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BILL



ANALYSIS

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Senate Bill 94

Sponsor: Senator Michael J. Bouchard

Committee: Families, Mental Health and Human Services

Date Completed: 11-30-95

SUMMARY OF SENATE BILL 94 as introduced 1-17-95:

The bill would create the “Child-Related Employment Criminal History Check Act” to do all of the following:

- **Require certain employers to obtain from each job applicant, employee, and volunteer a signed statement of whether that person had ever been convicted of certain criminal offenses. The bill would apply to various licensed facilities as well as any business or organization that had the care of, or supervisory or disciplinary powers over, a minor.**
- **Require each applicant, employee, and volunteer to give written consent for the employer to conduct a criminal history check, and allow an employer to refuse to hire an applicant who did not give consent.**
- **Require that an employer request the Department of State Police to conduct a criminal history check and that the Department do so.**
- **Allow a parent or guardian to request that a criminal history check of an employee or potential employee be conducted and require that a law enforcement agency comply with such a request.**
- **Extend limited immunity from liability to the Department of State Police and a law enforcement agency that disclosed a person's criminal history under the bill.**

Application of Bill

The bill would apply to the following employers, and to an employee, volunteer, or applicant for employment or volunteer work, who was at least 17 years of age and worked for, volunteered for, or applied for work with, any of them:

- A child care organization as defined in the child care licensing Act (MCL 722.111).
- An adult foster care family home or adult foster care small group home as defined in the Adult Foster Care Licensing Act (MCL 400.703).
- A private or public school with a preschool or any grade from kindergarten to 12th grade.
- A public or private intermediate or long-term care facility that provided treatment or care to a minor for a physical, mental, emotional, or rehabilitative condition or disease.
- A juvenile facility as defined in the Juvenile Facilities Act (MCL 803.222).
- Any other business, organization, or association that had the care of, or supervisory or

disciplinary powers over, a minor, including but not limited to providers of recreational or similar activities.

Employee Disclosure and Consent

The bill would require that an employer obtain a signed statement from each employee, applicant, or volunteer indicating whether he or she had ever been convicted of a felony or of a misdemeanor that was a violation of any of the following, or of a substantially similar law of another state, the United States, or a political subdivision of this State:

- The Public Health Code's prohibition against selling drug paraphernalia to a minor (MCL 333.7455).
- The Youth Employment Standards Act provisions involving the employment of a minor (MCL 409.101-409.124).
- The Liquor Control Act's prohibitions against selling alcoholic liquor to minors (MCL 436.33).
- The Liquor Control Act's prohibitions against furnishing fraudulent identification to a minor and using fraudulent identification as a minor to purchase alcoholic liquor (MCL 436.33b).
- The Child Care Licensing Act (MCL 722.111-722.128).
- Public Act 296 of 1968, which prohibits a person from knowingly and willfully aiding or abetting a minor to violate a juvenile court order or concealing or harboring juvenile runaways (MCL 722.151).
- Provisions of the child protection law that require the reporting of instances of suspected child abuse or neglect (MCL 722.633).
- Provisions of the Youth Tobacco Act that prohibit the sale of tobacco products to minors (MCL 722.641).
- Provisions of Public Act 33 of 1978 that prohibit the display or distribution of obscene material to minors and false representation of the minor's age or person's status as a parent or guardian of a minor (MCL 722.675, 722.677, and 722.678).
- Provisions in Public Act 41 of 1960 that prohibit aiding minors under the age of 16 to violate curfew hours (MCL 722.753).
- Provisions in the Michigan Penal Code pertaining to assault, assault and battery, and infliction of serious injury, involving an assault against a minor (MCL 750.81 and 750.81a).
- Provisions in Public Act 343 of 1984 pertaining to first-degree obscenity (MCL 752.365).
- Provisions in the Michigan Penal Code pertaining to providing minors with cereal beverages with alcohol; committing child abuse; purchasing goods from minors as junk shop dealers, peddlars, or second-hand dealers, without parental consent; interfering with legal custody arrangements; allowing minors in bars; exhibiting or employing minors in certain occupations such as wire walking, riding, or dancing or for any obscene, indecent or immoral purpose; allowing a minor to consume or possess alcohol or a controlled substance at a social gathering; furnishing minors with obscene books; exhibiting obscene material to minors; maintaining a licensed boarding home for children; contributing to the neglect or delinquency of a minor; soliciting a minor for immoral purposes; refusing or neglecting to support one's family; prostitution; window peeping; indecent or obscene conduct; loitering at a place of prostitution or lewdness; selling firearms of over 30 inches long to minors; selling or furnishing to a minor without parental consent any bulk gunpowder, dynamite, blasting caps or nitroglycerine; indecent exposure or sexual delinquency; soliciting or accosting a person to commit prostitution, lewdness, or other immoral acts; admitting a person to a place of prostitution, lewdness, or assignation; engaging or offering to engage the services of a female for prostitution, lewdness, or assignation; leasing houses for prostitution; employing or detaining female minors in houses of prostitution; and committing fourth-degree criminal sexual conduct (MCL 750.28, 750.136b, 750.137, 750.138, 750.140, 750.141, 750.141a,

750.142, 750.143, 750.144, 750.145, 750.145a, 750.167, 750.223, 750.327a, 750.335a, 750.448, 750.449, 750.449a, 750.450, 750.454, 750.462, and 750.520e).

The statement also would have to indicate whether the person had ever been convicted of an attempt or conspiracy to commit a felony or a misdemeanor in violation of the specified laws.

Knowingly or intentionally making a false statement on, or withholding information from, the signed statement would be a misdemeanor punishable by up to six months' imprisonment, a maximum fine of \$1,000, or both. Such an action also would be grounds for immediate disciplinary action, including discharge.

An applicant, employee, or volunteer also would have to give written consent for the employer to conduct a criminal history check and provide the Department of State Police with any information necessary for the check, including fingerprints and date of birth. Subject to Public Act 120 of 1935, which specifies a maximum fee of \$15 for processing fingerprints and conducting criminal record checks, and any other applicable limitations, the employer would have to pay the first \$5 of the fee for the criminal history check and the State would have to pay any amount in excess of \$5. An employer would be prohibited from hiring an applicant, and could dismiss an employee or volunteer, who did not give consent for a criminal history check under the bill.

Criminal History Check

An employer would have to request the Department of State Police to conduct a criminal history check on each applicant, employee, or volunteer who gave written consent as required by the bill. The Department would have to comply with such a request. An applicant, employee, or volunteer could provide fingerprints through a law enforcement agency, which would have to comply with Public Act 120 of 1935, which regulates the processing of fingerprints, and with any applicable procedures established by the Department for those checks. The Department would have to complete the check and provide the results to the employer and the applicant, employee, or volunteer within seven days after the request. Only information on convictions for crimes identified in the bill could be disclosed. The Department of State Police would have to prescribe the form for requests and information necessary to conduct the checks, and the form for providing the results.

An employer could request a criminal history check of a parent or guardian who otherwise met the definition of volunteer, but whose child was participating in or attending services or activities offered by that employer. The parent or guardian would have to consent to the criminal history check if requested by the employer before engaging in services offered by that employer, and the local law enforcement agency or the Department would have to conduct the criminal history check upon the same terms as it would for any other employer.

An employer could not employ or use the services of an applicant before completion of a criminal history check. If a criminal history check revealed a conviction for a crime described in the bill, the employer could refuse to hire the applicant, or dismiss the employee or volunteer, who had the conviction. If an employer hired an applicant or retained an employee or volunteer whose criminal history check revealed a conviction for a crime specified in the bill, the employer would have to notify the parent or guardian of each minor who used the employer's services of the conviction and its nature.

If a parent or guardian of a minor hired or intended to hire an individual who had or would have care of, or supervisory or disciplinary powers over, a child in the parent's or guardian's custody, the

parent or guardian could request the Department or the local law enforcement agency to conduct a criminal history check under the same terms as checks would be conducted for employers.

The Department of State Police, a law enforcement agency, and the employees of either, would have no liability in connection with a criminal history check conducted under the bill, except for a knowing or intentional release of false information.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill's provision requiring the State to assume responsibility for \$10 of the \$15 cost of a criminal history check could cost the State \$2 million per year, based on Department of State Police estimates of 200,000 annual employee criminal history checks being made under the bill.

The bill would appear to have no significant fiscal impact on the Department of Social Services.

Fiscal Analyst: B. 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.