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PRIVATE DRIVER TRAINING; CRIMINAL RECORDS CHECK

Senate Bills 763 and 792 with House committee amendments First Analysis (1-27-98)

Sponsor: Sen. Dianne Byrum
House Committee: Transportation
**Senate Committee: Transportation and
Tourism**

THE APPARENT PROBLEM:

Public Act 387 of 1996, in addition to creating a graduated driver's licensing system for teenagers under 18 years old, gives school districts the option of offering driver education programs through the schools. Until April 1, 1998, driver education courses must be conducted without charge by school districts, or by an intermediate school district at the request of a local district. (During this time, students, of course, may choose to seek instruction through private driving schools.) After April 1, 1998, school districts will have the option of providing a driver education program, and may charge students for the program.

Reportedly, many school districts already have decided to discontinue offering driver education. This means that many students throughout the state will be unable to participate in driver education programs unless they sign up with private driving schools, which likely will cause a great increase in the number of students enrolled in those schools.

Private driving schools have been licensed in Michigan since 1974. However, under that law neither operators nor instructors have been subject to criminal history checks. As the likelihood of private driver training instruction increases, there are those who fear that the teenagers who will seek instruction at private training sites may be in danger; that instructors may be unqualified or unsafe; or, that they may have a history of criminal abuse. It has been suggested that private driver training school operators and instructors should be subject to criminal history checks, in the same way as school teachers; that people who have prior convictions involving sexual or physical abuse be prohibited from being driver training instructors; and that the driving records of driver training school operators and instructors be available for review by prospective customers.

THE CONTENT OF THE BILLS:

Senate Bill 763 would amend Public Act 369 of 1974 (MCL 256.602 et al.) which regulates private driver training schools and instructors, to require criminal history checks for driver training instructors, and to prohibit people with a history of felony or misdemeanor convictions involving sexual or physical abuse from being driver training instructors, among other provisions.

Applications. Under current law, a person may not conduct a driver training school without obtaining a license in a noncommercial and/or commercial motor vehicle classification. An application for a license to conduct a driver training school must be filed with the Department of State. The bill would require that an application include an authorization to be signed by the prospective licensee permitting the department to request a criminal history check from the Department of State Police and the FBI. The Department of State would require prospective licensees to submit their fingerprints and those of prospective instructors to the Department of State Police on both state and federal fingerprint cards. The Department of State Police could charge a fee that did not exceed the actual cost of conducting the checks.

In addition, a driver training school may not employ a person as an instructor unless he or she is licensed as an instructor. A driver training school licensee must file annually an application with the Department of State for licensing its employees as instructors. In addition to the information already required for an application, the bill would require that an application include an authorization signed by a prospective employee before being hired as a driving instructor permitting the licensee to request a criminal history check from the Department of State Police and the FBI. This would not apply to a person already employed as a driver education instructor with a Michigan public school.

Senate Bills 763 and 792 (1-27-98)

evaluating the applicant's qualifications for employment, and only disclose to the person prior felony or misdemeanor convictions involving sexual or physical abuse. A person who violated these provisions would be guilty of a misdemeanor punishable by a fine of up to \$10,000.

In order to qualify as an instructor, a person must meet certain requirements. The bill would add that a person could not have a prior felony or misdemeanor conviction involving sexual or physical abuse.

Criminal History Check. The Department of State could not license a person to operate a driver training school or, after the bill's effective date, renew a person's license to operate a school, before requesting and receiving (not less than once every two years) from the Department of State Police and the FBI a criminal history check on the person. In addition, a driver training school licensee could not employ a person as an instructor or, after the bill's effective date, continue to employ a person as a driving instructor before requesting and receiving a criminal history check on the person from the State Police and the FBI. A person already employed as a driver education instructor with a Michigan public school would not be required to submit to a criminal history check.

A driver training school licensee would have to make a request, with payment of the appropriate fee, to the criminal records division of the State Police for a criminal history check on a form and in a manner prescribed by the criminal records division. The Department of State would request criminal records checks on prospective licensees.

Within 45 days after receiving a request from the Department of State for a criminal history check on a person seeking a license to operate a school or by a driver training school on a person seeking an instructor's license, the criminal records division of the State Police would have to conduct the criminal history check. After conducting the check and within that time period, the criminal records division would have to report the results of the criminal history check on an instructor applicant to the Department of State and the driver training school licensee, and report the results of a check on a school to the department. The report would have to contain any criminal history record information on the person maintained by the criminal records division.

Criminal history record information could be used by a driver training school licensee only for evaluating a person's qualifications for employment as a driver training instructor, and by the Department of State only for purposes of evaluating an applicant's qualifications for licensure as a driver training school. Further, Senate Bill 763 would require that the school and the Department of State only disclose the report or its contents to a person who is directly involved in

(Under the bill, “criminal history record information” would mean that term as defined in the bureau of criminal identification act. That act defines “criminal history record information” as the name; date of birth; fingerprints; photographs, if available; personal descriptions, including physical measurements, identifying marks, scars, amputations, and tattoos; aliases and prior names; Social Security and driver’s license numbers and other identifying numbers; and information on misdemeanor convictions and felony arrests and convictions.)

The bill would allow the secretary of state to deny an application for a driver training school or a driver training instructor if upon investigation and review of the criminal history record the department determined the applicant had a prior conviction for a fraudulent or deceptive practice in another business or in a private transaction with another person.

Fees. Currently, an application to conduct a driver training school must be accompanied by a \$75 fee for a noncommercial motor vehicle driver training school and \$150 for a commercial motor vehicle training school. The bill would raise the fee to \$125 for a noncommercial motor vehicle school and to \$200 for a commercial motor vehicle school.

In addition, a license issued to a driver training school expires on December 31 of the calendar year for which the license was issued. An application for license renewal must be accompanied by a renewal fee. The bill would raise the renewal fee from \$75 to \$125 for a noncommercial motor vehicle driver training school and from \$150 to \$200 for a commercial motor vehicle driver training school.

The act also requires that an application for licensure as an instructor be accompanied by a \$15 fee. The bill would raise this fee to \$25.

The bill specifies that after the actual administrative costs of the department were deducted, the balance of the fee revenue would have to be deposited in the Driver Education Fund, created under the Michigan Vehicle Code.

The act also requires that a noncommercial vehicle driver training school post a \$2,500 surety bond for the protection of the contractual rights of students. The bill would raise the required bond amount to \$10,000 for a noncommercial training school with less than 1,000 students in a calendar year, and \$20,000 for a noncommercial school with 1,000 or more students each year. (The bond for commercial vehicle driver training schools would remain at \$10,000.)

Effective Date. The bill would take effect June 1, 1998.

Senate Bill 792 would amend the Michigan Vehicle Code (MCL 257.2086) to require a driver training school operator to subscribe to the commercial look-up service maintained by the secretary of state (a service that provides driver and vehicle record information for a fee). In addition, the bill would require a driver training school operator to maintain on the premises of the school the most current copy of all nonpersonal information related to his or her driving record, and the driving record of each instructor employed by the school operator, for review by any prospective customer or customer’s parent or guardian; allow a prospective customer or the parent or guardian of a prospective customer to review a copy of all nonpersonal information related to the driving record of the operator or instructors employed by the operator; and require that any driver training school operator that advertises its services to the general public include in that advertising the notice that nonpersonal information related to the driving record of each instructor is available for review. An operator who failed to provide the information required by the bill or include it in the school’s advertising would be subject to a fine of up to \$500, and each failure to provide information would be considered a separate offense.

The bill would take effect June 1, 1998.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that Senate Bill 763 is not expected to significantly increase administrative costs to the Department of State. The bill provides that administrative costs would be recouped from the fees, and the balance of the fee revenue would be deposited in the Driver Education Fund. The state would also realize additional fine revenue associated with misdemeanor penalties. Because the revenue would be contingent on the number of violations, the fiscal impact is indeterminate. This additional revenue is constitutionally dedicated to the support of public libraries. Overall, the bill is expected to increase state revenue deposited in the Driver Education Fund and the revenue dedicated to support public libraries by an indeterminate amount. (1-22-98)

In addition, the House Fiscal Agency notes that Senate Bill 792 would increase administrative costs associated with the additional subscribers to the look-up service maintained by the Department of State. However, the department charges \$6.55 per transaction for the look-up service, which is designed to cover the costs of the program. Therefore, it is expected that the bill will have a neutral fiscal impact on the department. Overall,

the bill will increase state revenue associated with fines (up

to \$500) assessed for violations of the new requirements. Revenue for these fines is constitutionally dedicated to support public libraries. (1-22-98)

ARGUMENTS:

For:

In April 1998 schools will no longer be required to offer driver training programs, although they will have that option. Reportedly, many districts have indicated that they will drop their programs. As a result, it is likely that many more students throughout the state will have to register for instruction with private driving schools. Currently, there is no requirement in law that private driving school operators or instructors have their criminal histories checked; neither is there any requirement that operators' or instructors' driving records be available for inspection by prospective customers. This means that students who enroll in a private driving school may have an unqualified or unsafe instructor, or an instructor with a history of abuse. While no law can completely protect young people from abusive instructors or poor drivers, this legislation would help to ensure that operators and instructors are qualified and law-abiding, since it requires criminal history checks both of operators and instructors, and it makes operators' and instructors' driving records available to the public.

For:

Under the Revised School Code, since the 1993-94 school year, if a public school, nonpublic school, or public school academy offers a person employment as a teacher, the school must obtain from the Department of State Police a criminal history check of the person, including a criminal records check through the Federal Bureau of Investigation, before employing the person as a regular employee. This requirement was enacted in an attempt to prevent the hiring of teachers with questionable backgrounds, and thus reduce students' exposure to a potentially harmful individual. By requiring similar criminal history checks for private driver training school instructors and operators, the bill would do the same for students who enroll in private driver training schools.

Against:

Senate Bill 763 increases license fees substantially. Both for noncommercial and commercial vehicle training schools, the application fee and the renewal fee would be increased by \$50 (to \$125, or a 66 percent increase for noncommercial vehicle training school licensees, and to \$200, or a 33 percent increase for commercial vehicle school licensees). In addition, the instructor application fee would increase by \$10 (to \$25

or 66 percent). The state last raised these fees in 1992, and should not be raising them again.

Response:

The current licensing fees of \$75, \$150, and \$15 were set four years ago, in 1992. At that time they represented a very significant fee increase, since the earlier fees had been \$25 (both for the commercial vehicle and the noncommercial vehicle school license) and \$2 for an instructor application fee. Although these fees were increased six years ago, the increase in 1992 was the first during the 18 years that the drivers' training licensure program had been in effect. Two increases in 24 years does not pose an excessive burden on licensees.

POSITIONS:

AAA of Michigan supports the bills. (1-22-98)

The Department of State supports the bills. (1-22-98)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.