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BILL ANALYSIS

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House Bill 4045 (Substitute H-1 as passed by the House)
Sponsor: Representative Kathy Schmaltz
House Committee: Judiciary
Senate Committee: Committee of the Whole

Date Completed: 3-23-23

INTRODUCTION

The bill would enact the "Volunteer Employee Criminal History System Act" to create the Volunteer Employee Criminal History System Program. The Program would authorize a qualified entity, such as a business that provides care placement services, to submit to the Department of State Police (MSP) a request for a covered individual's (e.g., an employee or volunteer of the entity providing care) criminal history record information. A qualified entity could use the information only to determine the fitness of a covered individual. The bill would require the MSP to administer the Program, unless the Legislature did not appropriate sufficient funds, and would allow the MSP to charge a reasonable fee for an information request under the Program.

The bill would take effect May 1, 2023.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

The bill is similar to House Bill 6475 from the 2021-2022 Legislative Session.

FISCAL IMPACT

The bill would have no fiscal impact on the MSP as the bill would formally authorize the MSP to continue activities that it already conducts and that are funded under current Department appropriations. Under the program, the bill would require a payment to the MSP for conducting a national and State criminal history record information check. That fee could not more than the actual and reasonable cost of conducting the check. The current fee of \$30 includes \$16.75 for a State criminal history check and \$13.25 for the Federal check.

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CONTENT

The bill would enact the "Volunteer Employee Criminal History System Act" to do the following:

- Create the Program in the MSP for the purpose of authorizing a national and State criminal history record information of a qualified entity's covered individuals.
- Require the MSP to develop the application, approval, and compliance process and standards necessary to operate and manage the Program.
- Allow a qualified entity to submit a request to the MSP for a covered individual's national and State criminal history record information under the Program.
- Require a qualified entity that submitted a request to register with the MSP.
- Allow a qualified entity to participate in a rap back program.
- Allow a qualified entity to require a covered individual to submit the individual's fingerprints for the Program.
- Specify that information received under the Act could be used by the qualified entity only for the purpose of determining the fitness of a covered individual.
- Require a submission to the MSP to include a covered individual's fingerprints and specified information, such as name, address, and date of birth.
- Require the MSP to store and retain all fingerprints submitted under the Act in an automated fingerprint identification system database that searched against latent fingerprints.
- Allow the MSP to charge a fee for a national and State criminal history record information conducted under the Act that did not exceed the actual and reasonable cost of conducting the check
- Specify that the MSP would not be required to administer the Program unless the Legislature appropriated sufficient funds.

Definitions

"Criminal history record information" would mean that term as defined in Section 1a of Public Act 289 of 1925: name; date of birth; 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.

"Qualified entity" would mean a business or organization, whether public, private, operated for profit, or operated not for profit that provides care or care placement services. A qualified entity includes a business or organization that licenses or certifies others to provide care or care placement services.

"Covered individual" would mean an individual who meets any of the following requirements:

- Is employed by a qualified entity and has, seeks to have, or may have supervised or unsupervised access to a child, an elderly individual, or individual with a disability for whom the qualified entity provides care or care placement services.
- Is a volunteer of a qualified entity and has, seeks to have, or may have supervised or unsupervised access to a child, an elderly individual, or individual with a disability for whom the qualified entity provides care or care placement services.
- Owns, operates, or seeks to own or operate a qualified entity.

"Care or care placement services" would mean the provision of care, treatment, education, training, instruction, supervision, or recreation to a child, an elderly individual, or an individual

with a disability. "Child" would mean an individual who is less than 18 years of age and is not emancipated by operation of law. "Elderly individual" would mean an individual who is 65 years of age or older. "Individual with a disability" would mean an individual with a mental or physical impairment who requires assistance to perform one or more daily living tasks.

"Rap back program" would mean a State or Federal record of arrest and prosecution background program that enables qualified entities to receive ongoing status notifications of any criminal history reported on covered individuals whose fingerprints are registered in the system thereby eliminating the need for repeated background checks on covered individuals by qualified entities.

Program's Establishment

The proposed Act would create the Program in the MSP for the purpose of authorizing a national and State criminal history record information of a qualified entity's covered individuals. The Act would require the MSP to develop the application, approval, and compliance process and standards necessary to operate and manage the Program and develop the application form and any other forms required for a qualified entity's registration and participation in the program.

Qualified Entity's Request

Under the Act, a qualified entity could submit a request to the MSP for a covered individual's national and State criminal history record information under the Program. The request, for each covered individual, would have to include a copy of the covered individual's signed and submitted statement required as described below and the covered individual's fingerprints.

A qualified entity that submitted a request for a covered individual's national and State criminal history record information would have to register with the MSP. As part of the registration process, the qualified entity would have to agree to comply with State and Federal law, including the National Child Protection Act, which requires the reporting of child abuse crimes to the national criminal history background check system. The MSP, in its sole discretion, could audit a registered qualified entity to ensure that it was complying with State and Federal law, including the National Child Protection Act.

The proposed Act also would allow a qualified entity to participate in a rap back program. A qualified entity that participated would have to notify a covered individual that was subject to a national and State criminal history record information that the individual's fingerprints could be retained by the MSP's automated fingerprint identification system and the Federal Bureau of Investigation (FBI) for all purposes authorized for fingerprint submissions subject to ongoing monitoring.

If a Federal or State law required a qualified entity to apply screening criteria to the national and State criminal history record information of a covered individual, including any right to contest or request an exemption from disqualification, the qualified entity would have to apply the screening criteria under that other law to the national and State criminal history record information received for a covered individual that is subject to the required screening.

Covered Individual & Qualified Entity's Request

Under the Act, a qualified entity could require a covered individual to submit the individual's fingerprints to determine whether the national and State criminal history record information showed that the covered individual had been convicted of or was under pending indictment for any crime that bore on the individual's fitness to be responsible for the safety and well-

being of a child, an elderly individual, or individual with a disability. The determination of the covered individual's fitness would have to be made solely by the qualified entity. The proposed Act would not require the MSP to make a fitness determination on behalf of a qualified entity.

The national and State criminal history record information received could be used by the qualified entity only for the purpose of determining the fitness of a covered individual, as provided by the Act.

The Act would prohibit a qualified entity from submitting a request for a national and State criminal history record information to the MSP unless the covered individual had provided the individual's fingerprints and a completed and signed written statement to the qualified entity that included all the following:

- The covered individual's name, address, and date of birth as it appeared on a valid identification document.
- Notice that the covered individual's fingerprints could be used to conduct a national and State criminal history record information of the covered individual and that the criminal history record could be used by the qualified entity to deny the individual's supervised or unsupervised access to a child, an elderly individual, or individual with a disability for whom the qualified entity provides care or care placement services.
- A waiver permitting the qualified entity to request and receive the national and State criminal history record information of a covered individual to determine the individual's fitness to provide care or care placement services for a child, an elderly individual, or individual with a disability.
- A disclosure stating whether the covered individual had ever been convicted or was the subject of pending charges for a criminal offense and, if convicted, a description of the offense and the result of the conviction.
- Notice of the covered individual's right to obtain a copy of any background screening report, including the national and State criminal history record information, if any, contained in the report, and of the right to challenge the accuracy or completeness of any information contained in the report and to obtain a prompt determination as to the validity of the challenge before a final determination regarding the individual's fitness was made by the qualified entity reviewing the national and State criminal history record information.

The Act specifies that "identification document", as used above, would mean a document that is intended or commonly accepted for the purpose of identifying an individual and is made or issued by or under the authority of the United States government, a state, political subdivision of a state, sponsoring entity of an event designated as a special event of national significance, foreign government, political subdivision of a foreign government, or an international governmental or an international quasi-governmental organization.

A qualified entity would have to maintain in its records the statement provided under subsection that was completed and signed by the covered individual. The Act also specifies that a covered individual could challenge the information contained in the national and State criminal history record information only as provided in Federal regulations.

MSP Requirements

The Act would require the MSP to store and retain all fingerprints submitted under the Act in an automated fingerprint identification system database that searched against latent fingerprints. The MSP also would have to forward all fingerprints submitted to it under the Act to the FBI Investigation to be retained in the next generation identification system or its successor system.

The MSP would have to provide directly to the qualified entity the State criminal history record information that was not exempt from disclosure under Section 2a of the fingerprinting Law, or otherwise confidential under State or Federal law. The MSP would have to provide directly to the qualified entity the national and state criminal history record information as authorized by law and the covered individual's signed and written statement.

(Section 2a of the fingerprinting Law specifies that all criminal history record information that is associated with a State identification number and is supported by biometric data must be disseminated in response to either a fingerprint-based search or a name-based search of the criminal history record information database. The Section does not allow the dissemination of criminal history record information that is nonpublic or is prohibited by law from being disseminated.)

The Act would allow the MSP to charge a fee for a national and State criminal history record information conducted under the Act that did not exceed the actual and reasonable cost of conducting the check, plus the amount prescribed by the FBI for the national criminal history record information.

Other Provisions

The bill specifies that the proposed Act would not do any of the following:

- Create additional duties or obligations for a qualified entity to obtain the national and State criminal history record information authorized under the Act.
- Relieve a qualified entity of its duty to obtain a covered individual's criminal history or any other information in accordance with the requirements of any other applicable law.

The State, a political subdivision of the State, or any agency, officer, or employee of the State or a political subdivision would not be liable for damages to a covered individual for the timely provision of an accurate national and State criminal history record information requested under the Act.

The Program would not create an entitlement or right to use the program. The MSP would not be required to administer the Program unless the Legislature appropriated sufficient funds for the Program. The MSP could administer the program subject to any limitations it considered necessary or appropriate in the absence of the Legislature appropriating funds for the Program.

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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.