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BILL



ANALYSIS

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House Bills 4531 (Substitute H-1), 4532 (Substitute H-2), and 4533 (Substitute H-1)
Sponsor: Representative Terry London
House Committee: Education
Senate Committee: Education

Date Completed: 5-18-95

**SUMMARY OF HOUSE BILLS 4531 (Substitute H-1), 4532 (Substitute H-2), and 4533 (Substitute H-1)
as passed by the House:**

House Bill 4531 (H-1) would amend the School Code to establish misdemeanor penalties for the fraudulent use of a teaching certificate, school administrator's certificate, or State Board approval, or the fraudulent use of a college transcript or other credential to obtain a teaching or school administrator's certificate or State Board approval. **House Bill 4532 (H-2)** would amend the School Code to require that school districts, public school academies, and nonpublic schools request the Department of State Police to conduct a criminal records check through the FBI for individuals hired as teachers or school administrators or in positions requiring State Board approval. **House Bill 4533 (H-1)** would amend the School Code to expand the criminal convictions for which the State Board of Education may suspend a teaching certificate, school administrator's certificate, or State Board approval, by including all felonies and specified misdemeanors.

House Bills 4531 (H-1) and 4532 (H-2) would take effect on August 1, 1995.

(Under the Code, "state board approval" means a license, certificate, endorsement, permit, approval, or other evidence of qualifications to hold a particular position in a school district or intermediate school district or in a nonpublic school, other than a teacher's certificate or school administrator's certificate subject to suspension due to a criminal conviction, that is issued to a person by the State Board of Education under the School Code or a rule promulgated under the Code.)

House Bill 4531 (H-1)

Under the bill, a person would be guilty of a misdemeanor if he or she used or attempted to use a teaching certificate, school administrator's certificate, or State Board approval that the person knew was surrendered, suspended, revoked, nullified, fraudulently obtained, altered, or forged; or if the person used or attempted to use as his or her own a valid teaching certificate, school administrator's certificate, or State Board approval that he or she knew was issued to another person, to obtain employment in a position requiring a valid certificate or State Board approval or remained employed in a position requiring a valid teaching certificate, school administrator's certificate, or State Board approval knowing that he or she did not hold a valid certificate or State Board approval. It also would be a misdemeanor for a person to use or attempt to use a college or university transcript or a certificate or other credential that he or she knew was fraudulently obtained, altered, or forged, or to use or attempt to use as his or her own a college or university transcript or a certificate or other credential that he or she knew belonged to another person, to obtain a teaching certificate, school administrator's certificate, or State Board approval in this State.

These offenses would be punishable by imprisonment for up to 93 days and/or a fine of up to \$500 for a first offense. A second or subsequent offense would be subject to imprisonment for at least 93 days but not more than six months and/or a fine of at least \$500 but not more than \$1,000. These penalties would be in addition to any other penalty provided by law. The State Board could refuse to issue or renew a

teaching certificate, school administrator's certificate, or State Board approval, or refuse to issue an endorsement for a teaching or school administrator's certificate, to a person convicted of a violation of the bill.

House Bill 4532 (H-2)

Currently, before making an offer of initial employment to an individual for a position as a teacher or school administrator or for a position requiring State Board approval, a public school district, public school academy, or nonpublic school must request a criminal history check on the individual from the Department of State Police, and must receive the Department's report before employing the individual as a regular employee. Under certain circumstances, however, a school may employ an individual as a conditional employee without first receiving the report.

Under the bill, in addition to the criminal history check, the board of a school district, local act school district, or intermediate school district, or the governing body of a public school academy or nonpublic school, would have to request the Department of State Police to conduct a criminal records check through the Federal Bureau of Investigation on an applicant for, or an individual who was hired for, a position as a teacher or school administrator or a position requiring State Board approval. Except as provided below, a board or governing body could not employ an individual in such a position until after the board or governing body received the results of the criminal records check. A board or governing body requesting a criminal records check would have to require the individual to submit his or her fingerprints to the Department of State Police for that purpose. The Department could charge a fee for conducting the criminal records check. A board or governing body would have to require an individual to submit his or her fingerprints only at the time the individual initially applied for employment with, or was initially employed by, the board or governing body.

If a board or governing body determined it necessary to employ an individual for a position described above for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body could employ the individual as a conditional employee without first receiving the results of the criminal records check if the board or governing body requested the criminal records

check before conditionally employing the individual, and the individual signed a statement identifying all crimes for which he or she had been convicted, if any, and agreeing that, if the results of the criminal records check revealed information that was inconsistent with his or her statement, the individual's employment contract would be voidable at the option of the board or governing body. By September 30, 1995, the Department of Education would have to develop and distribute to districts and nonpublic schools a model form for the required statement. The Department would have to make the form available to public school academies. A district, public school academy, or nonpublic school would have to use the model form for the purposes of these provisions.

If an individual were employed as a conditional employee and the results of the criminal records check revealed information that was inconsistent with his or her statement, the board or governing body could void the individual's employment contract. If a contract were voided, the individual's employment would be terminated, a collective bargaining agreement that otherwise would apply to the employment would not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body would not be liable for the termination.

For an applicant for a position as a substitute teacher, instead of requesting a criminal records check, a school district, local act school district, intermediate school district, public school academy, or nonpublic school could use results received by another district, academy, or nonpublic school or maintained by the Department to confirm that the individual did not have any criminal history. If that confirmation were not available, the criminal records check required by the bill would apply.

If an applicant for a position as a teacher or school administrator or a position requiring State Board approval were being considered for employment in that position by more than one district, public school academy, or nonpublic school, and if the applicant agreed in writing to allow a district, academy, or nonpublic school to share the results of the criminal records check with another district, academy, or nonpublic school, then a district, academy, or nonpublic school could satisfy the bill's requirements by obtaining a copy of the results of the criminal records check from another district, public school academy, or nonpublic school.

An applicant would have to give written consent at the time of application for the criminal records division of the Department of State Police to conduct the criminal records check. A district, public school academy, or nonpublic school would have to make a request for a criminal records check on a form and in a manner prescribed by the Department of State Police.

The results of a criminal records check could be used by a district, academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she had applied and for the purposes of voiding the individual's employment contract, using the results received by another district, academy, or nonpublic school, and sharing the results with another district, academy, or nonpublic school. A member of the board of a district or the governing body of a public school academy or nonpublic school, or an employee of a district, academy, or nonpublic school could not disclose those results, except any felony conviction or a misdemeanor conviction involving sexual or physical abuse, to any person who was not directly involved in evaluating the individual's qualifications for employment. For the purposes of sharing among districts, academies, and nonpublic schools, however, a board or governing body member or an employee could provide a copy of the results to an appropriate representative of another district, public school academy, or nonpublic school. A person who violated this provision would be guilty of a misdemeanor punishable by a fine of up to \$10,000, but would not be subject to the penalty provided in the Code (a maximum fine of \$500 and/or imprisonment for up to three months) for someone who neglects or refuses to perform an act required by the Code or violates the Code (MCL 380.1804).

Within 30 days after receiving a proper request by a district, public school academy, or nonpublic school for a criminal records check under the bill, the criminal records division of the Department of State Police would have to initiate the check. After conducting the criminal records check for a district or public school academy, the criminal records division would have to provide the results to the district or academy. After conducting the check for a nonpublic school, the criminal records division would have to notify the nonpublic school of whether the criminal records check disclosed any criminal history that was not disclosed in the report of the individual provided to the nonpublic school under the Code's requirements for a criminal history check.

House Bill 4533 (H-1)

The School Code currently permits the State Board to suspend a person's teaching certificate, school administrator's certificate, or State Board approval if the person is convicted of criminal sexual conduct (CSC) in any degree; assault with intent to commit CSC; an attempt to commit CSC in any degree; felonious assault on a child; child abuse in any degree; an attempt to commit child abuse in any degree; cruelty, torture, or indecent exposure involving a child; assault with intent to commit murder; armed assault with intent to rob and steal; attempt to murder; first-degree murder; second-degree murder; armed robbery and aggravated assault; delivery or distribution of a Schedule 1 or 2 narcotic or cocaine to a minor at least three years younger than the offender or to a minor or student near school property; recruitment or inducement of a minor to commit a controlled substances felony; or manufacture, delivery, possession with intent to manufacture or deliver, or possession of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine.

The bill, instead, would permit the State Board to suspend a person's teaching certificate, school administrator's certificate, or State Board approval if the person were convicted of any felony or any of the following misdemeanors:

- Criminal sexual in the fourth degree or an attempt to commit fourth-degree CSC.
- Child abuse in the third or fourth degree or an attempt to commit third- or fourth-degree child abuse.
- A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
- A misdemeanor violation of the Public Health Code section prohibiting the delivery or distribution of a Schedule 1 or 2 narcotic or cocaine to a minor at least three years younger than the offender or to a minor or student on or near school property.
- A violation of Michigan Penal Code sections prohibiting breaking and entering, furnishing liquor to a minor, soliciting a child for immoral purposes, or larceny from a vacant dwelling; or a misdemeanor violation of Penal Code sections prohibiting assault and battery and domestic assault, aggravated assault, or child sexually abusive activity.
- A misdemeanor violation of the Michigan Liquor Control Act section prohibiting the sale of liquor to a person under 21.

Proposed MCL 380.1809 (H.B. 4531)
Proposed MCL 380.1230a (H.B. 4532)
MCL 380.1535a et al. (H.B. 4533)

Legislative Analyst: S. Margules

FISCAL IMPACT

House Bill 4531 (H-1)

The bill would have an indeterminate impact on State and local criminal justice systems. The increased penalties associated with the use and misuse of fraudulent certificates could result in increased costs for prosecuting and sanctioning convicted offenders. While there are no data that would indicate how many annual violations might occur, there are not expected to be significant costs associated with the bill.

House Bill 4532 (H-2)

This bill would have a minimal impact on State government. The Department of Education would bear the cost of developing and distributing the form to be used by new applicants to state that they did not have a criminal record. The fiscal impact on school districts would vary depending on the number of new teachers hired. Current law requires that new applicants have a criminal history check for offenses committed in Michigan. This check is performed by taking the applicant's fingerprints and submitting them to the State Police for a Statewide check. The cost to the school district of the Statewide check is \$15 per applicant. This bill would require that an additional nationwide criminal records check be conducted by the State Police through the FBI. The cost of the nationwide check is \$24. This bill would increase the cost to school districts from \$15 per applicant to \$39 per applicant.

House Bill 4533 (H-1)

The bill would have no fiscal impact on State or local government.

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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.