



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

This Revised Analysis Replaces the Analysis Dated 11-14-90

FIREARM REGULATIONS

**House Bill 5437 (Substitute H-3) House Bill
6010 (Substitute H-2)**
Sponsor: Rep. Jerry C. Bartnik

House Bill 6009 (Substitute H-2)
Sponsor: Rep. Shirley Johnson

House Bill 5366 (Substitute H-2)
Sponsor: Rep. Bill Martin

Committee: Tourism, Fisheries, and Wildlife

Revised First Analysis (12-7-90)

THE APPARENT PROBLEM:

Currently local units of government have the authority to enact and enforce gun control ordinances. Recently, the cities of Flint and Ann Arbor narrowly defeated gun control ordinances, and reportedly, there is a proliferation of local regulation regarding firearm ownership, sale, and possession, including ordinances in effect in Detroit and East Lansing. The narrow defeat of these ordinances has resulted in concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances. Many fear that the enactment of several gun control ordinances will make it hard for officers to enforce the laws and that gun enthusiasts will be unfairly prosecuted for not knowing the laws and the areas to which they apply. Legislation has been introduced to address this problem. In addition, legislation has been introduced to strengthen gun control enforcement provisions while providing more convenience for gun collectors and others who are in the habit of purchasing several pistols at the same time.

THE CONTENT OF THE BILLS:

House Bill 5437 would create an act to prohibit a local unit of government from regulating, taxing, enacting, or enforcing any ordinance pertaining to pistols and firearms and their ammunition, except as provided by federal or state law. However, the bill would allow a local unit of government to prohibit or regulate conduct with a pistol or other firearm that was a criminal offense under state law and to prohibit or regulate the transportation, carrying, or possession of pistols and other firearms by employees of the local unit of government in the course of their employment.

The bill is tie-barred to House Bills 5366, 6009, and 6010.

House Bill 5366 would amend the Michigan Penal Code to prohibit a person from knowingly manufacturing armor piercing ammunition. Violators of the bill would be guilty of a felony, punishable by imprisonment for up to four years, or a fine of up to \$2,000, or both. The bill would exempt a person from the prohibition if: the ammunition was for use by a state or the federal government or a political subdivision thereof; the ammunition was for exportation to another country; or the ammunition was for testing or experimentation by the secretary of the treasury of the U.S. or his or her delegate. "Armor piercing

ammunition" would not include the following: a shotgun that was required by federal or state law to be used for hunting; a frangible projectile designed for target shooting; a projectile that the Department of State Police found was primarily intended to be used for sporting purposes; or a projectile core that the department found was intended to be used for industrial purposes. The bill would provide an exemption for a projectile or projectile core if the item was exempted under federal law.

The bill is tie-barred to House Bills 5437, 6009, and 6010.

MCL 750.224c

House Bill 6009 would amend current law to revise the requirements for the sale or purchase of firearms. Under current law, a person must obtain a license before purchasing, carrying, or transporting a pistol. The bill would prohibit the granting of a license if the person was under the age of 21 and was purchasing the firearm from a federally licensed firearm dealer. The law prohibits the granting of a license if the person has been convicted of a felony or has been incarcerated as a result of a felony within the eight-year period immediately preceding the date of application. The bill would prohibit the granting of a license if the person had been convicted of a crime punishable by imprisonment for more than one year. However, this provision would not apply to a conviction that had been set aside or expunged, or for which the person had been pardoned, unless the expungement, order, or pardon expressly prohibited the person from shipping, transporting, possessing or receiving firearms. A person who was prohibited from receiving a license due to conviction for a crime punishable by imprisonment for more than one year could apply to the director of the Department of State Police for relief from the prohibition. The director could grant relief if the applicant showed that the circumstances regarding the conviction and the applicant's record and reputation were such that the applicant would not be likely to act in a manner dangerous to the public safety and that granting relief would not be contrary to the public interest. An applicant could seek judicial review of a denial by the director in circuit court.

Current law specifies a licensing process for the purchase of a pistol. Under the law, the purchaser of a pistol may only obtain one license per pistol. Under the bill, a licensing authority may

H.B. 5366, 5437, 6009 & 6010 (12-7-90) PAGE 1

OVER

issue a license in the form of a pistol acquisition certificate to a pistol purchaser. The certificate could be used by the person to purchase one or more pistols. The licensing authority would determine the number of pistols that could be purchased, and the number would be specified on the certificate. The certificate would be valid for three years after the date of issuance and would be revoked when the person no longer met the eligibility requirements for a license. The bill would specify that a person who purchased the maximum number of pistols permitted by a license could purchase additional pistols under additional licenses.

Currently, owners and others in possession of a pistol who reside in a city, township, or village with an organized police department must present the pistol to an authority within the department for a safety inspection. If the person resides in an area not included within a city, township, or village with a police department, the person would present the pistol to the county sheriff. The bill would specify that a person who presented a pistol for inspection would have to ensure that the pistol was unloaded and equipped with a trigger lock or other disabling mechanism or was enclosed in a locked container when the pistol was presented. A person who violated the bill would be responsible for a civil violation and could be fined up to \$50.

The bill is tie-barred to House Bills 5366, 5437, and 6010.

MCL 28.422 and 28.429

House Bill 6010 would amend the Michigan Penal Code to add certain criminal violations involving firearms and provide for penalties.

Sale of firearms. The bill would prohibit a person from selling a firearm or ammunition to a purchaser the seller knew was under indictment for, or had been convicted of, a crime punishable by imprisonment for more than one year. The provision would not apply to a purchaser who was a licensed firearm or ammunition seller during the term of the indictment until any conviction, nor would the provision apply to a purchaser who was granted relief by pardon or an expungement. A person who violated the provision would be guilty of a felony, punishable by imprisonment for up to ten years or a fine of up to \$5,000 or both.

Possession of a firearm during commission of a felony. The code establishes penalties for a person who has possession of a firearm during commission or attempt of a felony. Exceptions to the provision are granted when the primary felony involves the carrying of a concealed weapon or the unlawful possession of a weapon. The bill would amend the act to provide an exception to the provision when the primary crime is the illegal sale of pistols.

Penalties for violations involving firearms. A person who possessed a firearm with altered markings during the commission or attempt of a felony would be guilty of a felony and imprisoned for four years. Upon a second conviction under this provision the person would be imprisoned for ten years, and a third or subsequent conviction would result in imprisonment for 20 years. The provision would not apply when the primary crime involved the carrying of a concealed weapon, the selling of a firearm or ammunition to a person the seller knows is under indictment for or has been convicted of a crime punishable by imprisonment for more than one year, the unlawful possession of a weapon, or the alteration, removal or obliteration of a mark or the number on a firearm.

The following two violations would also result in imprisonment for four years for the first felony conviction, ten years for the

second and 20 years for the third or subsequent felony conviction with the same exemption as the provision above:

- the carrying or possession of a shotgun equipped with a rotary magazine capable of holding more than 9 rounds of ammunition at the time of the commission or attempt of a felony;
- the possession of a firearm at the time of commission or attempt of a felony regarding the distribution, manufacture, or delivery of a controlled substance, prescription form, or counterfeit prescription form.

Use of body armor during crimes. Under the bill, a person who committed or attempted to commit a crime involving a violent act or a threat of a violent act against another person while wearing body armor would be guilty of a felony. The bill would define the term "body armor" to mean clothing or a device designed or intended to protect the person or a portion of the person's body from injury caused by a firearm.

Pistol purchase provisions and safety inspections. Under the act, a person who fails to have a pistol inspected or who purchases a pistol without a license is guilty of a misdemeanor. In addition, a person who intentionally makes a false statement on an application for a license is guilty of a misdemeanor. Under the bill, the misdemeanors above would be punishable by imprisonment for up to 90 days, a fine of up to \$100, or both. In addition, the provision regarding failure to purchase a license would not apply to a person who obtained a pistol in violation of the safety or licensing requirement before the effective date of the bill, who had not been convicted of that violation, and who obtained a license or had the pistol inspected as required within 90 days after the effective date of the bill. A person who attempted to use a false identification to purchase a firearm would also be guilty of a misdemeanor punishable by 90 days in jail, a fine of up to \$100 or both.

Discharging a firearm. A person who intentionally discharged a firearm from a motor vehicle in a manner endangering the safety of others, or who discharged a firearm in a facility that he or she had reason to believe was occupied would be guilty of a felony punishable by imprisonment for up to four years, or a fine of up to \$2,000, or both. A person who intentionally discharged a firearm at a motor vehicle that he or she had reason to believe was an emergency or law enforcement vehicle would be guilty of a felony punishable by imprisonment for up to four years, or a fine of up to \$2,000, or both.

Stolen firearms. Under the bill, a person who committed larceny by stealing the firearm of another person would be guilty of a felony punishable by imprisonment for up to five years, a fine of up to \$2,500, or both. A person who transported or shipped a stolen firearm or stolen ammunition, knowing that the item was stolen, would be guilty of a felony punishable by imprisonment for up to ten years, a fine of up to \$5,000, or both. A person who received, concealed, stored, bartered, sold, disposed of, pledged, or accepted as security for a loan a stolen firearm or ammunition, knowing that the item was stolen, would be guilty of a felony punishable by imprisonment for up to ten years or a fine of up to \$5,000 or both.

The bill is tie-barred to House Bill 6009.

MCL 750.223 et al.

BACKGROUND INFORMATION:

Legislation addressing the local preemption provision and the strengthening of gun control provisions has been introduced in both the House and Senate during the past few sessions, and Senate Bill 179 of 1987 regarding local preemption passed the Senate last session.

FISCAL IMPLICATIONS:

Fiscal information is not available. (11-13-90)

ARGUMENTS:

For:

If local units continue to have the authority to enact and enforce gun control ordinances, many gun enthusiasts may be unreasonably prosecuted for violation of local ordinances. House Bill 5437 would provide uniformity of firearm laws in Michigan. Citizens and legal firearm owners are very mobile. Some gun owners who used to live in rural areas no longer have the luxury of shooting on their own property due to development. Therefore, in order to target practice or to hunt they have to travel to official ranges. It is extremely unfair to subject them to inconsistent laws that may not be compatible with hunting or target practice. In addition, it is impossible for a hunter traveling in northern Michigan to know if he or she is violating local transport or firearm use laws. It's much easier for sportspersons to obey and police to enforce a uniform state law than a patchwork of varying and potentially conflicting local ordinances. Many states have enacted similar legislation preempting local authority.

Against:

The bill addresses a hypothetical situation and takes away communities' right to regulate themselves in an appropriate manner. Some local units may not require a local ordinance strengthening gun control provisions. However, some areas feel that the ability to pass local gun control ordinances is vital to the safety of their community. Under the bill communities would have no discretion to address the needs of the citizens in their locality. In addition, while it may be true that a variety of local ordinances could create unreasonable problems for gun owners, not all types of firearm regulations would actually contribute to the situation. For example, ordinances mandating that a person take a safety course which detailed the responsibilities of gun ownership before the person purchased a license to buy a handgun, and other ordinances which conditioned the issuance of a permit on the absence of convictions for narcotics or alcohol offenses, could lead to increased safety in a community and would have no effect on individuals who had already received a permit from that or another jurisdiction.

In addition, the bill allows local units to regulate firearms only in a manner consistent with federal and state law. However, according to testimony before the House Conservation, Recreation, and Environment committee, state law does not prohibit the carrying of an unconcealed loaded firearm. Most, if not all, local units have ordinances prohibiting the carrying of a loaded unconcealed firearm, but those ordinances would be rendered void by the bill. Some feel that the bill would inadvertently allow the carrying of loaded unconcealed weapons.

For:

House Bill 6009 would lengthen the amount of time a person could have a license to purchase a pistol. The bill would make it more convenient for gun collectors and others who are familiar to police and have a reputation for safely handling firearms to purchase pistols. However, the purchasers would still be subject to a background check when they were initially applying for the pistol acquisition license.

Against:

The act prohibits the sale of pistols to convicted felons. However, the bill does not specify how law enforcement officers would determine whether a person was a convicted felon when presented with a seemingly valid pistol acquisition license if a person was convicted of a felony after receiving a pistol acquisition license. In addition, if a background check was made on the person attempting the purchase of a pistol, it is not clear if the check would include information from other states.

For:

House Bills 5366, 6009, and 6010 would strengthen state enforcement provisions regarding firearms. Although many of the provisions in the bills have already been mandated by federal law, the provisions are still laudatory and will provide consistency regarding state and federal treatment of firearms.

POSITIONS:

The National Rifle Association supports the bills. (11-9-90)

The Department of Natural Resources supports House Bill 5437. (11-9-90)

The office of the Lapeer County Sheriff supports the concept of the bills. (11-13-90)

The Department of State Police supports House Bill 6010, supports the concept of House Bill 5366 but would prefer that the bill also regulate the use, possession, and distribution of armor piercing ammunition, and opposes House Bill 6009. (11-13-90)

The Greater Detroit Chamber of Commerce supports House Bill 5366, takes no position on House Bills 6009 and 6010, and is extremely opposed to House Bill 5437. (11-9-90)

The Michigan Municipal League takes no position on House Bills 6009 and 6010, and opposes House Bill 5437. (11-9-90)

The Michigan Association of Chiefs of Police opposes House Bills 5437 and 5366. (11-13-90)

Save Our Sons and Daughters (SOSAD) opposes House Bill 5437. (11-13-90)

Survivors of Lost Loved Ones (SOLLO) opposes House Bill 5437. (11-13-90)