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BILL ANALYSIS



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Senate Bill 1022 (as introduced 6-8-16)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 6-29-16

CONTENT

The bill would amend the Commission on Law Enforcement Standards Act to do the following:

- **Require a law enforcement agency to maintain a record of the reasons for, and circumstances surrounding, a law enforcement officer's separation of service with the agency.**
- **Require an agency to allow a separating officer to review the separation record, upon his or her request, and to submit a written statement explaining the officer's disagreement with the record.**
- **Require a law enforcement officer to sign a waiver allowing a prospective employing agency to contact his or her former employing agency and seek a copy of the officer's separation record.**
- **Require a waiver to be executed on a form provided by the Michigan Commission on Law Enforcement Standards (MCOLES) to all law enforcement agencies in Michigan that employ certified officers.**
- **Require a former employing agency to give a copy of an officer's separation record to the prospective employing agency, upon receiving a waiver.**
- **Provide that a former employing agency disclosing information in good faith after receiving a waiver would be immune from civil liability for the disclosure, and establish a presumption of good faith.**

The bill would take effect 90 days after its enactment.

Separation Record

The Act requires a law enforcement agency to maintain an employment history record for each law enforcement officer employed by the agency. As prescribed by MCOLES, an agency must report the date on which each person begins or ends employment as an officer for the agency.

In addition to the employment history record, the bill would require a law enforcement agency to maintain a record regarding the reason or reasons for, and the circumstances surrounding, a separation of service for each officer the agency employed who subsequently separated from the agency. The agency would have to allow a separating officer to review that record, upon the officer's request.

If a separating officer disagreed with the accuracy of the contents of a separation record, he or she could request the correction or removal of the portion of the record he or she believed to be incorrect. If the agency and the officer could not reach an agreement on the contents

of the record, the officer could submit a written statement explaining his or her position and the basis for his or her disagreement. If a separating officer submitted a statement, it would have to be kept with the record and provided with the rest of the contents of the record to a law enforcement agency that was a prospective employer.

Waiver of Disclosure

Under the bill, a law enforcement officer who was certified under the Act and was previously employed as an officer in Michigan, who separated from his or her employing law enforcement agency and subsequently sought to become reemployed as an officer with a different agency in Michigan, would have to give the prospective employing law enforcement agency a signed waiver, upon an offer of employment. A waiver would have to expressly allow the prospective employing agency to contact the officer's former employing agency and seek a copy of the record regarding the reasons for, and circumstances surrounding, the officer's separation of service.

A waiver would have to be executed on a form provided by MCOLES to all law enforcement agencies in Michigan that employ law enforcement officers who are certified under the Act. A prospective employing agency would be responsible for providing an executed waiver to a former employing agency. Upon receiving the waiver, the former employing agency would have to give the prospective employing agency a copy of the separation record, along with other information required or allowed by law to be provided.

A former employing agency that disclosed information in good faith after receiving a waiver would be immune from civil liability for the disclosure. A former employing agency would be presumed to be acting in good faith unless a preponderance of the evidence established one or more of the following:

- That the former employing agency knew the information disclosed was false or misleading.
- That the former employing agency disclosed the information with a reckless disregard for the truth.
- That the disclosure was specifically prohibited by a State or Federal statute.

Proposed MCL 28.609e & 28.609f

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have a nominal fiscal impact on State and local law enforcement agencies. Local agencies already maintain and share officer employment records and commonly engage in information disclosure agreements with prospective employees. Currently, MCOLES provides "best practices" advice for agencies in hiring matters. Under the bill, the Commission would provide the required waiver forms, using existing resources.

Fiscal Analyst: Bruce Baker

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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.