



**House
Legislative
Analysis
Section**

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FIREARM REGULATIONS

House Bill 5437 as enrolled
House Bill 6010 as enrolled
Sponsor: Rep. Jerry C. Bartnik

House Bill 6009 as enrolled
Sponsor: Rep. Shirley Johnson

House Bill 5366 as enrolled
Sponsor: Rep. Bill Martin

Committee: Tourism, Fisheries, and Wildlife

Second Analysis (1-3-91)

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 would not prevent a city or township from prohibiting the discharge of a pistol or other firearm within the city or township.

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

House Bill 5366 would amend the Michigan Penal Code to prohibit a person from manufacturing, distributing, selling, or using 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 manufacture, distribution, sale or use of armor piercing ammunition was consistent with the federal firearm code; or the person was a licensed dealer who was selling or distributing armor piercing ammunition and subject to license revocation under the federal firearm code for that sale or distribution. "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.

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 law also requires a person on leave from active duty with the armed forces who brings a pistol into the state to obtain a pistol license within 5 days after arrival in the state. Under the bill, a person on leave or who had been discharged from the armed services would have 30 days to obtain a pistol license. 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. In addition, this section of the bill would define the term "crime punishable by imprisonment for more than one year" to exclude a state offense classified by the state as a misdemeanor and punishable by imprisonment for no more than two years. The law requires a person to be a U.S. citizen and to reside in the state at least six months in order to be granted a pistol license. The bill would require the person to be a legal resident of Michigan and a U.S. citizen. In addition, the bill would prohibit a person who was under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness, or a person who had been adjudged legally incapacitated, from being granted a pistol license. Further, a person would only be granted a license if the person correctly answered at least 70 percent of

the questions on a basic pistol safety review questionnaire. If the person failed to answer at least 70 percent of the questions correctly, the licensing authority would inform the person of the questions answered incorrectly and allow the person to attempt to complete another questionnaire. A person could complete no more than two questionnaires per day.

Safety Inspections. 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 encased 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.

Basic Pistol Safety Brochures. Licensed dealers would be required to provide a basic pistol safety brochure to purchasers of pistols starting July 1, 1991. Dealers would also have to post information relating to the availability of known local voluntary pistol safety programs. The brochures would be produced and sold at cost by state or national nonprofit membership organizations that provide volunteer pistol safety programs. The bill would detail the information to be contained in the brochure, such as rules for safe handling and use of pistols and the responsibilities of owning a pistol. The bill would also limit the liability of pistol dealers and organizations for injuries resulting from the accidental discharge of a nondefective pistol purchased from the dealer.

The Basic Pistol Safety Review Board. The board would be created in the Department of State Police to approve the basic pistol safety pamphlet and to approve the basic pistol safety questionnaires. The board would have to approve and submit to the department for printing the questionnaires and pamphlet within 90 days.

The board would consist of the director of the Department of State Police (DSP); the director of the Department of Natural Resources; an advocate of organizations involved in shooting sports who was appointed by the governor; an advocate of a statewide conservation organization who was appointed by the governor; and an advocate of the public appointed by the governor. All appointments by the governor would be subject to the consent of the Senate.

Upon approval by the board and printing by the DSP, the pamphlet and questionnaires would be distributed free of charge to licensing authorities. The pamphlets and questionnaires would be distributed within 90 days after the DSP received the master copies from the board. Licensing authorities would distribute the pamphlet free of charge to persons requesting a copy of it.

Other Provisions. The bill would specify that firearms that were possessed in violation of the act would be subject to forfeiture. In addition, the bill would require a person to report to a police agency the theft of a firearm within five days after discovering the theft. Failure to report the theft would be a civil violation and the person could be fined up to \$500.

The bill would require the DSP to establish a system for the expeditious review of the criminal histories of purchasers of firearms and to file a written report of the findings with the

legislature before January 1, 1995 if sufficient money was appropriated by the legislature.

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 specify that a person who sold a pistol in violation of laws regulating pistol sales would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days or a fine of up to \$100 or both. A person who sold a firearm more than 30 inches in length to a person under the age of 18 would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$500 or both. A second or subsequent violation of this provision would result in a felony punishable by imprisonment for up to four years, a fine of up to \$2,000 or both. A licensed dealer who knowingly sold a pistol without complying with laws requiring pistol dealers to provide basic pistol safety brochures would be guilty of a misdemeanor punishable by a fine of up to \$100. 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.

Under the code, a person who intentionally makes a material false statement on an application for a license to purchase a pistol is guilty of a misdemeanor. Under the bill violation of the provision would be a felony punishable by imprisonment for up to four years, a fine of up to \$2,000 or both.

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.

Devices to convert semiautomatic firearms into fully automatic firearms. The bill would prohibit the actual or attempted manufacture, sale, distribution, or possession of a device intended to convert a semiautomatic firearm into a fully automatic firearm. The bill would also prohibit the demonstration by one person to another of the procedure used to manufacture or install a device to convert a semiautomatic firearm into a fully automatic firearm. Violation of this provision would result in a felony punishable by imprisonment for up to four years, or a fine of up to \$2,000 or both. The bill would exempt the following from this provisions: police agencies of local, state and federal governments and their employees, the armed forces and their members, and licensed collectors of the devices.

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, snowmobile, or an off-road 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.

Possession and brandishing firearm. The bill would prohibit the possession of a firearm on the premises of the following: a financial institution or its subsidiary or affiliate, churches or other houses of worship, a school, a court, a theater, a sports arena, a day care center, a hospital, or an establishment licensed under the liquor control act. The bill would provide exemptions from this provision for certain persons licensed to carry firearms. In addition, the bill would prohibit persons under the age of 18 from possessing a firearm in public except under the direct supervision of a person 18 years of age or older. A person who violate this provision would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$100 or both.

The bill would prohibit the brandishing of a firearm in public, but would exempt from this provision those persons engaged in lawfully permitted activities.

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. (1-3-91)

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 travelling in northern Michigan to know if he or she is violating local transport or firearm use laws. It's much easier for sportpersons 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.

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.