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SFA



BILL ANALYSIS

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Senate Bill 763 (as enrolled)
Senate Bill 792 (as enrolled)
Sponsor: Senator Dianne Byrum
Senate Committee: Transportation and Tourism
House Committee: Transportation

PUBLIC ACT 11 of 1998
PUBLIC ACT 12 of 1998

Date Completed: 8-11-98

RATIONALE

Public Act 387 of 1996, in addition to creating a graduated driver's licensing system for teenagers under 18 years old, granted school districts the option of offering driver education programs through the schools. Until April 1, 1998, driver education courses had to be conducted without charge by school districts, or by an intermediate school district at the request of a local district. (Students, of course, could choose to seek instruction through private driving schools.) Since April 1, 1998, school districts have had the option of providing a driver education program, and charging students for the program. Reportedly, many school districts 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. It was suggested that private driver training school operators and instructors be subject to criminal history checks, in the same way that teachers are subject to criminal history checks; that persons 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.

CONTENT

Senate Bill 763 amended Public Act 369 of 1974, which provides for the licensure of driver training schools and instructors, to do the following:

- Require a license application for a driver training school or instructor to permit the

- Department of State to request a criminal history check on the prospective licensee from the State Police and the Federal Bureau of Investigation (FBI).
- Prohibit the Department of State from licensing or renewing the license of a driver training school or instructor before requesting and receiving a criminal history check on the licensee.
- Prohibit a person from being a driver training school instructor if he or she has been convicted of a felony or misdemeanor involving sexual or physical abuse.
- Allow the Department of State to deny an application of a driver training school or instructor if a criminal history check determines that the applicant has a prior conviction for a fraudulent or deceptive business practice.
- Require the State Police criminal records division, within 45 days of receiving a request, to conduct a criminal history check and report the results to Department of State and the training school licensee.
- Prohibit the disclosure of a report, except any conviction involving sexual or physical abuse, to any person not directly involved in evaluating an applicant's qualification for licensure as a driver training school or instructor, and establish misdemeanor penalties for violating this prohibition.
- Increase license application and renewal fees, and require that the fee revenue, after administrative costs are deducted, be deposited in the Driver Education Fund.

Senate Bill 792 amended the Michigan Vehicle Code to require driver training school operators to subscribe to the Secretary of State's commercial look-up service, and maintain nonpersonal information on their own and their instructors' driving records.

The bills took effect June 1, 1998.

Senate Bill 763

Applications

Under Public Act 369 of 1974, 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 requires 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 must require a prospective licensee to submit his or her fingerprints and the fingerprints of a prospective driving instructor to the State Police for criminal history checks on both State and Federal fingerprint cards. Further, the application must include an agreement signed by the licensee to provide at least three individuals in a vehicle during a driver training exercise or test administered by the licensee, to a customer who is younger than 18, unless the licensee has obtained a written waiver signed by a parent or guardian.

The Act also provides that 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 requires 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 does not apply to a person already employed as a driver education instructor with a Michigan public school.

In order to qualify as an instructor, a person must meet certain requirements. The bill adds that a person must not have a prior felony or misdemeanor conviction for criminal sexual conduct, or a felony conviction for a crime in which

an element of the crime is the use or threat of use of physical force. Also, the Department of State may not license a person to operate a driver training school if the person has a prior felony or misdemeanor conviction for criminal sexual conduct, or a felony conviction for a crime involving the use or threat of physical force.

In addition, under the bill, the Department may deny an application for a license for a driver training school, or a driver training instructor, if upon investigation and review of the criminal history record information the Department determines that the applicant has a prior conviction for a fraudulent or deceptive practice in another business or in a private transaction with another person.

Criminal History Check

The bill provides that the Department of State may not license a person to operate a driver training school, or renew a person's license to operate a school, before requesting and receiving (at least 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 may not employ a person as an instructor, or continue to employ a person as a driving instructor, before requesting and receiving (at least once every two years) 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 is not required to submit to a criminal history check.

A driver training school licensee must 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.

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

Criminal history record information may be used by a driver training school licensee only for evaluating a person's qualifications for employment as a driver training instructor, or by the Department for evaluating a person's qualifications for licensure as a driver training school. A driver training school licensee or the Department may disclose the report or its contents only to a person who is directly involved in evaluating the applicant's qualifications for employment, and may disclose to that person only a prior felony or misdemeanor conviction for criminal sexual conduct, or a felony conviction for a crime that involves the use or threat of physical force. A person who violates these provisions will be guilty of a misdemeanor punishable by a fine of up to \$10,000.

(Under the bill, "criminal history record information" means 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.)

Fees

Previously, an application to conduct a driver training school had to be accompanied by a \$75 fee for a noncommercial motor vehicle driver training school and \$150 for a commercial motor vehicle driver training school. The bill raises the fee to \$125 for a noncommercial motor vehicle school and to \$200 for a commercial motor vehicle school.

In addition, the bill raises 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 required that an application for licensure as an instructor be accompanied by a \$15 fee. The bill raises this fee to \$25.

After the actual administrative costs of the Department are deducted, the balance of the fee revenue must be deposited in the Driver Education Fund, created in the Michigan Vehicle Code.

Surety Bond

Under the Act, to operate a driver training school, a person must post a continuous surety bond. The bill raises the amount of the required bond from \$2,500 to \$10,000 for a noncommercial motor vehicle driver training school with fewer than 1,000 students in a calendar year, and \$20,000 for a school with 1,000 students or more in a calendar year.

Senate Bill 792

The bill amended the Michigan Vehicle Code to require a driver training school operator to subscribe to the commercial look-up service maintained by the Secretary of State; 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; and 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. An operator who fails to provide the information required by the bill is subject to a fine of up to \$500; each failure to provide information is considered a separate offense.

In addition, a driver training school operator that advertises the availability of his or her services to the general public must include in the advertisement that nonpersonal information, related to the driving record of each individual instructor, is available for review by the general public at the business address of the owner. A driver training school operator that fails to include the required information in its advertising is subject to a fine of up to \$500.

MCL 256.602 et al. (S.B. 763)
257.208b (S.B. 792)

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

Since April 1998, schools have no longer been required to offer driver training programs, although they have the option to offer driver training.

Reportedly, however, many districts have already decided to drop their programs. As a result of these decisions, it is likely that many students across the State will have to register for instruction with private driving schools, thus greatly increasing the number of students in private driving schools. Previously, there was no requirement in law that private driving school operators or instructors have their criminal histories checked, nor was there any requirement that operators' or instructors' driving records be available for inspection by prospective customers. This meant that students who enrolled in a private driving school could find themselves with an unqualified or unsafe instructor or, perhaps worse, an instructor with a history of abuse. While no law can completely prevent abuse or poor driving, the bills will help to ensure that operators and instructors are safe and qualified, by requiring criminal history checks of operators and instructors, and making operators' and instructors' driving records available.

Supporting Argument

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 bills will do the same for students who enroll in private driver training schools.

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 763

The State will see an increase in revenue from the fee increases. There will be virtually no increase in administrative costs from these provisions. The balance of fee revenue will be deposited in the Driver Education Fund. Because the exact revenue increase will depend on the number of individuals applying for noncommercial and commercial vehicle schools, as well as for licenses for instructors, the fiscal impact is indeterminate.

The State also will collect revenue from fines assessed from misdemeanor penalties. Because the number of individuals who may be fined is unknown, the fiscal impact is indeterminate. Revenue collected from the fines will have to be applied to the support of public libraries, according to Article VIII, Section 9 of the Michigan Constitution.

The bill will have an indeterminate fiscal impact on the Department of State Police. The cost of a criminal history check from the Department of State Police and the FBI is \$39. It is unclear under the bill as to who will be responsible for this cost though it may be assumed that the costs will be paid by a driver training school licensee. It is also not known how many applications for criminal history checks will be made under the bill.

Senate Bill 792

Currently, the State charges \$6.55 per transaction for look-up services. Requiring driver training operators to subscribe to the look-up service maintained by the Department of State may increase administrative costs to the State. Because the increase in administrative costs will depend on the number of prospective operators who apply, the fiscal impact is indeterminate.

A driver training operator will have to provide upon request information regarding his or her driving record. Failure to provide such information may result in a fine of not more than \$500. Revenue received from these fines will have to be applied to the support of public libraries according to Article VIII, Section 9 of the Michigan Constitution. The amount of revenue that may be received from fines is indeterminate.

Fiscal Analyst: E. Limbs
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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.