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CHARITABLE ORGANIZATIONS; FEE WAIVERS

House Bill 4765 as enrolled Public Act 105 of 1998 Second Analysis (6-10-98)

Sponsor: Rep. James McNutt
House Committee: Transportation
Senate Committee: Transportation
and Tourism

THE APPARENT PROBLEM:

Some nonprofit organizations such as Meals on Wheels use volunteer drivers to serve clients. To ensure safety, the nonprofit organizations check their driver applicants' driving records through the secretary of state's office. Each record check costs \$6.55. For a nonprofit organization with a small budget, the cost of driving record checks can be onerous.

Under Public Acts 99-102 of 1997, the secretary of state is authorized to establish a commercial look-up service to provide individual records for purposes that are described in federal and state laws that have been enacted to protect citizens' privacy. The law specifies that for each record look up, the secretary of state charges a fee specified annually by the legislature (or if the legislature does not specify a fee, a market-based price established by the department). Historically, that fee has been set at \$6.55 per look-up, a fee authorized annually in the boilerplate of the general government appropriations act. Overall, the sale of records generates more than \$26 million each year, financing about one-sixth of the Department of State's operating costs.

Some have argued that the driver record look-up fee should be waived for volunteer nonprofit agencies such as Meals on Wheels. However, in accomplishing that aim, others have warned that the entire nonprofit sector encompasses a wide variety of organizations, some having ample assets and holdings. Their concern has been to ensure the fee-waiver for those nonprofits that are truly voluntary, and to restrict the participation of those nonprofits that are financially well endowed.

Although there are more than 50,000 nonprofit organizations licensed in Michigan, the director of the eight-year-old Nonprofit Michigan Project, a data collection and analysis effort located at Michigan State University, estimates that no more than 1,250 organizations would participate, if a fee-waiver for driver license status checks were in place. To ensure

that the fee-waiver is targeted, they endorse a system in which the secretary of state identifies and electronically equips a few intermediary nonprofit agencies to serve as clearinghouses, and from which the nonprofits would seek status checks of their volunteer driver applicants at no cost.

Some have argued that a law should be enacted which, in certain circumstances, relieves nonprofit voluntary service agencies of the driving record look-up fee.

THE CONTENT OF THE BILL:

House Bill 4765 (H-3) would amend the Michigan Vehicle Code to require that the secretary of state provide an electronic driver license status check of a person who transports clients or provides medical or other health, human or social services for an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. The bill would require that the status check identify the person's driver license type and status and indicate whether the driver has any points.

Under the bill, the secretary of state would be required to process an electronic status check only if the request is submitted by an approved intermediary agency serving those organizations eligible to receive status checks. Tax-exempt agencies requesting status checks would be required to obtain a driver's written permission to conduct the status check, and to keep that permission on file for five years. The bill would allow the secretary of state to require other safeguards to protect the rights of a driver, including a bond. Finally, the bill would prohibit the secretary of state from charging a fee for a status check, but it stipulates that an organization requesting an actual copy of a record would be required to pay the same fee as any other requestor.

MCL 257.207a

House Bill 4765 (6-10-98)

BACKGROUND INFORMATION:

It would appear that no agency of state government knows the number of nonprofit organizations with 501(c)(3) tax status in Michigan. As a result, it has been impossible to determine both the need for the driver record look-up fee waiver, and the cost of the waiver in lost revenue to the office of secretary of state.

According to the Corporation Division of the Corporation, Securities and Land Development Bureau of the Department of Consumer and Industry Services, there are 54,000 corporate nonprofits licensed in the state of Michigan, although the division is uncertain how many of the nonprofits it licenses have tax exempt 501(c)(3) status, as granted under the Internal Revenue Code. In addition, to the 54,000 corporate nonprofits, there are an unknown number of unincorporated nonprofits.

One surrogate measure would be the number of nonprofits that also are charities. The Charitable Trusts section of the Office of Attorney General's Consumer Protection Bureau, both licenses charitable organizations (if they intend to raise more than \$8,000 annually), and registers all charitable trusts. The nonprofits in these two categories--about 6,000 organizations in all--have 501(c)(3) status. However, the figure is low since a number of organizations that have 501(c)(3) status are exempt from the state licensing and registration requirements (e.g., charter schools, churches).

The State of Nonprofit Michigan 1994 notes that in 1989, nearly a decade ago, 4,278 Michigan nonprofits filed IRS 990 forms, and nearly an additional 10,000 filed for an extension or did not list any expenditures for the year. These 14,278 nonprofits would be 501(c)(3) tax exempt organizations.

Despite the uncertainty about the number of tax exempt nonprofits eligible to take advantage of the driver look-up fee waiver, it does seem certain that the nonprofit sector is large, various, and slowly expanding. According to the report *The State of Nonprofit Michigan 1994* (soon to be updated), nonprofit corporations employed 249,274 workers in 1992, an increase of 4.2 percent over 1991, and their employment growth rate early in this decade exceeded both for-profit and public sector growth rates. Total expenditures by Michigan nonprofits in 1989 were almost \$13 billion. Average assets for each nonprofit were \$3,826,063 with a median of \$158,250.

Organizations with few assets included those in civil rights, social science, and international/foreign affairs. Organizations with major assets were those held by health, education, and housing nonprofits. In all, total assets held by Michigan nonprofits in 1989 were more than \$16 billion.

Generally, and in an effort to grasp the enormous variety among enterprises located within the nonprofit sector, *The State of Nonprofit Michigan 1994* proposes that nonprofit corporations can be divided into six categories. They are, in the order of the number of people each category employs (largest employer to smallest): (1) health services (producers of medical instruments, doctors and other health practitioners, nursing and personal care facilities, hospitals, medical laboratories, and home health care services); (2) social services (comprising individual and family services, job training, child day care services, and residential care services); (3) education (including elementary and secondary schools, colleges and universities, libraries, and vocation schools); (4) membership organizations (including business associations, professional organizations, labor organizations, civic and social organizations, and religious organizations); (5) arts and amusement services (including radio and television broadcasting, dance studios, orchestras, amusement services, museums, and art galleries); and (6) recreation nonprofits (comprising camps and membership hotels).

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that although the population of nonprofit organizations is quite large, the Department of State estimates that 1,200 organizations would benefit from the fee waiver. The bill will result in a minimal increase in the Department of State's administrative costs associated with setting up a system and maintaining the procedures necessary for the third-party organizations to provide an electronic status check for eligible nonprofits. Currently the Department of State charges \$6.55 per record look-up for all requests for records. The bill could also result in a small decrease in state revenues associated with some nonprofit organizations no longer requesting records subject to the \$6.55 fee in lieu of the new status check procedure being available. The actual revenue decrease will be contingent on the number of free status checks that replace the record look-up. It is estimated that the state could lose \$10,000 in look-up fee revenue. It is worth noting that the bill stipulates that a third-party organization requesting an actual copy of a record would still be subject to the current look-up fees. (6-9-98)

ARGUMENTS:

For:

The bill would help nonprofit agencies with small budgets and voluntary personnel to save the cost of driver record look-up fees when they conduct status checks of their drivers. This cost can be substantial for those organizations which use many volunteer drivers, such as Meals on Wheels.

Against:

This bill is too broadly written. It allows a driver license status check for any person who transports clients or provides medical or other health, and human or social services, for an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. The legislation potentially would allow thousands of nonprofit agencies, some with ample resources and fully able to recover costs, to waive driver license look-up fees.

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.