

## LOCAL UNITS COULD REQUIRE CRIMINAL HISTORY CHECKS FOR TAXI DRIVERS, STREET VENDORS, ETC.

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4601 (Substitute H-1)**  
**Sponsor: Rep. Richard LeBlanc**  
**Committee: Judiciary**

### First Analysis (6-15-09)

**BRIEF SUMMARY:** The bill would allow municipalities to adopt ordinances requiring individuals in certain professions, such as taxicab drivers, street vendors, and door-to-door solicitors, to first undergo fingerprint criminal history checks.

**FISCAL IMPACT:** House Bill 4601 would have an indeterminate fiscal impact on state and local government. Fingerprint background checks cost \$54 in total (\$30 for the State Police cost and \$24 for the FBI); however, it is unknown how many local government units would establish an ordinance to require fingerprint background checks of the individuals listed in this bill. It is also unknown how many of these individuals would actually undergo fingerprint background checks. The State Police and local government units may incur some administrative costs for processing, storing, and disposing of the fingerprint information.

### **THE APPARENT PROBLEM:**

Several states specifically grant local units of government the authority to require individuals working in certain occupations to undergo a state and national criminal history check. For several years, some local officials in Michigan have requested similar authority. Many municipalities require certain occupations to have locally-issued licenses. Apparently, however, without statutory authority to conduct state and national fingerprint criminal history checks, local law enforcement officials are unable to access LEIN to see if there are any outstanding warrants or to check the Secretary of State driver's license data base to validate an operator's license or to see the person's driving history (helpful to know before issuing a taxi driver license).

Without the ability to conduct the fingerprint checks, the local officials maintain that a local license gives a false sense of security. For instance, parents may be reassured that the person driving the ice cream truck in the summers is licensed by the municipality. But, a fingerprint check is the only way to verify the true identity of the person and to verify that the person has no known criminal history that could pose a risk of harm to children. In addition, based on a false name, a person could obtain a license issued by a local government, and then use that fake ID to obtain other government-issued documents such as a driver's license, fake birth certificate, or passport. Legislation has been offered to address these concerns.

## ***THE CONTENT OF THE BILL:***

House Bill 4601 would create a new act to allow a local unit of government (defined as a county, city, village, township, or charter township) to adopt an ordinance requiring the fingerprinting of door-to-door solicitors, taxicab drivers or other drivers for hire, or street vendors or other transient merchants (including merchants who market their goods from motorized vehicles) for the purpose of obtaining criminal history record information on those individuals.

"Criminal history record information" would mean that term as defined in MCL 28.241a. (Under that provision, the term refers to name; date of birth; fingerprints; photographs, if available; personal descriptions, including identifying marks, scars, amputations, and tattoos; aliases and prior names; Social Security number, driver's license number and other identifying numbers; and information on misdemeanor arrests and convictions and felony arrests and convictions.)

Fingerprint check. Under the bill, fingerprints collected by the municipality would be submitted to the Department of State Police for a state criminal history record check and to the Federal Bureau of Investigation (FBI) for a national criminal history check. The State Police would have to disseminate the federal information to the municipality.

Fees. A municipality could pass the cost of the state and federal fingerprint checks on to the individual (currently, \$30 and \$24, respectively). These fees would be forwarded to the department. (It is not clear if the wording of the bill would allow a municipality to charge an additional fee for collecting and processing the fingerprints, which is currently allowed when fingerprinting individuals mandated by statute to undergo a criminal history check for a specific occupation, or if the wording would exclude such a fee.)

Policies. A municipality that fingerprinted an applicant or licensee under the bill would be required to develop a written fingerprint policy and provide a synopsis of that policy to the applicant or licensee. The synopsis would have to describe how fingerprints would be controlled while in the possession of the municipality (e.g., city police department or sheriff's office), who the fingerprints are sent to, and how the fingerprints are used.

Retention. The municipality could not retain the fingerprint impressions after the criminal history check was completed unless requested to do so in writing by the applicant or licensee. Any biometric data kept on file by the municipality would be exempt from disclosure under the Freedom of Information Act. (The bill is silent as to how the fingerprint impressions would be removed from the local system.)

The bill would take effect January 1, 2010.

## ***BACKGROUND INFORMATION:***

The bill is similar to House Bill 5543, which was passed by the House in the 2007-2008 legislative session.

## **ARGUMENTS:**

### ***For:***

The bill is voluntary, not mandatory. It simply allows local officials in counties, cities, villages, and townships to fingerprint and conduct criminal background checks on those applying for certain business licenses. Though some criminal history information can be obtained through a name check, such a check is only as accurate as the name given by the person. Plus, many people have the same name, and so it can unfairly disadvantage an applicant if someone with the same name is not a model citizen. The inaccuracies of name checks are statistically significant.

The only accurate way to verify a person's identity and background is through a fingerprint check. The fingerprints would be submitted to the Department of State Police and the Federal Bureau of Investigation to be checked against the electronic law enforcement information data systems. If a record came back with outstanding traffic violations, the applicant could be advised to clear those up. If it came back with a criminal history, the municipality could decide, on a case-by-case basis, if the record was relevant. This is similar to the process in place in state statute for many occupations, such as direct-care workers in nursing homes and school personnel.

Although some local governments already require a criminal history check for door-to-door solicitors and other potential licensees within their communities, House Bill 4601 would help ensure that the protocols followed by local government officials are lawful and would also provide access to other systems currently denied without statutory authority.

### ***Response:***

Last session, the Michigan Township Association voiced a concern that as drafted, the bill granted authority to the local units of government to collect the fee charged by the State Police and the FBI to process the criminal history check, but did not specifically give the local officials authority to collect a fee for their own costs associated with fingerprinting license applicants. The concern is that courts have sometimes interpreted similar provisions as allowing only what is specified, and not allowing that which is not specified.

### ***Against:***

The bill is too broad in its application, allowing local governments far too much discretion in its implementation. Without clarity and limitations as to how and for what locals could use the information obtained as a result of the fingerprint checks, a person's right to privacy and due process rights could be infringed upon. For instance, the ACLU of Michigan has identified several flaws with the bill, including the following:

- \*\* There are no clear guidelines or specifics regarding the "policy" on how a local unit would handle the fingerprints and the criminal record information obtained from them.
- \*\* There are no penalties for a local government or any employees who misuse the prints or criminal history record information.

\*\* Other than prohibiting permanent retention of the fingerprints by the local units, there are no time limits other than forever. That means the prints could be retained "almost forever."

\*\* A criminal records check (name check) should suffice.

\*\* Currently, the FBI database has some systemic problems, such as incomplete disposition information, that could unfairly prejudice a community against an innocent applicant. For example, a record may show that the person was arrested, but not say that no charges were filed, or that charges were dropped. At the very least, the bill should require the applicant be given a copy of the state and FBI information and access to a hearing to contest a license denial.

***POSITIONS:***

A representative of the Livonia Police Department testified in support of the bill. (6-10-09)

The Department of State Police indicated a position of neutrality. (6-10-09)

The ACLU of Michigan indicated opposition to the bill. (6-10-09)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Jan Wisniewski

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.