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PRIVATE SECURITY GUARDS; PROHIBIT CERTAIN ACTIVITIES

House Bill 4462 as passed by the House
Sponsor: Rep. William Callahan

House Bill 4810 as passed by the House
Sponsor: Rep. John Freeman

House Bill 4812 as passed by the House
Sponsor: Rep. Deborah Cherry

Second Analysis (7-9-97)
Committee: Labor and Occupational Safety

THE APPARENT PROBLEM:

In the wake of the nearly two-year-long strike by employees of the Detroit News, the Detroit Free Press, and the joint operating agreement (JOA) corporation, Detroit Newspapers Inc., and the numerous allegations made by striking workers that during the strike the private security guards hired by the newspapers engaged in assaultive, intimidating, and threatening behavior towards striking workers, questions have been raised about what sort of behavior is acceptable when dealing with striking workers. Allegations have been made by the striking employees that security guards hired by the newspapers stalked, assaulted, and threatened the striking workers, not only while the workers were on picket lines, but it is also alleged that these guards on occasion followed strikers to their homes and at other places of employment as well. Although lawsuits and criminal cases are pending as a result of some of these allegations, legislation has been offered to prohibit private security guards in the future from engaging in such practices as have been alleged to have taken place during the newspaper strike, and to provide specific and appropriate punishments for such activities.

THE CONTENT OF THE BILLS:

The bills would amend the labor mediation act, the Michigan Penal Code, and the Private Security Guard Act of 1968 to prohibit an employer, or an individual hired by an employer to provide security or protection for the employer's property, from engaging in certain behavior towards striking workers.

House Bill 4812 would amend the Michigan Penal Code (MCL 750.355b) to create a new felony punishable by not more than two years of imprisonment, a fine of not more than $5,000, or both. The bill would prohibit an individual who was involved in providing protective or investigative services for a person who was engaged in or involved in a labor dispute from taking certain actions during the course of his or her employment. Specifically, it would be illegal for the individual do any of the following: a) brandish, discharge, or threaten to discharge a firearm in the presence of an individual lawfully engaged or involved in a labor dispute, unless the security guard reasonably believed that his or her life was in danger; b) leave the boundaries of the property he or she had been hired to protect or investigate for the purpose of pursuing, monitoring, or conducting surveillance of an individual lawfully engaged or involved in a labor dispute (however, it would not be illegal to leave the employer's property to protect other real estate or real property owned by or under contract to the employer that was in imminent danger of being damaged and that was used in the course of the employer's business); c) leave the boundaries of the property that the individual had been hired to protect or investigate to engage in assaultive, intimidating, or threatening behavior; or d) use unreasonable force in the execution of his or her duties.

The bill would use the definition of "firearm" used in the Revised Statutes of 1846 (MCL 8.3t), namely, "any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion" except for BB guns not exceeding .177 caliber. The term "labor dispute" would mean that term as defined in the labor mediation act (MCL 423.2), namely, "[including] but not restricted to any controversy concerning terms, tenure, or conditions of

employment, or concerning the association or representation of employees in negotiating, fixing, maintaining, or changing terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

House Bill 4810 would amend the Private Security Guard Act of 1968 (MCL 338.1060, 338.1066a, and 338.1082), which authorizes the Department of State Police to license and otherwise regulate persons or other entities engaged in, among other things, providing private police and or private security guards. The bill would prohibit licensees under the act and/or their employees from engaging in the same behaviors as would be made illegal by the provisions of House Bill 4812. The bill would also prohibit licensees from directing an employee or knowingly allowing an employee to engage in any of the proscribed actions. Violation of the bill's prohibitions would be a felony punishable by imprisonment of not more than 2 years, a fine of not more than $5,000, or both. Further, such violations would be an added to the list of reasons for which the department could revoke a license issued under the act. The bill would also provide that a license could be revoked based on the actions of an employee of the licensee. Currently, the act only provides for revocations based on the actions of the licensee, and his or her manager, where the licensee is an individual, or, where the licensee is a partnership, corporation or other legal entity (not an individual), based on the actions of the officers, directors, partners, or manager of the licensee. In addition, anyone who was convicted of or had an employee who was convicted of any of the actions prohibited by House Bill 4810 or House Bill 4812 would be barred from receiving a license under the act until four years after the date of the conviction. House Bill 4810 would not take effect unless House Bill 4812 were also enacted.

House Bill 4462 would amend the labor mediation act (Public Act 176 of 1939, MCL 423.22), which requires that before a strike or a lockout takes effect, the employees (or their representatives), in the case of a strike, or employers (or their agents), in the case of a lockout, must serve notice of the dispute, together with a statement of the issues involved, to the Michigan Employment Relations Commission and to the other party to the labor dispute. The act prohibits employers from engaging in lockouts, and labor organizations from engaging in (or instigating) strikes, without first having given this required notice, and further prohibits individuals from instigating lockouts or strikes that are unlawful under the act.

The bill would further prohibit employers, their agents, and employees who provided security or protection for the employer's property both from harassing individuals lawfully engaged in strikes and from brandishing, discharging, or threatening to discharge firearms in the presence of any striker. ("Firearm" would mean that term as defined in the Revised Statutes of 1846, MCL 8.3t 8.3t, namely, "any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion" except for BB guns not exceeding .177 caliber.) In addition, the bill also would prohibit employer agents or security employees from leaving the employer's property in the course of performing their duties.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have no fiscal impact. (8-20-97)

ARGUMENTS:

For:

According to proponents of the bill, the behavior of the security guards hired by the Detroit newspapers during the recent strike was reminiscent of the actions of businesses during the earliest years of the labor movement, when the threat of violence and picket lines went hand in hand and a striking laborer knew that his or her life was at risk if he or she chose to join a picket line. Is that really the era to which we as citizens of this state wish to return? Reportedly, the security guards hired by the Detroit newspapers did not merely secure and protect the property of the newspapers. At the picket lines, the guards made concerted efforts to provoke and/or intimidate striking workers and even physically attacked the workers. And, away from the picket lines, it is asserted that striking workers and their friends and families were stalked by security guards, and that guards followed the workers to their homes and their places of employment and threatened not only the workers but their friends and family as well.

These bills will level the playing field and are needed to protect striking workers from strong arm tactics like those practiced by the guards hired by the Detroit newspapers. Striking workers are engaged in lawful activity that is clearly regulated, and if they violate the laws regarding how they may carry on their activities they may be arrested and could face criminal charges. These bills will help provide a balance by regulating the employer's behavior. The provisions of the bills are just common sense; there can be no good reason for security personnel to be allowed to leave the property they have been hired to protect in order to harass striking workers.

Against:

Opponents point out that the bills are quite one-sided and fail to take into account that there are two sides to the allegations made about the behavior of the security guards in the Detroit newspaper strike. It should be

noted that the security guards hired by the papers were not the only ones to behave badly. Some of the tactics engaged in by strikers were threatening as well.

Even if some of the allegations made against the security guards are borne out, no further criminal laws are needed to deal with the actions of those security personnel since assaults and other behaviors alleged to have occurred are already illegal. There is no good reason to believe that the current laws are not adequate to deal with all of the allegations made by the strikers.

Further, businesses have a right to continue to operate their lawful business during a strike. If strikers did not try to prevent the lawful operation of businesses, businesses would not need the help of security guards to protect the business property and to make sure that those people who are not on strike are able to come and go safely.

Against:

Strikes, being borne out of disagreements, are inherently volatile situations. Clearly, some of the allegations of what took place during the Detroit newspaper strike give credence to the suggestion that changes in how security personnel protect businesses that are being picketed should be considered. However, because of the volatile nature of such situations, aren't some of the penalties excessive? For example, is it fair to bar a security business from receiving a license for four years?

POSITIONS:

The Michigan State AFL-CIO supports the bills. (7-10-97)

The Michigan Chamber of Commerce opposes the bills. (7-10-97)

The National Federation of Independent Businesses opposes the bills. (7-10-97)

The Michigan Manufacturers Association opposes the bills. (5-27-97)

Analyst: W. Flory

■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.