

Legislative Analysis



LAW ENFORCEMENT TRAINING AND OTHER OPTIONAL EDUCATION REPAYMENT AGREEMENTS

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Senate Bill 32 (H-2) as passed by the House

Sponsor: Sen. Sylvia Santana

House Committee: Judiciary

Senate Committee: Civil Rights, Judiciary, and Public Safety

Complete to 5-18-23

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

SUMMARY:

Senate Bill 32 would amend 1978 PA 390, which regulates the payment of wages and fringe benefits to employees and prescribes rights and responsibilities of employers and employees. Generally speaking, the act prohibits employers and their agents or representatives from requiring or receiving from an employee—whether directly or indirectly—a fee, gift, tip, gratuity, or other remuneration or consideration as a condition of employment or continuation of employment.¹

The bill would allow a law enforcement agency to enter into an agreement with an employee that allows the agency to collect reimbursement from the employee for all or part of the cost of the employee's law enforcement training academy, based on the length of service, if the employee voluntarily leaves employment with the agency within four years after their training ended.

The bill also would allow any employer to collect remuneration or consideration from an employee under an optional education repayment agreement under certain conditions.

Law enforcement training academy cost agreements

Specifically, under the bill, a *law enforcement agency* could collect remuneration or consideration from an employee under a signed agreement entered into on or after the bill's effective date for the cost of the employee's *law enforcement training academy* if the employee voluntarily leaves employment, as follows:

- 100% of the cost of the law enforcement training, up to and not exceeding the employee's salary for the first year of employment, if the employee leaves employment *not more than one year* after the date the employee's law enforcement training academy ended.
- 75% of the cost of the law enforcement training, up to and not exceeding the employee's salary for the first year of employment, if the employee leaves employment *more than one year but less than two years* after the date the employee's law enforcement training academy ended.
- 50% of the cost of the law enforcement training, up to and not exceeding the employee's salary for the first year of employment, if the employee leaves employment

¹ A violation is a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$500, or both, and may subject an employer to restitution, penalties, damages, or costs under section 18 of the act. Section 351 of the Michigan Penal Code also contains the same prohibition and makes a violation a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$500, or both.

two years or more but less than three years after the date the employee's law enforcement training academy ended.

- 25% of the cost of the law enforcement training, up to and not exceeding the employee's salary for the first year of employment, if the employee leaves employment *three years or more but less than four years* after the date the employee's law enforcement training academy ended.

An agreement would have to contain the following terms:

- That the cost of a law enforcement training academy required for the employee to obtain a license under the Michigan Commission on Law Enforcement Standards (MCOLES) Act will be paid by the employer.
- The conditions under which the payment will be provided and under which repayment to the employer by the employee or another person may be required.
- That remuneration or consideration from the employee will be waived by the employer if the employee is not required to be licensed as a law enforcement employee under the MCOLES Act within any of the following:
 - One year after leaving employment with the employer, if the employee voluntarily left employment with the agency not more than one year after the date the employee's law enforcement training academy ended.
 - Two years after leaving employment with the employer, if the employee voluntarily left employment more than one year and less than four years after the date the employee's law enforcement training academy ended.

Law enforcement agency would mean an entity that is established and maintained in accordance with Michigan law and is authorized by Michigan law to appoint or employ law enforcement officers as defined in the MCOLES Act.

Law enforcement training academy would mean any of the following:²

- An agency basic law enforcement training academy (a law enforcement agency that is approved by MCOLES to provide a course of study for qualified recruits employed by that law enforcement agency).
- A preservice college basic law enforcement training academy (an MCOLES-approved training and education program offered by an accredited community college, college, or university that incorporates the MCOLES-mandated curriculum in the academic course of study).
- A regional basic law enforcement training academy (a city, county, township, village, corporation, community college, college, university, or state agency that is approved by MCOLES to offer a basic law enforcement training program to preservice and employed recruits).

Other optional education repayment agreements

The bill also would allow any employer (not just law enforcement agencies) to collect remuneration or consideration under an optional education repayment agreement in which the employer offers to fund an employee's education with the understanding that the employee

² The definitions of ***law enforcement training academy*** and ***law enforcement agency*** are those found in the MCOLES Act. The descriptions of the different training academies are from R 28.14301 of the Michigan Administrative Code, promulgated by MCOLES under authority of that act. For a list of specific training academies and programs, see <https://www.michigan.gov/mcoles/standard-training/law-enforcement-training-academies-and-programs>

will repay the costs incurred unless the employee remains with the employer for a specific period.³

[**Note:** Unlike the provision related to law enforcement agencies, which is triggered if an employee *voluntarily* leaves employment during a specified period, this provision is not restricted only to situations where an employee *voluntarily* leaves employment. As written, an agreement could require an employee to repay education costs “unless the employee remains with the employer for a specific period.” This would appear to allow an employer to claim education costs from an employee who never expected to pay them but was downsized or fired before the end of the time period. It would also appear to allow bad actors to fire employees on the last day of an agreement in order to claim that money. It is unclear if such an agreement could require costs to be repaid if the employee died.]

MCL 408.478

The bill cannot take effect unless House Bill 4176 is also enacted.

BACKGROUND:

Senate Bill 32 (H-2) is similar to House Bill 4176 as reported from House committee. Those bills are similar to the House-passed version of HB 5130 of the 2021-22 legislative session.

BRIEF DISCUSSION:

Many police departments in the state face a declining pool of qualified applicants to replace officers leaving the force due to retirement, career changes, or other reasons. Generally speaking, a person seeking a career as a law enforcement officer either attends a program offered by the Michigan Department of State Police, a college- or university-based academic program, or a training program offered by a municipality. Completion of a training program is a necessary step for licensure under the MCOLES Act. However, such training is not cheap. Often, a law enforcement agency sponsors a candidate to attend a training program only to have the individual, shortly after graduation, leave employment with the law enforcement agency that paid for the training to accept a position with a different agency or decide against a career in law enforcement. For some law enforcement agencies, the number of candidates they have sponsored who have left their employment shortly after graduation from a training academy is significant and reduces resources that could be focused on increasing public safety.

The bill would address the situation by creating an explicit exception to a prohibition in law meant to prevent a potential employer from demanding a fee, gift, or other consideration of an applicant for employment in order to be hired. The bill would allow a law enforcement agency and a candidate for employment with that agency to enter into a contract that creates clear parameters as to how much of the cost of attending a training academy a new recruit would have to reimburse the sponsoring law enforcement agency if the recruit left before the recruit

³ This provision would appear to codify a portion of a Michigan Supreme Court opinion in which the court noted that an employer-sponsored program to fund an employee’s education “with the understanding that the employees will repay, unless they remain with the employer for a specific period” does not violate the prohibition in subsection 8(1) of 1978 PA 390 (or section 351 of the Michigan Penal Code). See *Sands Appliance Services v Wilson*, 463 Mich 231, 248 (2000). https://scholar.google.com/scholar_case?case=13190577159852212125

completed four years of employment. It is hoped that the bill would both grow interest in a career in law enforcement by encouraging more law enforcement agencies to pay for a candidate's training and also create a fairer system where some municipalities are not carrying more of the training costs of new recruits than others.

FISCAL IMPACT:

Senate Bill 32 would provide an additional revenue source for law enforcement agencies, by allowing the agencies to receive remuneration from employees voluntarily leaving prior to completing four years of service, compensating the agencies for a tiered portion of the cost of the employee's participation in a law enforcement training academy. This revenue would only be realized in the event that an employee separates from a law enforcement agency during the time parameters established under the bill, and if the employee has a signed agreement with the law enforcement agency.

POSITIONS:

A representative of the City of Detroit testified in support of the bill. (4-19-23)

A representative of the Detroit Police Department testified in support of the bill. (4-19-23)

The Michigan Municipal League indicated support for the bill. (5-10-23)

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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.