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SFA



BILL ANALYSIS

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Senate Bill 420 (Substitute S-1 as passed by the Senate)
Senate Bill 425 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Gary Peters (Senate Bill 420)
Senator Philip E. Hoffman (Senate Bill 425)
Committee: Judiciary

Date Completed: 4-16-02

RATIONALE

The Private Security Business and Security Alarm Act requires a person or firm to be licensed in order to operate as a security alarm system contractor, private security guard, private security police, or patrol service, or as an agency furnishing those services. Although the Act contains criteria for licensure, training standards for security guards are not prescribed by law in Michigan. In recent years, there have been several reports of injuries and death caused by security guards at retail stores. Between June 2000 and April 2001, at least three deaths in southeastern Michigan were attributed to actions of security guards and other staff in suspected shoplifting situations. Some people believe that, in order to ensure that private security officials operate in a professional and safe manner, training standards should be developed and implemented and that other licensure requirements should be enhanced.

In addition, the fees charged for various licenses under the Private Security Business and Security Alarm Act apparently have not been increased since its 1968 enactment, and revenue from those fees does not fully fund oversight of the licensing program. (Some of those fees, however, were increased for fiscal year (FY) 2001-02 by Executive Order 9 of 2001.) It has been suggested that the fees be increased and a restricted fund be established so that the Department of State Police's oversight of licensees could be adequately funded without using State General Fund money.

CONTENT

Senate Bills 420 (S-1) and 425 (S-2) would amend the Private Security

Business and Security Alarm Act to do all of the following:

- Create a "Security Provider Advisory Commission" within the Department of State Police and require it to establish minimum mandatory training standards for private security guards, private security police, and private detectives acting as private security guards or private security police.
- Require the Department to consider the training requirements recommended by the commission, and to adopt training requirements.
- Increase certain fees required under the Act.
- Establish the "Security Business Fund" and require that fees collected under the Act be deposited into the Fund.
- Provide that licensees and their employees who were armed with a pistol would have to have a concealed pistol license.
- Require a licensee's employees to have at least a high school education.
- Revise fingerprinting requirements for employees of a licensee.
- Require the Department of State Police, within one year of the bill's effective date, to prescribe training requirements for employees of private security guard licensees engaged in providing security guard duties.
- Increase the required size of shoulder identification patches or emblems on uniforms.
- Revise other licensure and application requirements.

Senate Bill 425 (S-2) also would delete references to a person in the definitions of "licensee" and "security alarm system contractor", and include in those definitions a sole proprietorship and a limited liability company. (Currently, "licensee" means a person, firm, company, partnership, or corporation licensed under the Act; and "security alarm system contractor" means a person, firm, company, partnership, or corporation engaged in the installation, maintenance, alteration, monitoring, or servicing of security alarm systems or who responds to a security alarm system.)

The bills are tie-barred.

Senate Bill 420 (S-1)

Security Provider Advisory Commission members would have to include up to seven individuals from the public and private sectors, as determined by the Department Director. One member would have to be a member of the Commission on Law Enforcement Standards. Within six months after its creation, the commission would have to establish minimum mandatory training standards for private security guards, private security police, and private detectives licensed under the Private Detective License Act who were acting as private security guards or private security police and, as such, were exempt from licensure under the Private Security Business and Security Alarm Act. Upon establishing the standards, the commission immediately would have to convey a copy of them to the Director, and could recommend the adoption of those standards.

Within one month after receiving the training standards, the Director would have to consider any commission recommendation and decide whether to adopt the standards, in whole or in part. The Department would have to adopt training requirements acceptable to the State Police Director by rule or as otherwise provided by law.

Senate Bill 425 (S-2)

Fees

Licensure. Under the Act, the Department of State Police, when it is satisfied with the good character, competence, and integrity of an applicant, or of its individual members or

officers, must issue to the applicant a certificate of license upon the applicant's payment of a fee and filing of a bond.

Currently, the fee is \$200 for a person; \$300 for a private security guard firm, company, partnership, or corporation; and \$500 for a security alarm system contractor. Under the bill, the fee for a sole proprietorship (rather than a "person") would be \$1,000; the fee for a private security guard firm, company, partnership, limited liability company, or corporation would be \$1,500; and the fee for a security alarm system contractor would be \$1,500.

Branch Offices. The Act provides that a licensee may receive a certificate of license for a branch office following approval by the Department and the payment of an additional fee of \$50 for each private security guard branch office license and \$100 for each security alarm system contractor branch office license. The bill would increase those fees to \$250 and \$500, respectively.

Renewal. The Department may renew a license granted under the Act upon the licensee's application, payment of a fee, and filing of a renewal bond.

Currently, the fee is \$100 for an individual; \$150 for a private security guard firm, company, partnership, or corporation; and \$250 for a security alarm system contractor. (Under Executive Order 9 of 2001, however, each of those fees is \$1,500 in FY 2001-02.) Under the bill, the fee for a sole proprietorship (rather than an "individual") would be \$1,000; the fee for a private security guard firm, company, partnership, limited liability company, or corporation would be \$1,500; and the fee for a security alarm system contractor would be \$1,500.

Security Business Fund

The bill would create the Security Business Fund within the State Treasury. The Department of State Police could spend money from the Fund, upon appropriation, only for the enforcement and administration of the Act. The Department would have to deposit all license fees collected under the Act into the Fund. The State Treasurer could receive money or other assets from any source for deposit into the Fund and would have to direct its investment. The State Treasurer would

have to credit to the Fund any interest and earnings on Fund investments. Money in the Fund at the close of a fiscal year would have to remain in the Fund and be available for appropriation and expenditure by the Department of State Police in subsequent fiscal years. Money in the Fund could not lapse to the General Fund.

Concealed Pistol License

The Act provides that a licensee may employ as many people as he or she considers necessary to assist in the work of a security alarm system contractor, private security police, or private security guard. At all times during the employment, the licensee is accountable for the good conduct in the business of each person employed. The bill would add to that provision a requirement that licensees and their employees who were armed with a pistol within the course of their employment obtain a Michigan concealed pistol license.

High School Education

The Act requires that people in the employ of a licensee meet certain qualifications, including at least an eighth grade education or its equivalent. Under the bill, after its effective date, employees would have to have at least a high school diploma, a GED, or its equivalent.

Fingerprinting Requirements

Under the Act, a licensee must have all prospective employees fingerprinted, and the fingerprints must be submitted to the Department of State Police for processing and approval. Fingerprints of a licensee's employees may be taken by a law enforcement agency or any other person determined by the Department to be qualified to take fingerprints. If a licensee takes the fingerprints, that licensee must obtain training in taking fingerprints from the Department or a law enforcement agency or other person determined qualified by the Department.

The bill would require that the fingerprints be submitted to both the Department and the FBI. The bill also would require that the fingerprints be accompanied by a processing fee in the amount prescribed by Section 3 of Public Act 120 of 1935, as well as any costs imposed by the FBI. The bill would prohibit a

licensee from hiring an employee before obtaining fingerprint clearance.

(Section 3 of Public Act 120 allows the Department to charge a fee of up to \$15 for taking and processing fingerprints and completing a criminal record check of a Michigan resident when fingerprints are requested for employment- or licensing-related purposes. Executive Order 9 of 2001, however, requires the processing fee under Section 3 of Public Act 120 to be \$30 for FY 2001-02.)

The bill would delete provisions allowing the Department to charge a fee of up to \$100 for training, requiring a licensee to submit a one-time \$15 processing fee for each person applying for employment, and allowing a local law enforcement agency to charge a fee of up to \$15 per person for the fingerprint process.

The bill also would delete provisions that require a licensee to request that the Department conduct a background check of each prospective employee based upon a name check, and require the Department to conduct the background check upon a written or telephone request accompanied by a \$5 fee (which is \$15 for FY 2001-02, under Executive Order 9). The provisions that would be deleted also make it a misdemeanor, punishable by up to 93 days' imprisonment and/or a maximum fine of \$1,000, for a licensee or employee of a licensee to use a name check or results of a name check for purposes other than prospective employment.

Training Requirements

Within one year after the bill's effective date, the Department of State Police would have to prescribe, by rule or as otherwise provided by law, training requirements for employees of private security guard licensees who were engaged in providing security guard duties. The Department would have to notify affected license holders about the training requirements. It would be the licensees' responsibility to ensure that all designated employees met the training standards within three months after the date of notification by the Department or the date of hire. Each designated employee also would have to complete an annual refresher training course, prescribed by Department rule, within each calendar year. It would be a misdemeanor, punishable by up to 93 days' imprisonment

and/or a maximum fine of \$1,000, for a licensee to violate these provisions.

Uniform Patches

Under the Act, the particular type of uniform and insignia worn by a licensee or his or her employees must be approved by the Department and may not deceive or confuse the public or be identical to that of a Federal, State, or local law enforcement officer. Shoulder identification patches must be worn on all uniform jackets, coats, and shirts, and include the name of the licensee or agency. Currently, shoulder identification patches or emblems may not be smaller than two inches by three inches. Under the bill, the shoulder patches or emblems would have to be at least three inches by five inches.

Other Licensure & Application Requirements

Under the Act, an applicant for a private security guard or agency license must have one or more types of experience. One of these is experience in the private security guard or agency business for at least three years. Under the bill, this condition would apply to experience in another state. Another type of experience is law enforcement employment on a full-time basis for at least four years for a city, county, or state, or the U.S. government. The bill would limit this to employment as a certified police officer.

The Act provides that the Department of State Police must require an applicant for licensure to obtain reference statements from at least five reputable citizens who are residents of this State. The bill would delete the requirement that the statements come from Michigan residents.

The Act requires the Department to investigate an applicant's "reputation for truth, honesty, integrity and ethical dealing" upon receiving an application. The bill, instead, would require the Department to investigate an applicant's "qualifications for licensure" upon receiving the application and application fee.

Under the Act, any change in the name or location of an agency or a branch office or subagency must be reported to the Department at least 10 days before the change becomes effective. The bill specifies that the change would have to be reported by the licensee and that failure to notify the Department of a change in name or location could result in a license suspension.

The Act requires a licensee to keep and maintain in Michigan adequate and complete personnel information on all employees. The bill also would require each licensee, on a quarterly basis, to file a complete employee roster, in a manner described by the Department. The rosters would have to be filed with the Department by April 15, July 15, October 15, and January 15 for the preceding quarter. Failure to submit accurate rosters would be cause for license suspension. A renewal application could not be processed if the quarterly roster had not been received for each quarter of the preceding two-year license period.

MCL 338.1067 et al. (S.B. 420)
338.1052 et al. (S.B. 425)

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

It stands to reason that security personnel assigned to deal with problem situations should be required to have at least a minimal amount of training in how to handle those types of situations. By creating the Security Provider Advisory Commission within the Department of State Police and requiring the Department to prescribe training requirements for employees of private security guard licensees who perform security guard duties, the bills would improve the professionalism of security providers and offer a greater degree of protection to the public. In widely publicized cases, at least three deaths occurred at the hands of security providers in southeastern Michigan in 2000 and 2001. In one of those incidents, a shopping mall security guard choked the father of a girl suspected of stealing a bracelet; in another, store personnel sat on a woman who left a drug store without paying for merchandise; and a third death occurred after a man was pinned to the ground while trying to steal meat from a grocery store. If the security staff had been required to meet minimal training standards for those situations, the incidents might have had different outcomes.

In addition, according to testimony before the Senate Judiciary Committee by the Southfield police chief, local police departments increasingly must rely on and coordinate their

activities with private security officers. In some cases, private security officers may even have to act as an unofficial extension of a local police force. Since the terrorist attacks of September 11, 2001, it has become clear that national security interests require local law enforcement agencies to have a greater awareness of the potential for acts of terror and sabotage to be committed on domestic soil. Local police departments are now being designated as first responders in the event of terrorist incidents, and those law enforcement agencies must be able to interact with and rely upon private security sources in the protection of the public and of infrastructure and business facilities. It is essential to this cooperation between public and private police that private security personnel have adequate education and training.

Response: The bills also should require the Security Provider Advisory Commission and the Department to research training standards developed by other states and the security industry.

Supporting Argument

The minimum standards under the Private Security Business and Security Alarm Act for licensees and their employees are inadequate. For instance, employees of a licensee need to have only an eighth grade education. With the types of responsibilities that private security guards must assume, that level of education is simply too low. A high school education or GED should be the minimum standard for those employees. Also, while the Act requires that a licensee have all prospective employees fingerprinted for a criminal history check, the fingerprints must be submitted only to the Department of State Police for processing and approval. Under Senate Bill 425 (S-2), the fingerprints also would have to be submitted to the FBI. In this way, a broader check of applicants' possible criminal history could be conducted. That bill also would prohibit a licensee from hiring an applicant before obtaining fingerprint clearance from the Department, and specifies that each licensee would have to file a complete employee roster with the Department on a quarterly basis. In addition, if a licensee or an employee of a licensee were to be armed with a pistol during the course of employment, he or she would have to obtain a Michigan concealed pistol license.

Supporting Argument

In order to provide adequate funding for the

Department of State Police's oversight of the private security licensing program, license fees need to be increased. Reportedly, those fees have not been raised since 1968, when the Private Security Business and Security Alarm Act became law, and the Department has had to subsidize the program through its annual General Fund appropriation. Regulatory programs such as this should be self-funded by the user fees obtained from licensees. Senate Bill 425 (S-2) would accomplish that goal by increasing fees for licensure under the Act and establishing the Security Business Fund as a revenue source for the enforcement and administration of the Act. License fees collected under the bill would have to be deposited into that Fund and money left in the Fund at the end of any particular fiscal year could not lapse to the General Fund. This would ensure that the Department had the resources necessary to oversee the private security business without having to use a portion of its General Fund appropriation to do so.

Response: The fee increases proposed by Senate Bill 425 (S-2) are too extreme and unfair. Small businesses could be hard-pressed to come up with the necessary fees and could be driven out of business by the increases. According to testimony before the Senate Judiciary Committee by the Michigan Council of Private Investigators, the Department already has experienced a downturn in the number of license renewals due the increases for the current fiscal year imposed by the Governor's order.

In addition, rather than basing the fee amounts on the type of business, perhaps the fees should be based on the company's number of employees or value of assets. It is unfair, for instance, to require a higher fee of a small corporation than for a sole proprietorship because a licensee structured as a sole proprietorship actually might have many employees and ample assets while a single individual could form a corporation for business purposes.

Opposing Argument

Senate Bill 425 (S-2) should apply not only to contract security providers but to proprietary providers as well. In other words, security companies that contract their services out to others would have to abide by the increased requirements for licensure and the training standards adopted by the Department of State Police, but in-house employees who provide

security services only for their own company are not covered by the Act. By some estimates, this means that up to 60% of the security providers in Michigan would not be affected by the bill. Any mandatory training standards should be applied across the board to all private security providers. Also, if educational and criminal history check requirements were to be upgraded for contract security providers, the same standards should apply to proprietary security providers.

In addition, the bill fails to address either the cost implications for licensees if training standards were mandated or any training that licensees and their employees might already have. If training standards resulted in significant costs to licensees, in addition to their license fees, perhaps the State should help those licensees to pay the cost of meeting the training standards. Also, some licensees and their employees already engage in training even though it is not required by law. They should be credited with meeting all or part of the training standards that would be developed under the bill.

Response: Issues involving the scope of required training, the cost of training, and credit for previous training could be addressed by the Security Provider Advisory Commission proposed by Senate Bill 420 (S-1).

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 420 (S-1)

The bill would have a minimal fiscal impact on the Department of State Police. Support for the activities and costs of the proposed commission could be assumed by existing resources within the Department.

Senate Bill 425 (S-2)

The bill would generate approximately \$300,000 annually in license fee revenue, which the Department of State Police would use to regulate the contractual security guard and alarm industry in the State. Under the current fee structure, some of which is set by Executive Order 2001-9, license fee collections are estimated to reach \$250,000 for the 2001-02 fiscal year. Prior to the executive order, collections from these fees totaled approximately \$100,000 annually. The bill would adjust existing fees as shown in Table

1.

Table 1

Security Business Fee Increases

License - New	Current Law	SB 425 (S-2)
Sole proprietorship	\$200 (statute)	\$1,000
Firm, company, partnership	\$300 (statute)	\$1,500
Alarm contractor	\$500 (statute)	\$1,500
Branch office-security guard	\$50 (statute)	\$250
Branch office-alarm	\$100 (statute)	\$500
License - Renewal		
Sole Proprietorship	\$1,500 (E.O. 2001-9)	\$1,000
Firm, company, partnership	\$1,500 (E.O. 2001-9)	\$1,500
Alarm contractor	\$1,500 (E.O. 2001-9)	\$1,500
Branch office-security guard	\$50 (statute)	\$250
Branch office-alarm	\$100 (statute)	\$500

Provisions of the bill requiring regulatory activities not currently specified in statute could be met successfully by the funds generated under the bill's fee structure and by the regulatory office's current level of 6.0 FTEs.

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.