

PUBLIC EMPLOYEE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK ACT

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House Bill 5254 (reported from committee as substitute H-3)

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Rep. Hank Vaupel

Committee: Judiciary

(Enacted as Public Act 427 of 2018)

Complete to 5-29-18

SUMMARY:

House Bill 5254 would create the Public Employee Fingerprint-Based Criminal History Check Act to require public agencies in the state to develop a written policy ensuring that current and prospective employees who may have access to federal information databases in the course of employment undergo the fingerprint-based criminal history record check required by the Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information. The new act would apply to each agency that determines it must do so to comply with Publication 1075.

The bill would require each *agency* subject to the requirement in Publication 1075 to request the Department of State Police (MSP) to conduct a fingerprint-based criminal history check (hereinafter “criminal history check”) on each current and new full-time or part-time *employee* who may have access to *federal information databases*. For a new employee, the criminal history check would be conducted upon an offer of initial employment. A subsequent criminal history check would not be required for an employee as long as he or she remains employed with no separation from service. (Being laid off or placed on a leave of absence but returning to active service within one year would not count as a separation.) The bill would authorize the MSP to conduct the criminal history checks and would include a check of the state’s and the FBI’s automated fingerprint identification system (AFIS).

Under the bill, *agency* would mean a department of the state or a local department or agency. It would include public departments or agencies in a county, city, village, or township that, in the course of conducting its business, has or maintains access to a *federal information database*—defined as a database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information.

Employee would mean an individual employed by:

- The state of Michigan.
- A county, city, village, or township.
- A private business entity under contract with the state, a county, city, village, or township.

The results of a fingerprint-based criminal history check:

- Would be confidential.
- Would not be subject to disclosure under the Freedom of Information Act (FOIA).
- Could be provided to the IRS or other federal governmental entity as required by federal regulation or law.
- Could only be provided to an agency and could not be shared with a vendor or contractor providing employees to an agency under a contract. The results could be shared between a requesting agency and another agency in the state.
- Could be shared between an agency and civil service staff providing HR services to the agency if the civil service manages HR functions for the agency under an executive order.

Briefly, the bill would also do the following:

- Not require an agency to delay hiring an individual until the investigation is complete. However, require the agency to receive the report from the MSP regarding the criminal history check before assigning the individual to employment.
- Within 30 days of receiving a request by an agency, require the MSP to conduct the criminal history checks and initiate the checks through the FBI.
- Require the MSP to provide a report of the results to the agency.
- Require the report to contain both state and FBI criminal history information.
- Limit the information in the report to be used only for the purpose of evaluating an individual's qualifications for employment.
- Prohibit disclosure, except as required by federal regulation or rule, of the report or its contents to any person not directly involved in evaluating an applicant's or employee's qualifications to begin or maintain access to federal information databases.
- Make a violation of the prohibition against disclosure a misdemeanor punishable by a fine of up to \$10,000.
- Require MSP to store and retain all fingerprints submitted under the bill in an automated fingerprint identification system database that searches against latent fingerprints and provides for an automatic notification if subsequent criminal information matches a set previously submitted. Upon receiving a notification, the MSP would have to immediately notify the requesting agency.
- Allow the fingerprints retained under the bill to be searched against future fingerprint submissions, including latent prints, and for relevant results to be shared with submitting and subscribing entities.
- Require the MSP to forward fingerprints submitted under the bill to the FBI for retention in AFIS, which provides for automatic notification if criminal information matches fingerprints previously submitted to the FBI under the bill. Upon receiving a notification from the FBI, the MSP would have to immediately notify the agency that requested the criminal history check. This provision would not apply unless the MSP were capable of participating in the FBI's automated fingerprint notification system.

FISCAL IMPACT:

The requirements of House Bill 5254 to perform fingerprint-based criminal history background checks on potential employees who will have access to sensitive personal information will create costs for state agencies and local units of government. Each fingerprint-based criminal history background check costs approximately \$42 (\$30 state-level for the Department of State Police (MSP) check, and \$12 federal-level for the Federal Bureau of Investigation (FBI) check). These costs will likely be passed on by the MSP to state agencies and local units of government, which could pass on these costs to the applicants—though House Bill 5254 does not explicitly state that state agencies and local units of government have the authority to do so. House Bill 5254 would likely have no fiscal impact on the MSP, as the \$42 fee defrays the cost of conducting the fingerprint-based background checks, and the costs of maintaining applicant’s fingerprints in the Automated Fingerprint Identification System (AFIS) would be covered by existing appropriations.

The Department of Treasury and the Department of Health and Human Services are likely to have the most employees affected by the proposed requirement. According to the Department of Treasury, approximately 950 department employees and 300 contract employees would be affected, for a total initial cost of \$52,500 based on the \$42 fee. The Department of Treasury has indicated that it plans to absorb the cost through existing resources.

Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected court caseloads and related administrative costs.

POSITIONS:

A representative of the Michigan Department of Treasury testified in support of the bill. (5-22-18)

IDEMIA (global leader in augmented identity) indicated support for the bill. (5-22-18)

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