

FLIGHT SCHOOL SECURITY

House Bill 4704 (Substitute H-1) First Analysis (6-10-03)

Sponsor: Rep. Stephen Ehardt
**Committee: Veterans Affairs and
Homeland Security**

THE APPARENT PROBLEM:

In the wake of the September 11th terrorist attacks, a bi-partisan package of 30 anti-terrorism bills were signed into law by then-Governor Engler on March 29, 2002. Among the bills enacted were Public Act 258 of 2002 (enrolled Senate Bill 1006) and Public Act 318 of 2002 (enrolled Senate Bill 934), both of which amended the Aeronautics Code to require flight schools to request a criminal history check from the Department of State Police and a criminal records check through the Federal Bureau of Investigation (FBI), on any applicant for training at the flight school. The two acts also restricted access to flight schools based on recent criminal history.

Since the acts took effect on May 1, 2002, a few problems with the two acts have surfaced, particularly the acts' operation (and necessity) when taken in conjunction with federal laws and regulations related to flight schools and aviation security. The federal Transportation Security Administration notes that, "[i]t is the position of TSA that federal law impliedly preempts state-imposed aviation security requirements such as Mich. Comp. Law § 259.85(24) and that similar legislation being contemplated by other state legislatures would likewise be preempted. Although express preemption is not found in the Aviation and Transportation Security Act (ATSA), Pub.L. 107-71, 115 Stat.597, regulations promulgated pursuant to ATSA, or any preexisting federal aviation legislation or regulations, federal legislation evinces a clear intent to occupy the field of pilot regulation in furtherance of national security, to the exclusion of state law." [Letter from Thomas R. Blank, Assistant Administrator for Transportation Security Policy, addressed to the Aircraft Owners and Pilots Association, dated 4-10-03.]

THE CONTENT OF THE BILL:

House Bill 4704 would repeal the provisions in the Aeronautics Code added by Public Acts 258 and 318 of 2002 (see above) and, instead, require a flight

school to develop a security program acceptable to the State Aeronautics Commission designed to limit accessibility to, and to ensure the security of, the aircraft on the ground and used by the school.

A security program would have to include procedures for positively identifying student pilots and renter pilots as a precondition to allowing access to aircraft; procedures for control of aircraft ignition keys to prevent operation of an aircraft by a student pilot that was not in the presence of or under the authorization of a flight instructor or other authorized individual; and instructional procedures that ensured close student pilot supervision.

In addition, the security program would have to include (1) a requirement that the student present a Federal Aviation Administration (FAA) student medical certificate and student pilot certificate as a condition to enrollment in the flight school, and (2) instructional materials that identified and offered examples of types of suspicious activity at or near an airport, and that advised students and renter pilots how to report such activity to local law enforcement and the appropriate federal authorities. The security program would also have to include the prominent display of signs requesting student pilots to report any suspicious activity, including telephone numbers for the proper authorities.

MCL 259.85 and 259.85a

BACKGROUND INFORMATION:

The April 10, 2003 letter by the TSA cited earlier further notes that, "state regulation of flight schools, instructors, and pilots ostensibly in furtherance of national security would probably have been preempted even prior to enactment of ATSA. Statutory text establishes a federal responsibility to promote safe flight of civil aircraft in air commerce through the prescription of regulations and minimum standards necessary for safety in air commerce and

national security. Even without such statutory language, it is indisputable that decisions pertaining to national security and defense of the nation rest exclusively with the federal government and cannot be impeded by the states....The combination of preexisting law, ATSA, and the legislative history accompanying its enactment reveals a Congressional intent to establish complete and thorough federal responsibility over aviation security not subject to supplementation by the states. State imposed measures to require criminal background checks on flight school applicants would create a patchwork of requirements in this area and would appear to be inconsistent with the intent of Congress. Accordingly, it is TSA's view that while such efforts by states are motivated by legitimate concerns for security of the nation, they are nevertheless not permissible."

FISCAL IMPLICATIONS:

The Michigan State Police charges \$30 for state-level criminal history checks and \$24 for federal-level criminal records checks (\$54 total). A record of how many criminal checks originated by flight schools were processed, or how much background check fee revenue was collected from flight schools is not readily available. It is believed that the fee revenue collected is not material in amount and as a result, the bill would have no material fiscal impact. (HFA analysis dated 5-30-03, and communication with the House Fiscal Agency, 6-6-03)

ARGUMENTS:

For:

Based on the information provided by the federal Transportation Security Administration, it appears that the criminal background check requirements added as part of last session's bi-partisan anti-terrorism package are unnecessary and likely to be preempted by federal laws and regulations pertaining to aviation security. The bill seeks to restrict access to aircraft to only those individual who should have access, thereby providing for a more appropriate flight school security program that complements (rather than contravenes) the efforts taken on the part of the Transportation Security Administration and the Federal Aviation Administration to enhance the security of flight schools and the aviation industry as a whole.

POSITIONS:

The Aircraft Owners and Pilots Association testified, and offered written testimony, in support of the bill. (6-5-03)

Analyst: M. Wolf

■ 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.