



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4704 (Substitute H-2 as reported without amendment)
Sponsor: Representative Stephen Ehardt
House Committee: Veterans Affairs and Homeland Security
Senate Committee: Transportation

Date Completed: 7-8-03

RATIONALE

In response to the terrorist attacks of September 11, 2001, a number of antiterrorism bills were passed by the Michigan Legislature and signed into law. Because some of the perpetrators of the attacks received training in American flight schools, the measures included legislation that requires flight schools to request a criminal history check of applicants from the Michigan Department of State Police (MSP) and a criminal records check through the Federal Bureau of Investigation (FBI), and prohibits flight schools from enrolling anyone who, within the preceding seven years, was convicted of a felony, or incarcerated or on probation or parole for a felony (Public Acts 258 and 318 of 2002).

Since May 1, 2002, when Public Acts 258 and 318 became effective, some have questioned their necessity, and whether they conflict with the Aviation and Transportation Security Act, a Federal law passed in response to the attacks. Some people believe that the provisions of the Acts should be repealed, and that flight schools instead should be required to implement aircraft security programs.

CONTENT

The bill would amend the Aeronautics Code to repeal Section 85a, which requires a criminal history check and criminal records check of flight school applicants; delete a provision prohibiting a flight school from enrolling an applicant with a felony conviction in the preceding seven years; and require a flight school to implement a program to ensure the security of aircraft on the ground.

Criminal Background Checks

The Code requires a flight school to request from the Criminal Records Division of the Michigan Department of State Police (MSP) a criminal history check and criminal records check through the Federal Bureau of Investigation (FBI) on any applicant for training in the manner provided for under Section 85a. The bill would delete this requirement.

Under Section 85a, a flight school must require that an applicant submit his or her fingerprints to the MSP for the criminal history and criminal records check. Within 30 days after receiving the request, the Criminal Records Division must conduct the check and provide a report on the results to the flight school. The report must contain any criminal history record information on the applicant maintained by the MSP and criminal records information on the applicant maintained by the FBI. The flight school must receive this report before enrolling the applicant. A flight school may enroll an applicant as a conditional student without first receiving the report if the applicant signs a statement identifying all crimes for which he or she has been convicted, if any, and agreeing that, if the report is not the same as the applicant's statement, the enrollment contract is void.

The bill would repeal Section 85a, and delete a provision requiring a flight school not to enroll, or to terminate the enrollment of, an applicant if, within the preceding seven years, the applicant was convicted of, incarcerated for, or on probation or parole for a violent or other felony conviction.

Security Program

The bill would require a flight school to implement a security program, acceptable to the Michigan Aeronautics Commission, designed to limit aircraft accessibility and ensure the security of those aircraft on the ground that are used by the flight school. The program would have to include at least one of the following:

- Procedures for positive identification of a student pilot or renter pilot as a precondition to allowing access to aircraft.
- Procedures for control of aircraft ignition keys that would 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.
- Instructional procedures that ensured close student pilot supervision.

Additionally, the program would have to include all of the following:

- A requirement that a student present a Federal Aviation Administration student medical certificate and student pilot certificate as a predicate to enrollment in the flight school. The bill specifies that enrollment would be considered a flight instructor endorsement to operate an aircraft while the student was the sole occupant of the aircraft.
- Instructional materials that identified and offered examples of types of suspicious activity at or near an airport and that told students and renter pilots how to report such activity to local law enforcement officials and appropriate Federal authorities.
- The prominent display of signs requesting pilots to report suspicious activity at or near an airport. The signs would have to provide telephone numbers of local law enforcement officials and appropriate Federal authorities.

MCL 259.85 & 259.85a

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

While Public Acts 258 and 318 were enacted because of legitimate concerns over safety, they conflict with Federal regulation of pilot qualifications. Requiring background checks and prohibiting the enrollment of people with recent felony convictions seemed like appropriate measures at the time, when it was not known how the requirements would mesh with Federal law, or whether they might put an undue burden on the aviation industry. According to an October 2002 letter from the deputy chief counsel of the Federal Aviation Administration (FAA) to the Aircraft Owners and Pilots Association, "...state legislation that requires the collection of personal information from prospective students, including fingerprinting and background checks, or disqualifies prospective students based on specified past criminal conduct would likely intrude into an area that Congress has preempted." Congress has reserved to the FAA Administrator the duty to regulate flight schools, pilot qualifications, and pilot training, and "...courts throughout the country have recognized a Congressional intent to preclude supplementation by the States."

The letter further explained that the long history of Federal authority over flight schools is based on a need for uniformity among the states. Airspace is Federally regulated, and aircraft frequently fly through and land in a state other than the one from which the aircraft took off. Because of this, a patchwork of state laws would be impractical when it comes to pilot qualifications. According to the letter, the U.S. Supreme Court has found that a single, uniform system is essential to aviation safety.

The enactment of Federal security measures also calls into question the necessity of Public Acts 258 and 318. Under the Federal Aviation and Transportation Security Act, the United States Attorney General already may require a flight school to provide him or her with identification of an applicant, and may direct the school not to provide training to the applicant if he or she is determined to present a risk to aviation or national security. The bill's requirements for an on-ground aircraft security program would be more appropriate for flight schools, and would resolve the discord between State and Federal law.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would decrease State revenues by an indeterminate amount, but the bill's overall fiscal impact on the State would be cost-neutral. Currently, fees collected by the Michigan State Police for criminal history checks are used to support the costs of administering the checks. The State Police charge \$30 for State-level checks and \$24 for Federal-level checks. The State Police do not record information regarding the checks conducted for flight schools.

Fiscal Analyst: Craig Thiel

H0304\s4704a

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.