LAW ENFORCEMENT OFFICER SEPARATION OF SERVICE RECORD ACT

Act 128 of 2017

AN ACT to require the creation and maintenance of certain law enforcement officer personnel records; to prescribe the information that may be contained in the personnel records; to permit law enforcement officers to review the personnel records; and to provide for immunity from civil liability to law enforcement agencies in certain circumstances.

History: 2017, Act 128, Eff. Jan. 15, 2018

The People of the State of Michigan enact:

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28.561 Short title.

Sec. 1.

This act shall be known and may be cited as the "law enforcement officer separation of service record act".

History: 2017, Act 128, Eff. Jan. 15, 2018

28.562 Definitions.

Sec. 2.

As used in this act:

(a) "Commission" means the Michigan commission on law enforcement standards created in section 3 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.603.

(b) "Former employing law enforcement agency" means a law enforcement agency in this state that was the employer of, or that issued an oath of office to, a law enforcement officer licensed under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, and that was required to maintain an employment history record for that law enforcement officer under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

History: 2017, Act 128, Eff. Jan. 15, 2018

28.563 Separation of service; maintenance of record regarding reasons and circumstances; review by separating law enforcement officer; request for correction or removal of portion of record; submission of written statement by separating law enforcement officer.

Sec. 3.

(1) In addition to the employment history record required to be maintained under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, by a law enforcement agency for each officer it employs or for each officer to whom the chief of police of a village, city, or township or county sheriff has administered an oath of office, a law enforcement agency shall maintain a record regarding the reason or reasons for, and circumstances surrounding, a separation of service for each law enforcement officer for whom the law enforcement agency is required to maintain an employment history record under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, who subsequently separates from the law

enforcement agency or from his or her employment as a law enforcement officer requiring the administration of an oath of office under section 9c or 9d of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.609c and 28.609d.

(2) The law enforcement agency shall allow a separating law enforcement officer to review a record prepared under subsection (1) upon the request of the separating officer.

(3) If a separating law enforcement officer disagrees with the accuracy of the contents of the record prepared under subsection (1), he or she may request the correction or removal of the portion of the record he or she believes is incorrect. If the law enforcement agency and the separating law enforcement officer cannot reach an agreement on the contents of the record prepared under subsection (1), the separating law enforcement officer may submit a written statement explaining the separating law enforcement officer's position and the basis for his or her disagreement. If a separating law enforcement officer submits a written statement under this subsection, it must be kept with the record required under subsection (1) and provided with the rest of the contents of the record as required under section 5.

History: 2017, Act 128, Eff. Jan. 15, 2018

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28.565 Reemployment of law enforcement officer; waiver allowing contact with former employing law enforcement agency; execution of waiver; immunity from civil liability; copy to Michigan commission on law enforcement standards.

Sec. 5.

(1) A law enforcement officer who is licensed or who was previously licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, and was previously employed as a law enforcement officer in this state, who separates from his or her employing law enforcement agency or from employment as a law enforcement officer to whom an oath of office has been administered under section 9c or 9d of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.609c and 28.609d, and who subsequently seeks to become reemployed as a law enforcement officer in this state, shall provide to the prospective employing law enforcement agency, upon receiving a conditional offer of employment, a signed waiver. A waiver executed under this subsection must expressly allow the prospective employing law enforcement agency to contact the law enforcement officer's former employing law enforcement agency or agencies and seek a copy of the record regarding the reason or reasons for, and circumstances surrounding, his or her separation of service created by his or her former employing law enforcement agency or agencies under section 3.

(2) A waiver under subsection (1) must be executed on a form provided by the commission to all law enforcement agencies in this state that employ or administer oaths of office to law enforcement officers licensed under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615. The prospective employing law enforcement agency is responsible for providing the waiver executed under subsection (1) to the former employing law enforcement agency or agencies.

(3) Upon receipt of the waiver executed under subsection (1), a former employing law enforcement agency shall provide, along with other information required or allowed to be provided by law, a copy of the record required under section 3 to the prospective employing law enforcement agency.

(4) A prospective employing law enforcement agency shall not hire a law enforcement officer to whom subsection (1) applies unless the prospective employing law enforcement agency receives the record created under section 3 from the law enforcement officer's former employing law enforcement agency or agencies.

(5) A former employing law enforcement agency that discloses information under this section in good faith after receipt of a waiver executed under subsection (1) is immune from civil liability for the disclosure. A former employing law enforcement agency is presumed to be acting in good faith at the time of a disclosure under this section unless a preponderance of the evidence establishes 1 or more of the following:

(a) That the former employing law enforcement agency knew that the information disclosed was false or misleading.

(b) That the former employing law enforcement agency disclosed the information with a reckless disregard for the truth.

(c) That the disclosure was specifically prohibited by a state or federal statute.

(6) A prospective employing law enforcement agency that receives a record maintained under section 3 from the law enforcement officer's former employing law enforcement agency or agencies shall, upon written request from the commission, provide a copy of the record requested to the commission for the purpose of determining compliance with licensing standards and procedures under the Michigan commission on law enforcement standards

act, 1965 PA 203, MCL 28.601 to 28.615.

(7) A law enforcement agency that is required to maintain a record under section 3 shall, upon written request from the commission, provide a copy of the record requested to the commission for the purpose of determining compliance with licensing standards and procedures under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

History: 2017, Act 128, Eff. Jan. 15, 2018 ;-- Am. 2018, Act 522, Eff. Mar. 28, 2019

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