



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

BILL ANALYSIS



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

Senate Bill 1413 (as introduced 6-24-08)
Sponsor: Senator Alan L. Cropsey
Committee: Judiciary

(as enacted)

Date Completed: 11-12-08

CONTENT

The bill would enact the "National Crime Prevention and Privacy Compact" to authorize the Governor to enter into the Compact on behalf of the State of Michigan with any of the states of the United States that legally join in that compact.

The Compact "organizes an electronic information sharing system among the federal government and the states to exchange criminal history records for non-criminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment". "Under this compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and to party states for authorized purposes." The Compact also requires the FBI to manage the Federal data facilities that provide a significant part of the infrastructure for the system.

The following is an overview of the Compact's provisions.

Purposes & Responsibilities

The Compact's purposes include all of the following:

- Provide a legal framework for the cooperative system for the interstate and Federal-state exchange of criminal history records for noncriminal justice uses.
- Require the FBI to permit the use of records by each party state and to provide criminal history records to requesting states in a timely fashion.
- Require party states to provide information and criminal history records to other states and the Federal government in a timely fashion.
- Establish a council to monitor the Interstate Identification Index (III) system and provide rules and procedures for its operation.
- Require the FBI and each party state to adhere to III system standards.

The Compact specifies the responsibilities of the FBI and party states, including the appointment of Compact officers to administer the Compact in their respective jurisdictions. In carrying out Compact responsibilities, the FBI and each party state must comply with III system rules, procedures, and standards.

Use of the III system for noncriminal justice purposes must be managed so as not to diminish services provided in support of criminal justice purposes, and administration of the Compact may not reduce the level of services available to authorized noncriminal justice users on the Compact's effective date.

Authorized Record Disclosure; Request Procedures & Fees

Under the Compact, the FBI must provide criminal history records, on request, to state criminal history record repositories for noncriminal justice purposes. The FBI and state criminal history record repositories must provide criminal history records to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes. Those provisions exclude sealed records.

Records obtained under the Compact may be used only for the official purposes for which they are requested.

Fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes. A state's request for criminal history record checks may be made under any approved state statute and must be submitted through the state's criminal history record repository. Each request made under Federal authority must be submitted through the FBI or, if the state criminal history record repository consents, through the criminal history record repository in the state in which the request originates. Direct access to the national identification index by entities other than the FBI and state criminal history records repositories is not permitted for noncriminal justice purposes.

A state repository or the FBI may charge a fee for handling a request involving fingerprint processing for noncriminal justice purposes, but may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

If a state repository cannot positively identify the subject of a record request, the request and the fingerprints or other identifying information must be forwarded to the FBI for a search of the national indices. If the FBI positively identifies the subject as having an III system record, it must advise the state repository that is entitled to obtain the criminal history record information from the FBI or other state repositories.

Compact Council

The Compact provides for the establishment of a 15-member Compact Council, which has the authority to promulgate rules and procedures. The Council continues as long as the Compact remains in effect. Administratively, the Council is located within the FBI.

The Council must meet at least once a year, at the call of the chair. Meetings must be open to the public and the Council must provide prior public notice of each meeting in the Federal Register, including the matters to be addressed at the meeting.

The Council may request from the FBI reports, studies, statistics, or other information or materials the Council determines to be necessary to perform its duties under the Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon request.

Ratification & Renunciation of Compact

The Compact takes effect upon being entered into by two or more states as between those states and the Federal government. Upon additional states' entry into the Compact, it

becomes effective among those states and the Federal government and each party state that previously ratified it. (The Compact became effective on April 28, 1999, when it was ratified by two states: Montana on March 31, 1999, and Georgia on April 28, 1999.)

The Compact has the full force and effect of law within the ratifying jurisdictions.

The Compact binds each party state until renounced by the party state. Any renunciation of the Compact by a party state must be done in the same manner by which the party state ratified the Compact, and becomes effective 180 days after the party state provides written notice of renunciation to each other party state and to the Federal government.

Severability

The provisions of the Compact are severable, and if any phrase, clause, sentence, or provision is declared to be contrary to the constitution of any participating state or to the U.S. Constitution, the validity of the remainder of the Compact and the applicability of it to any government, agency, person, or circumstance will not be affected. If a portion of the Compact is held contrary to the constitution of any party state, all other portions will remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

Adjudication of Disputes

The Compact Council has initial authority to make determinations with respect to disputes. The Council must hold a hearing concerning any dispute at a regularly scheduled meeting and may render a decision only upon a majority vote of the Council members.

The FBI must exercise immediate and necessary action to preserve the integrity of the III system, maintain policy and standards, protect the accuracy and privacy of records, and prevent abuses until the Council holds a hearing.

The FBI or a party state may appeal any decision of the Council to the U.S. Attorney General. After that, the FBI or any party state may file suit in the appropriate U.S. District Court. Any suit arising under the Compact and initiated in a state court must be removed to the appropriate U.S. District Court.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on the Department of State Police. The bill's provisions would be accomplished with existing resources and services provided by the Department.

Fiscal Analyst: Bruce Baker

S0708\1413sa

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.