutions that are licensed private security police, without imposing the same requirement on employees of private security police providing services to other entities.

Opposing Argument

The potential creation of numerous private security police leads to questions that the neither the Act nor the bill answers. For example, if a private security police officer arrested someone, would the person be transported to a jail or to a different location, and who would be responsible for transporting him or her? If a law enforcement officer had to pick up the person, how long would he or she have to wait? Would there even be a requirement to notify a law enforcement agency? Would a bonding mechanism be available? Who would prosecute the case? Would the public or the contracting agency be responsible for the costs of incarceration? If the person required medical attention, who would pay those costs? Who would collect evidence and investigate the crime scene? Until these issues are addressed, and the statute itself is updated, the scope of the Act should not be expanded.

Opposing Argument

The expansion of private security police and the proliferation of private individuals with arrest authority would set back the professionalism of public safety positions. Law enforcement agencies and officers are under considerable scrutiny these days, and the movement is toward greater accountability, not less. In 2014, President Barack Obama established the Task Force on 21st Century Policing to identify best practices and offer recommendations on how policing practices could promote effective crime reduction while building public trust. In its Final Report issued in May 2015, the Task Force stated, "Law enforcement agencies *should...establish a culture of transparency and accountability* to build public trust and accountability." (Emphasis added.) While public law enforcement agencies are striving to achieve this, the bill would take the State in the

opposite direction. Private security police are not answerable to elected officials who, ultimately, are accountable to the people of the State. Private police are not subject to the Freedom of Information Act. They also are not subject to the new Law Enforcement Officer Separation of Service Record Act, which requires law enforcement agencies to maintain and share records of the reasons for an officer's separation of service. That Act, which took effect on January 15, 2018, is designed to prevent police officers from repeatedly engaging in misconduct, resigning from employment, and finding a job with a different law enforcement agency. Private security police employees, however, can do virtually the same thing.

Opposing Argument

Private security police are not subject to constitutional mandates and restrictions that protect the public. Requirements regarding probable cause for search and seizure and lawful detention, *Miranda* warnings that apply to police interrogations, and limitations concerning the use of force do not apply to private police. Nevertheless, they can carry weapons, use force, interrogate, and arrest and detain individuals. They have the power to deprive a person of liberty, without the intervening constitutional safeguards. According to testimony by the ACLU, there are civil and criminal cases pending around the country against private police agencies. Although there may not be any cases in Michigan, where only about 15 private security police are licensed, the State should not create the opportunity for abuse by allowing any legally organized entity to obtain a license.

Opposing Argument

The bill would exacerbate the disparities that exist in access to public safety, by opening the door for private police to be used more frequently by entities and groups that can afford them, such as homeowners' associations and private schools. Regardless of the setting or the client, however, there is nothing to stop private security police from practicing selective, discriminatory, or overzealous enforcement. In addition, if public or private schools hire improperly trained private police, there could be a negative impact on the overall educational climate, especially if their policing tactics intimidate at-risk students or the officers mishandle sensitive situations.

Opposing Argument

The bill could impose an administrative burden on MCOLES, which currently licenses only about 15 private security police. According to Committee testimony, if the bill were enacted, the Commission anticipates that there would be a sizeable increase in the number of licensees and the number of private individuals with arrest powers.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate, but potentially significant, fiscal impact on the Michigan Department of State Police (MSP). The bill would authorize the MSP to license a more broadly defined category of private security police. This responsibility potentially could be handled by the Michigan Commission on Law Enforcement Standards, which already licenses and regulates law enforcement officers and private security police officers. By expanding the population eligible to be licensed as private security police, the bill could cause the MSP to incur additional responsibilities, at a cost that is unclear, since the number of people that would seek licensure as a result of the bill cannot be known at this time. Currently, the MSP licenses only 15 such agencies, primarily in the health care industry. According to the MSP, should interest in obtaining licenses increase to any great extent, and require a greater degree of regulatory oversight, the MSP could require a more sophisticated database, which would include computer programming costs of \$300,000 to \$500,000 and an additional FTE at a cost of \$150,000.

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.