

HOUSE BILL NO. 4118

February 03, 2021, Introduced by Reps. Frederick and Anthony and referred to the Committee on Judiciary.

A bill to amend 2017 PA 128, entitled "Law enforcement officer separation of service record act," by amending the title and sections 1, 2, 3, and 5 (MCL 28.561, 28.562, 28.563, and 28.565), section 5 as amended by 2018 PA 522, and by adding section 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to require the creation and maintenance of certain law
3 enforcement officer personnel records; to prescribe the information

1 that may be contained in the personnel records; to permit law
 2 enforcement officers **and corrections officers** to review the
 3 personnel records; **to provide for the duties and powers of certain**
 4 **state and local officers and governmental entities**; and to provide
 5 for immunity from civil liability ~~to law enforcement agencies in~~
 6 certain circumstances.

7 Sec. 1. This act shall be known and may be cited as the "~~law~~
 8 ~~enforcement~~"officer separation of service record act".

9 Sec. 2. As used in this act:

10 (a) "Commission" means the Michigan commission on law
 11 enforcement standards created in section 3 of the Michigan
 12 commission on law enforcement standards act, 1965 PA 203, MCL
 13 28.603.

14 (b) "Corrections agency" means the department of corrections
 15 or a county sheriff that employs corrections officers.

16 (c) "Corrections officer" means an individual who is a state
 17 correctional officer as that term is defined in section 2 of the
 18 correctional officers' training act of 1982, 1982 PA 415, MCL
 19 791.502, or a local corrections officer as that term is defined in
 20 section 2 of the local corrections officers training act, 2003 PA
 21 125, MCL 791.532.

22 (d) ~~(b)~~ "Former employing law enforcement agency" means a law
 23 enforcement agency in this state that was the employer of, or that
 24 issued an oath of office to, a law enforcement officer licensed
 25 under the Michigan commission on law enforcement standards act,
 26 1965 PA 203, MCL 28.601 to 28.615, and that was required to
 27 maintain an employment history record for that law enforcement
 28 officer under the Michigan commission on law enforcement standards
 29 act, 1965 PA 203, MCL 28.601 to 28.615.

1 Sec. 3. (1) In addition to the employment history record
2 required to be maintained under the Michigan commission on law
3 enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, by a
4 law enforcement agency for each officer it employs or for each
5 officer to whom the chief of police of a village, city, or township
6 or county sheriff has administered an oath of office, a law
7 enforcement agency shall maintain a record regarding the reason or
8 reasons for, and circumstances surrounding, a separation of service
9 for each law enforcement officer for whom the law enforcement
10 agency is required to maintain an employment history record under
11 the Michigan commission on law enforcement standards act, 1965 PA
12 203, MCL 28.601 to 28.615, who subsequently separates from the law
13 enforcement agency or from his or her employment as a law
14 enforcement officer requiring the administration of an oath of
15 office under section 9c or 9d of the Michigan commission on law
16 enforcement standards act, 1965 PA 203, MCL 28.609c and 28.609d.

17 **(2) A corrections agency shall maintain a record regarding the**
18 **reason or reasons for, and circumstances surrounding, a separation**
19 **of service for each corrections officer who subsequently separates**
20 **from the corrections agency or from his or her employment as a**
21 **corrections officer.**

22 **(3) ~~(2)~~—The law enforcement agency shall allow a separating**
23 **law enforcement officer to review a record prepared under**
24 **subsection (1) upon the request of the separating officer. The**
25 **corrections agency shall allow a separating corrections officer to**
26 **review a record prepared under subsection (2) on the request of the**
27 **separating corrections officer.**

28 **(4) ~~(3)~~—If a separating law enforcement officer or corrections**
29 **officer disagrees with the accuracy of the contents of the record**

1 prepared under subsection (1) **or (2), as applicable**, he or she may
 2 request the correction or removal of the portion of the record he
 3 or she believes is incorrect. If the law enforcement agency and the
 4 separating law enforcement officer, **or the corrections agency and**
 5 **the separating corrections officer**, cannot reach an agreement on
 6 the contents of the record prepared under subsection (1) **or (2), as**
 7 **applicable**, the separating law enforcement officer **or corrections**
 8 **officer** may submit a written statement explaining the separating
 9 ~~law enforcement officer's~~ position and the basis for his or her
 10 disagreement. If a separating law enforcement officer **or**
 11 **corrections officer** submits a written statement under this
 12 subsection, it must be kept with the record required under
 13 subsection (1) **or (2), as applicable**, and provided with the rest of
 14 the contents of the record as required under section 5.

15 Sec. 5. (1) ~~A~~ **The following officers shall provide a signed**
 16 **waiver to a prospective employing law enforcement agency or**
 17 **prospective employing corrections agency:**

18 **(a) A** law enforcement officer who is licensed or who was
 19 previously licensed or certified under the Michigan commission on
 20 law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615,
 21 and was previously employed as a law enforcement officer in this
 22 state, who separates from his or her employing law enforcement
 23 agency or from employment as a law enforcement officer to whom an
 24 oath of office has been administered under section 9c or 9d of the
 25 Michigan commission on law enforcement standards act, 1965 PA 203,
 26 MCL 28.609c and 28.609d, and who subsequently seeks to become
 27 reemployed as a law enforcement officer **or employed as a**
 28 **corrections officer** in this state. ~~, shall provide to the~~
 29 ~~prospective employing law enforcement agency, upon receiving a~~

~~conditional offer of employment, a signed waiver.~~

(b) A corrections officer who separates from his or her employing corrections agency and subsequently seeks to become reemployed as a corrections officer or employed as a law enforcement officer in this state.

(2) A waiver executed under ~~this subsection (1)~~ must expressly allow the prospective employing law enforcement agency **or corrections agency** to contact the ~~law enforcement officer's~~ former employing law enforcement agency or agencies, **and former employing corrections agency or agencies, as applicable**, and seek a copy of the record regarding the reason or reasons for, and circumstances surrounding, his or her separation of service created by his or her former employing law enforcement agency or agencies, **and former employing corrections agency or agencies, as applicable**, under section 3.

(3) ~~(2)~~ A waiver under subsection ~~(1)~~ **(1) (a)** must be executed on a form provided by the commission to all law enforcement agencies in this state that employ or administer oaths of office to law enforcement officers licensed under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

(4) The prospective employing ~~law enforcement~~ agency is responsible for providing the waiver executed under subsection (1) to the former employing law enforcement agency or agencies, **and former employing corrections agency or agencies**.

(5) ~~(3)~~ Upon receipt of the waiver executed under subsection (1), a former employing law enforcement agency **or former employing corrections agency** shall provide, along with other information required or allowed to be provided by law, a copy of the record required under section 3 to the prospective employing law

1 enforcement agency **or the prospective employing corrections agency,**
2 **as applicable.**

3 (6) ~~+(4)~~—A prospective employing law enforcement agency shall
4 not hire a law enforcement officer to whom subsection (1) applies
5 unless the prospective employing law enforcement agency receives
6 the record created under section 3 from the law enforcement
7 officer's former employing law enforcement agency or agencies, **and**
8 **former employing corrections agency or agencies, as applicable. A**
9 **prospective employing corrections agency shall not hire a**
10 **corrections officer to whom subsection (1) applies unless the**
11 **prospective employing corrections agency receives the record**
12 **created under section 3 from the corrections officer's former**
13 **employing law enforcement agency or agencies, and former employing**
14 **corrections agency or agencies, as applicable.**

15 (7) ~~+(5)~~—A former employing law enforcement agency **or a former**
16 **employing corrections agency** that discloses information under this
17 section in good faith after receipt of a waiver executed under
18 subsection (1) is immune from civil liability for the disclosure. A
19 former employing law enforcement agency **or a former employing**
20 **corrections agency** is presumed to be acting in good faith at the
21 time of a disclosure under this section unless a preponderance of
22 the evidence establishes 1 or more of the following:

23 (a) That the former employing law enforcement agency **or former**
24 **employing corrections agency** knew that the information disclosed
25 was false or misleading.

26 (b) That the former employing law enforcement agency **or former**
27 **employing corrections agency** disclosed the information with a
28 reckless disregard for the truth.

29 (c) That the disclosure was specifically prohibited by a state

1 or federal statute.

2 (8) ~~(6)~~—A prospective employing law enforcement agency that
3 receives a record maintained under section 3 from the law
4 enforcement officer's former employing law enforcement agency or
5 agencies shall, upon written request from the commission, provide a
6 copy of the record requested to the commission for the purpose of
7 determining compliance with licensing standards and procedures
8 under the Michigan commission on law enforcement standards act,
9 1965 PA 203, MCL 28.601 to 28.615.

10 (9) ~~(7)~~—A law enforcement agency that is required to maintain
11 a record under section 3 shall, upon written request from the
12 commission, provide a copy of the record requested to the
13 commission for the purpose of determining compliance with licensing
14 standards and procedures under the Michigan commission on law
15 enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

16 **Sec. 6. This act applies to public employers and public**
17 **employees, except to the extent that it is inconsistent with**
18 **section 5 of article XI of the state constitution of 1963.**