



**House
Legislative
Analysis
Section**

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**CRIMINAL RECORDS CHECKS;
FLIGHT SCHOOLS**

**Senate Bill 934 as passed by the Senate
Sponsor: Sen. Joel D. Gougeon**

**Senate Bill 1006 as passed by the Senate
Sponsor: Sen. George Z. Hart**

**First Analysis (2-26-02)
Senate Committee: Judiciary
House Committee: Transportation**

THE APPARENT PROBLEM:

On Tuesday morning September 11, 2001, nineteen terrorists hijacked four east coast passenger jets fueled for transcontinental flights, and flew three of them into two targets: the twin towers of the 110-story World Trade Center in New York City; and, the Pentagon military headquarters located in Alexandria, Virginia near the nation's capitol. A fourth jet crashed in rural Pennsylvania, 80 miles southeast of Pittsburgh, seemingly enroute to Washington, D.C. The fiery suicide missions killed more than 3,000 people, collapsing the skyscrapers and a wing of the Pentagon. The hijackers have been linked to an international network of Muslim extremists called Al Qaeda, whose leader is Osama bin Laden, a Saudi Arabian citizen unwelcome in his country and now thought to be hiding from military forces in Afghanistan.

Since these attacks, the president of the United States and the country's secretary of state and attorney general have called on leaders throughout the world to unite in a global network of effective surveillance and intelligence-gathering that would eliminate terrorism. Further, the president has called for international cooperation as the United States moves to apprehend known terrorists and to bring them to justice. Finally, the president promised military action against the governments of countries that harbor terrorists, and a military campaign was launched by American and British forces against the Taliban government of Afghanistan, beginning on October 7, 2001 and continuing to this time.

In addition to these international initiatives, the U.S. president has called for more vigilance and heightened internal security throughout the nation. To that end he has created a new cabinet-level post

called the Secretary for Homeland Security, and appointed the former governor of Pennsylvania to fill it. In addition, the U.S. Congress has pledged \$40 billion in federal aid to rebuild the New York City crash site, and established the Victims Compensation Fund to protect family members whose claims are settled by a special master appointed from the judiciary. More than 16 agencies of the federal government have received appropriations to fund programs that are designed to help recovery. [Descriptions of the Homeland Security and Defense programs are available at www.usinfo.state.gov/topical/pol/terror/homeland.]

In addition, to bolster the air transportation system, the U.S. Congress has provided favorable loans to the airline industry to prevent bankruptcies caused by the declining number of passengers. Further, the Congress has enacted a new airport security law, the Aviation and Transportation Security Act, that puts responsibility for the country's airport security into the hands of national law enforcers at the U.S. Department of Transportation, and that requires the inspection of all bags for weapons, as well as assigns armed air marshals on long-distance flights.

To identify and restrict the movement of illegal aliens and other newcomers to America, a more nuanced debate also is underway to consider the need for broader or more effective law enforcement powers that might infringe on the customary civil liberties of the American people, the constitutionality of which have been challenged at times by the American Civil Liberties Association. Finally, efforts to patrol the nation's borders have been increased in order to prevent illegal immigrants and known terrorists from crossing into the United States from Canada and

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Mexico (although 11 of the 19 terrorists entered the United States via Britain, while four others entered via Germany).

In response to the September 11 attack, the U.S. Congress passed the Aviation and Transportation Security Act on November 16, 2001. The act established the Transportation Security Association (TSA), and under the new federal statute the TSA was required to implement the security provisions of the act in relatively short timeframes, many within 60 days. A part of the U.S. Department of Transportation, the TSA promptly issued guidelines to transportation officials throughout America, some directed to all airfield owners, operators and inspectors, and to operators of flight schools and training centers. For example, guideline N8700.11 is entitled "Flight School and Training Center Requirements Under the Aviation and Transportation Security Act," issued on December 17, 2001. Another, guideline N8700.12, issued on January 9, 2002, is entitled "Suggestions for Enhanced Security for Flight Schools and Fixed Base Operators."

Generally, the new legislation requires flight schools and training centers to advise the U.S. attorney general of any foreign applicants, and to delay the admission of those applicants for 45 days until their credentials are checked against international surveillance files. This precaution has been taken because some of the terrorists who piloted the jetliners on September 11 received their training at flight centers in the United States. Currently the Department of Justice, the Federal Bureau of Investigation, and the Immigration and Naturalization Service are creating the procedures that flight school operators must follow in order to provide information about their applicants, and once the protocol is finalized, it will be distributed to flight schools and training centers.

In Michigan, several proposals to increase security would limit the use of the ground transportation system (in particular, automobile travel and hazardous truck transports), as well as screen those who would pilot aircraft. For example, one proposal which recently passed in the House of Representatives, House Bill 5497, would restrict the movement of those who enter the country illegally by denying them a Michigan drivers license. Two other proposals--House Bill 5504 and Senate Bill 943--would require criminal records checks for hazardous materials haulers, and stiffen penalties for violations of the laws that govern the transportation of hazardous materials when they move by truck. Yet other proposals--Senate Bills 934 and 1006--have

been offered to make air transportation more secure, requiring that applicants for flight training all undergo criminal history and criminal records checks through the Department of State Police and the Federal Bureau of Investigation. See *BACKGROUND INFORMATION* below.

THE CONTENT OF THE BILLS:

The bills would amend the Aeronautics Code to require that criminal history checks be completed before training applicants were formally enrolled in flight school. The bills are tie-barred to each other so that neither could become law unless the other also were enacted.

Senate Bill 934 would amend the Aeronautics Code (MCL 259.85) to require that a flight school request from the Department of State Police criminal records division a criminal history check, and a criminal records check through the Federal Bureau of Investigation (FBI), on any applicant for training at the flight school. The school would have to require the applicant to submit his or her fingerprints for the criminal checks. The department could charge a fee for the criminal check.

Within 30 days after receiving a request from a flight school, the department would have to conduct the criminal history check, initiate the criminal records check, and provide a report of the results to the flight school.

A flight school could enroll an applicant as a conditional student, without first receiving the report, if the applicant signed a statement identifying all crimes for which he or she had been convicted. If the statement included a felony conviction or incarceration, probation, or parole for a felony conviction within the preceding seven years, the enrollment contract would be void. If the report were not the same as the applicant's statement, the flight school would have to void the applicant's enrollment contract, the enrollment would be terminated, and the school would not be liable for the termination or any money paid toward enrollment.

A flight school could use the information received from the department to evaluate an applicant's qualification for enrollment or compare the information to that in a conditional student's statement of criminal convictions, or if an applicant had agreed to provide the report to a representative of another flight school. A violation of this disclosure provision would be a misdemeanor punishable by up to 90 days imprisonment and/or a fine of up to \$500.

Senate Bill 1006 would amend the Aeronautics Code (MCL 259.85) to require that a flight school request from the Department of State Police criminal records division a criminal history check, and a criminal records check through the Federal Bureau of Investigation (FBI), on any applicant for training at the flight school.

A flight school applicant would have to cooperate with the school in completing the criminal history and criminal records checks. If, in the preceding seven years, the applicant had been convicted of a felony, or had been incarcerated, on parole, or on probation for a felony conviction, the flight school could not enroll the applicant or would have to terminate his or her enrollment.

BACKGROUND INFORMATION:

Criminal history and criminal records checks. Currently, there are several mechanisms for conducting a criminal history check.

- LEIN. The Law Enforcement Information Network can be used by law enforcement agencies and the state police to run a name search for convictions in the state of Michigan. However, only the state police can access LEIN for non-criminal justice purposes. A \$5 fee is charged for name searches for a civil purpose, such as for employment purposes, but is generally waived for nonprofit agencies. If a person uses a false name or birth date, the information provided by LEIN would be inaccurate.

- NCIC. The National Crime Information Center maintains a national database of convictions. Terminals linked to the database can be set up in law enforcement agencies such as local police stations and prosecutor's offices. A national name search can be conducted in a matter of minutes, but is only available for criminal justice purposes. As with the state LEIN system, an NCIC search cannot guarantee an accurate identification, especially if an alias is used. According to staff at the Department of State Police, recent Federal Bureau of Investigation (FBI) statistics report that 11.7 percent of name checks reflected the use of a different name, resulting in approximately 70,000 false hits a year.

- Fingerprint checks. The only way to accurately verify a person's identity, and therefore establish his or her criminal background, is to do a fingerprint check at the national level. Only the FBI can process fingerprints and conduct such a search (several states retain their own database of fingerprints and those states will run a search and report back to the FBI).

Under current state law, only the Criminal Justice Information Center within the Department of State Police can submit fingerprints to the FBI for non-criminal justice purposes and receive the FBI report. Upon a request for a national fingerprint search, the department first runs a fingerprint check for Michigan convictions, then sends the report and fingerprints to the FBI. According to a representative of the FBI, there is a 24-hour turn around on criminal background checks for civil purposes (two hours for criminal investigations), with a few extra days needed to search the records maintained by individual states.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that with regard to Senate Bills 934 and 1006, the Michigan Bureau of Aeronautics estimates that 2,600 individuals apply for a first-time commercial drivers license annually. Senate Bill 934 would allow the Department of State Police to charge a fee for the required background checks, and the department routinely charges a fee of \$39 (\$15 for the state-level check and \$24 for the federal-level check). Annual fee revenue and associated expenditures by the department would therefore increase by an estimated \$101,400 under the bills. The agency notes further, that Executive Order 2001-9 raised the state-level portion of the fee from \$15 to \$30, effective for fiscal year 2001-02 only. If that higher fee were to stay in effect, the revenue/expenditure estimate would increase to \$140,400. (2-20-02)

The Senate Fiscal Agency notes that Senate Bills 934 and 1006 would have a minimal fiscal impact on the Department of State Police.

Further, the Senate Fiscal Agency notes that with regard to both bills, the Michigan State Aeronautics Commission within the Department of Transportation is responsible for licensing flight schools. However, the bills would not affect the activities of the commission, and therefore would not have a fiscal impact of the Department of Transportation.

Finally, the agency notes that Senate Bill 934 would have an indeterminate impact on local government. Although there are no data to indicate how many people could be convicted of disclosing information from a flight school applicant's criminal history record, an offender would receive a misdemeanor conviction and could be fined up to \$10,000. Public libraries would benefit, as they receive all penal fine revenue. (2-1-02)

ARGUMENTS:**For:**

A name check through the Law Enforcement Information Network (LEIN) reveals if a person had a conviction in Michigan. The name check can help to ensure safety if it is done in conjunction with a fingerprint and criminal history check completed by the Federal Bureau of Investigation, and its effectiveness is enhanced even further when those two steps are undertaken in tandem with a third precaution--checking the foreign flight school applicants against international crime records, in compliance with new requirements under the Aviation and Transportation Security Act, adopted in November 2001. That federal act requires flight school operators to delay for 45 days the entry of all foreign applicants for flight school, so their records can be checked against international surveillance files. Although it is true that name-only background checks do little to reveal if a person is working under an assumed name or has given a false birth date, fingerprint checks can verify a person's identity, enabling flight school operators and law enforcement officials to discover if applicants are trustworthy. The bills would create a needed surveillance protocol to identify those with histories of terrorist activities. In this way, known members of terrorist groups with past histories of violent behavior who pose a risk to the health and safety of residents throughout the world community, can be screened out of flight training programs before terrorist acts can occur.

Against:

There is the possibility that those who apply for flight training and are conditionally accepted pending their criminal records checks could be flying airplanes before the results of the check were known. According to committee testimony, flight training often puts students in the cockpit of an airplane during the first month of their training.

Response:

Although provisionally accepted flight training students might be flying airplanes before their criminal record checks have been completed, their early flying hours are always in the company of a flight instructor.

Against:

New criminal record check requirements to thwart terrorists will add tens of thousands of criminal checks to the workload of the Michigan State Police crime lab each year. There is the possibility that the increase in the requests will overwhelm the system, causing delays in receiving reports from the FBI.

The possibility of delay is especially great given that fingerprints must be digitally scanned before they are transmitted electronically to the FBI for identification. Currently many fingerprints are not taken in a "live scan" format, and so they must be converted before they can be transmitted.

Response:

In order to meet the new requirements for criminal record checks, the Department of State Police designates private vendors to assist the department in the conversion of ink fingerprints to digitized formats. The private vendors take the "live scans" directly from applicants for licenses who are required to provide fingerprints, and they are paid by the applicants for the service. Those prints are then relayed to the Department of State Police, and the department then forwards them to the FBI.

POSITIONS:

The Department of State Police supports the bills. (2-22-02)

The Department of Transportation is neutral on Senate Bill 934. (2-21-02)

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■ 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.