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SFA



BILL ANALYSIS

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House Bill 5044 (Substitute H-1 as reported without amendment)
Sponsor: Representative Terry Geiger
House Committee: Family and Civil Law
Senate Committee: Families, Mental Health and Human Services

Date Completed: 4-28-00

RATIONALE

It is relatively easy in Michigan for a person to change his or her name. Under current law, any person who wishes to change his or her name legally may petition the family division of circuit court (family court) for a name change. Legal name changes may be granted provided that the person seeking the change has resided in the county for at least one year, shows sufficient reason for the change, and is not seeking the change for a fraudulent purpose. Anyone 22 years or older who petitions the family court for a name change must undergo a criminal record check. If a petitioner has a criminal record, he or she is presumed to be seeking a name change with a fraudulent intent, and the burden to rebut that presumption is on the petitioner. The name of a minor normally may not be changed without the consent of both parents; however, in cases in which a noncustodial parent has failed to provide support for two years or more or has been convicted of criminal sexual conduct or child abuse, the court may allow a name change without the consent or notification of that parent.

As part of the name-change process, the family court is required to schedule and hold a hearing and order publication as provided by Supreme Court rule. (Michigan Court Rule 5.781 provides that a published notice of a proceeding to change a name must include the name of the petitioner, the current name of the subject of the petition, the proposed name, and the time, date, and place of the hearing.) For a number of reasons, a person who seeks to change his or her name may not want the name change published. The law, however, does not allow the court to decide not to publish a name change proceeding. Some people believe that the court should have the discretion to keep a name change from being published in circumstances that warrant confidentiality, such as if the person seeking a name change could be placed at risk of physical harm if the proceeding were published.

CONTENT

The bill would amend the Probate Code to allow the family court to order that, under certain circumstances, there be no publication of a proceeding to change a person's name and that the record of the proceeding be confidential.

Under the bill, in a proceeding to change a person's name, the family court could order, for "good cause", that no publication of the proceeding take place and that the record of the proceeding remain confidential. For purposes of this provision, "good cause" would include, but would not be limited to, evidence that publication or availability of a record of the proceeding could place the petitioner or another person in physical danger, such as evidence that the petitioner or another individual had been the victim of stalking or an assaultive crime. Evidence of the possibility of physical danger would have to include the petitioner's or endangered individual's sworn statement giving the reason for the fear of physical danger if the record were published or otherwise made available. If evidence of stalking or an assaultive crime were offered, the court could not require proof of an arrest or prosecution for that crime in order to reach a finding of good cause.

A court officer, employee, or agent who divulged, used, or published, beyond the scope of his or her duties with the court, information from a record made confidential under the bill would be guilty of a misdemeanor. This penalty would not apply to a disclosure under a court order.

A confidential record created under the bill would be exempt from disclosure under the Freedom of Information Act.

MCL 711.1 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The

Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By giving a judge the discretion to assess an individual's situation and determine whether publication of the name change should not be required, the bill would address what some view as a problem with the name-change process. There are many situations in which a person could have good reason to want to change his or her name, but might not want to have the change made public. For example, a person who is the victim of a stalker or an assaultive former spouse might choose to change his or her name in order to avoid further contact with that person. Another situation might involve a person who testifies for the prosecution in a criminal proceeding and wants to avoid contact with those against whom he or she testifies. In either of these situations, the requirement that the court publish the individual's name change defeats the purpose of making the change.

Opposing Argument

There is a risk that people could abuse the bill's protections by falsely asserting the existence of reasons for keeping a name change private. One way of preventing this could be to specify the type of evidence needed to show that good cause existed to keep the matter private. In addition, requiring the filing of a sworn affidavit might make people less likely to be dishonest about their reasons for seeking a name change.

Response: The bill's definition of "good cause" is sufficient to indicate the type of evidence that would be required, and the bill also would require an individual's sworn statement regarding the possibility of physical danger. In addition, the law already provides that a false statement intentionally included within a petition for a name change constitutes perjury.

Opposing Argument

The bill should address another matter. Although a person who has a criminal record must overcome a presumption of fraudulent intent in order to have his or her name legally changed, the Code still allows the family court to proceed with the name change. If the court grants a name change for a person with a criminal record, it must forward the order to the State Police central records division and to the Department of Corrections (if the person is in prison or on parole or has been imprisoned or released from parole within the past two years), the sheriff of the county in which the person was last convicted (if he or she was incarcerated in a county jail or released from county jail within the past two years), and/or the court that has jurisdiction over the person (if he or she is under the jurisdiction of the family court or has been discharged from that court's jurisdiction within the past two years). Given the emphasis on victims'

rights in recent years, the bill also should require notification of the victim of a crime committed by the person being granted a name change. In addition, if a person granted a name change were required to register under the Sex Offenders Registration Act, the Code should require that the State Police or local law enforcement agency be informed and that the registry be updated to reflect the name change. Alternatively, perhaps the bill should prohibit a name change without publication if a person had a criminal record or were required to register as a sex offender.

Response: If a person with a criminal record were granted a name change, it is questionable whether a court would grant that person an exemption from the publication requirement, especially if the person were required to register as a sex offender. Furthermore, Department of Corrections policy directives require notice to a victim if a prisoner legally changes his or her name, or if a discharged prisoner legally changes his or her name within two years of discharge from parole. In addition, the Crime Victim's Rights Act requires notice to a victim that a prisoner has had his or her name legally changed while on parole or within two years of release from parole.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman

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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.