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SUSPICIOUS ACTIVITY REPORTS BY FINANCIAL INSTITUTIONS

House Bill 4579 as introduced
Sponsor: Rep. Alexander C. Lipsey

House Bill 4580 as introduced
Sponsor: Rep. David Palsrok

House Bill 4581 as introduced
Sponsor: Rep. William J. O'Neil

House Bill 4582 as introduced
Sponsor: Rep. Lorence Wenke

First Analysis (5-7-03)
Committee: Commerce

THE APPARENT PROBLEM:

Federal and state money laundering prohibitions have been in place for many years and financial institutions have had various reporting requirements for transactions involving large sums of money or transactions with overseas banks. However, the events of September 11, 2001 brought these laws under close scrutiny to see if they were effective in stopping the flow of funds used to support terrorist activities. The U.S.A. Patriot Act, enacted in November of 2001, amended federal banking laws to require the filing of transaction reports on specified transactions as a way of monitoring possible money laundering activities of terrorist organizations or individual terrorists. Financial institutions that do not comply with the required reporting criteria may be subject to civil fines of up to \$250,000 per account and criminal penalties of up to \$1 million in fines and/or up to 12 years imprisonment.

In an attempt to provide timely alerts to possible money laundering activities occurring in Michigan, Public Acts 183-185 and Public Act 247 of 2002 were enacted as part of state anti-terrorism legislation. The acts amended various banking laws to require a financial institution to file with the Department of State Police a duplicate copy of any transaction required to be filed under 31 U.S.C. 5313 to 5318 (created by the U.S.A. Patriot Act). The duplicate copy must be filed within 24 hours of when it is filed with the federal authorities. Transaction reports covered by the federal law include currency transaction reports, which are triggered by cash deposits or withdrawals in excess of \$10,000 (though

a bank can file an exemption for commercial businesses who regularly have deposits or withdrawals exceeding the threshold), and suspicious activity reports, which are not triggered by a dollar amount, but by things that look out of the ordinary.

According to a representative of the Michigan State Police, the department is being overwhelmed by the number of transaction reports being transmitted to them on a weekly basis. Reportedly, the department does not have the resources to review the sheer amount of reports it receives, especially since the vast majority do not represent any wrongdoing. It has been suggested that instead of financial institutions transmitting copies of all transaction reports that are required to be reported to federal authorities, that only copies of the suspicious activity reports be sent to the state police. Legislation has been offered to address this concern.

THE CONTENT OF THE BILLS:

Each of the bills would require a specific kind of financial institution to file a suspicious activity report with the Michigan State Police within 24 hours of filing such a report with an agency of the federal government. The provisions would replace existing requirements that financial institutions file a copy of any "transaction report". Each bill would also add new language to a state regulatory statute to specify that a financial institution could file the suspicious activity report with the state police in any manner

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allowed by federal law or regulation or in any other manner acceptable to the state police.

Further, the federal U.S.A. Patriot Act states that financial institutions complying with reporting requirements are not civilly liable to an account holder or member for a disclosure authorized under the federal regulations, or for failure to notify the person involved in the transaction of the disclosure or any other person. A similar provision in the recently enacted legislation specified that except for a violation of the federal reporting requirements, a financial institution, director, officer, employee, or agent of the financial institution is not liable in any civil or governmental action for the filing of a copy of the transaction report with the state police or for the failure to notify the account holder or any other person of the filing. Under the bill, the term "transaction report" would be replaced with the term "suspicious activity report." In addition, the bill would limit the civil immunity to reports filed under Section 5318g of the U.S. Code (31 U.S.C. 5318), which pertains exclusively to the filing of suspicious activity reports.

House Bill 4579 would similarly amend the Savings and Loan Act (MCL 491.1135). House Bill 4580 would amend the Banking Code (MCL 487.14406). House Bill 4581 would amend the Savings Bank Act (MCL 487.3514). House Bill 4582 would amend the Credit Union Act (MCL 490.16c).

[According to information from the Financial Crimes Enforcement Network in the U.S. Department of Treasury, all financial institutions operating in the United States are required to make suspicious activity reports (SARs) following the discovery of insider abuse involving any amount; violations aggregating \$5,000 or more where a suspect can be identified; violations aggregating \$25,000 or more regardless of a potential suspect; or transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.]

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have no significant fiscal impact on the state or on local units of government. (HFA fiscal analysis dated 5-6-03)

ARGUMENTS:

For:

The bills would lessen the burden on financial institutions and on the Michigan State Police by reducing the number of reports required to be copied and sent to the state police. Under federal law, financial institutions are required to report on banking transactions meeting specified criteria. The U.S. Department of Treasury can then monitor this information for patterns that may reveal criminal activity such as money laundering by terrorist organizations. Currently, state law requires copies of all transaction reports to be sent to the Department of State Police. Reportedly, however, the department is being overwhelmed by the tens of thousands of transaction reports they receive each month. As the vast majority of transaction reports do not represent illegal activities, it is believed that amending the law to require the financial institutions to file a duplicate copy of only the suspicious activity reports should be sufficient to provide the protection intended by the original legislation.

The bills would also allow the suspicious activity reports to be filed with the state police in any manner acceptable to the state police. This has been described as allowing, for example, electronic or computer transmission of information at the discretion of law enforcement officials.

POSITIONS:

The Department of State Police has indicated support for the bills. (5-6-03)

The Michigan Bankers Association has indicated support for the bills. (5-6-03)

The Michigan Credit Union League has indicated support for the bills. (5-6-03)

Analyst: C. Couch

■ 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.