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BILL



ANALYSIS

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Senate Bill 968 (Substitute S-3 as reported)
Sponsor: Senator Wayne Kuipers
Committee: Judiciary

(as passed by the Senate)

Date Completed: 1-14-08

RATIONALE

Many municipalities throughout Michigan require individuals to obtain a business license before engaging in certain occupations, such as driving a taxicab, making door-to-door solicitations, or working as an ice cream vendor. In order to protect public safety, a local may conduct, or request its police department to conduct, a background investigation on a business license applicant. Criminal records may be obtained through the Internet Criminal History Access Tool, or ICHAT, which is maintained by the Michigan Department of State Police. For a \$10 fee, anyone may request an ICHAT search and receive information on arrests, criminal charges, and convictions in Michigan. Because an ICHAT search is based on a person's name, however, it is possible that a business license applicant might supply a false name and his or her criminal history will not be revealed. In addition, an ICHAT search will not provide information from any other state or national criminal record system. Although police departments have access to the Law Enforcement Information Network, or LEIN, which contains comprehensive state and national criminal history information, that system may be used only for law enforcement purposes, which do not include licensing.

To enhance municipalities' access to criminal records for the purpose of deciding whether to issue certain business licenses, it has been suggested that the law should authorize local units to submit individuals' fingerprints to the State Police for a comparison with the State's and the FBI's print-based criminal history databases.

CONTENT

The bill would create a new act to allow a local unit of government (a county, city,

village, township, or charter township) to require, by ordinance, the fingerprinting of any of the following for the purpose of obtaining criminal history record information on them:

- Door-to-door solicitors.
- Taxicab drivers or other drivers for hire.
- Street vendors or other transient merchants.

The local unit could submit the fingerprints to the Michigan Department of State Police (MSP) or a public law enforcement consortium for a State criminal history record check, and to the FBI for a national criminal history record check. The MSP or public law enforcement consortium would serve as the sole source for receiving fingerprint submissions from local units and for receiving the responses to those submissions from the FBI. The MSP or public law enforcement consortium would have to disseminate the criminal history record check information to the local unit.

A local unit could charge an individual the appropriate fees for the State and national criminal history record check. The local unit would have to transmit the fees to the MSP or public law enforcement consortium.

"Criminal history record information" would mean that term as defined in the fingerprinting law (MCL 28.241a), i.e., name; date of birth; fingerprints; photographs, if available; personal descriptions including identifying marks, scars, amputations, and tattoos; aliases and prior names; Social Security number; driver license number and other identifying numbers; and information on misdemeanor and felony arrests and convictions.

The bill would take effect on January 1, 2009.

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

With the limited criminal history information that ICHAT provides, local units cannot make fully informed decisions on whether to grant a business license to someone who will have contact with the public. Although license applicants may be required to produce a driver license or other pictured identification, there often is little way of knowing whether the document is legitimate, given the proliferation of false IDs and the prevalence of identity theft in today's society. Even if an applicant provides valid identification and an ICHAT search reveals no criminal history, there is a possibility that the person has a criminal record in another state or at the Federal level. While this may occur anywhere in Michigan, it is a particular concern in local units near the State's borders. With no information about out-of-State violations, and potentially inaccurate information about a person's criminal history in Michigan, a local unit might issue a license to someone who poses a danger to the public. In turn, members of the public may have a false sense of security when someone appearing on their doorstep, or selling ice cream to their children, displays a local business license.

The bill would provide the necessary statutory authorization for local units to obtain fingerprints and submit them to the State Police or a public law enforcement consortium and to the FBI. (A public law enforcement consortium known CLEMIS, for the Courts and Law Enforcement Management Information System, provides data-sharing and access to criminal information to 235 public safety agencies in Oakland, Macomb, Livingston, Washtenaw, Wayne, and Genesee Counties.) If a local unit submitted fingerprints to the State Police, the MSP would compare the prints to those in the State's Automated Fingerprint Identification System (AFIS). While this database and the ICHAT database contain the same information—arrests, charges, and convictions in Michigan, a print-based search would be more reliable than one based on a

person's name. In addition, when prints were submitted to the FBI, a search of its database would reveal out-of-State and Federal criminal history information.

Opposing Argument

By allowing local units to submit fingerprints to a public law enforcement consortium, the bill simply would insert an additional, unnecessary step into the process. According to a representative of the State Police, the consortium that exists in Michigan—CLEMIS—does not have access to AFIS. Therefore, if a local unit submitted prints to CLEMIS, the consortium then would have to submit the prints to the State Police. In addition, according to the MSP, neither CLEMIS nor local units of government have the authority to submit fingerprints directly to the FBI, and would have to go through the State Police despite the bill's language.

Response: According to a representative of CLEMIS, the consortium has its own AFIS, which contains the same information as the State Police database. Therefore, CLEMIS can perform its own fingerprint-based search of Michigan criminal records. Also, if CLEMIS received authorization from the State's Criminal Justice Information Policy Council, the consortium could submit fingerprints directly to the FBI. Reportedly, the Federal government has recognized similar entities in California, and CLEMIS would be able to receive criminal history information from the FBI.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a minimal fiscal impact on local government. The fee for the processing of a criminal history record from the Department of State Police is \$54. While the bill would allow a local unit of government to charge an individual for this cost, it is not known at this time how many checks would be made, how many local units would choose to enact an ordinance allowing such checks, or whether a local unit would require the occupational groups in question to fund the cost of the criminal history checks.

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.