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**BILL ANALYSIS**

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Senate Bill 223 (as introduced 3-9-17)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

Date Completed: 3-13-17

### **CONTENT**

**The bill would enact the "Law Enforcement Officer Separation of Service Record 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 of service 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 of service 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 licensed officers.**
- **Require a former employing agency to give a copy of an officer's separation of service record to the prospective employing agency, upon receiving a waiver.**
- **Prohibit a prospective employing agency from hiring an officer unless the agency received the record from his or her former employing agency.**
- **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 of Service Record**

The MCOLES Act governs the licensure of law enforcement officers, and contains requirements for law enforcement agencies that employ them. Among other things, 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 maintained by a law enforcement agency for each officer it employed, or for each officer to whom the chief of police of a city, village, or township or a county sheriff administered an oath of office, 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 or from his or her employment as a law enforcement

officer requiring the administration of an oath under Section 9c or 9d of the MCOLES Act (described below).

The agency would have to allow a separating officer to review his or her separation of service record, upon the officer's request.

If a separating officer disagreed with the accuracy of the contents of a separation of service 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.

(Section 9c of the MCOLES Act applies to individuals who are employed as fire arson investigators from fire departments within cities, villages, townships, or counties, who are sworn and fully empowered by the chiefs of police of those local units. Section 9d applies to individuals who are employed as private college security officers, seek licensure under the Act, and are sworn and fully empowered by a chief of police of a city, village, or township law enforcement agency, or are deputized by a county sheriff. Each section requires the chief of police or the sheriff, as applicable, to administer an oath of office authorizing the individual to enforce the laws of the State. The police chief or sheriff also must maintain an employment history record with respect to the individual.)

#### Waiver

A law enforcement officer currently licensed under the MCOLES Act, or previously licensed or certified under the Act, who was previously employed as a law enforcement officer in Michigan, who separated from his or her employing law enforcement agency or from employment as a law enforcement officer to whom an oath of office had been administered under Section 9c or 9d of the Act, and who subsequently sought to become reemployed as an officer 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 or administer oaths of office to law enforcement officers licensed 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 of service record, along with other information required or allowed by law to be provided.

#### Prohibited Employment

A prospective employing law enforcement agency could not hire a law enforcement officer to whom the waiver requirement applied unless that agency received the separation of service record from the law enforcement officer's former employing law enforcement agency.

#### Civil Immunity

A former employing law enforcement 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.

Legislative Analyst: Suzanne Lowe

### **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