

RECREATION: ANTIQUE FIREARMS

House Bills 4431 and 4432 as introduced First Analysis (4-20-99)

Sponsor: Rep. Janet Kukuk
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Most antique firearms are purchased either by collectors for display purposes, or by actors for use in demonstrations, such as civil war reenactments. They are also used for hunting, during muzzle-loading deer season, although reproductions of antiques are normally used for this purpose. Federal gun laws provide an exception from normal licensing requirements for a firearm that is identified as an "antique." Neither do such weapons fall within the definition of a "firearm" under Title 26, Chapter 53, Section 5845(a) of the Internal Revenue Code (26 U.S.C. 53). This type of weapon is defined under the federal Gun Control Act (18 U.S.C. Chapter 44) as one that was manufactured before 1899, and that has an ignition system such as a matchlock, flintlock, or percussion cap. A replica of an antique firearm is also included under this definition, provided that it is not "designed or redesigned to use rimfire or conventional centerfire fixed ammunition" (for example, the type of ammunition, such as 9 mm. cartridges, that are readily purchased at local gun shops or sporting goods stores). If a replica does use rimfire or conventional centerfire fixed ammunition, then the exclusion applies only to a type that is no longer manufactured in the United States and cannot be purchased through ordinary commercial channels.

Michigan law mirrors federal law regarding these exceptions. In fact, Michigan law goes one step further and extends its exemption from normal licensing requirements to include relics and curios: The firearms act (MCL 28.421 et al.) -- which generally requires that a person obtain a license to purchase, carry, or transport firearms, and that pistols be presented to local police departments for safety inspections -- exempts pistols kept solely as relics, curios, or antiques from licensing requirements, and exempts pistols kept solely for display, as relics, curios or antiques, from safety inspection requirements, provided, in each case, that the weapons are permanently deactivated or are not made for modern ammunition. In addition, Public Act 129 of

1998 amended the Natural Resources and Environmental Protection Act (NREPA) to exempt actors participating in an historical reenactment from having to purchase a hunting license. Since the Penal Code (MCL 750.227) also excludes antique firearms from the prohibition against carrying concealed weapons, it has been generally assumed that antique firearms are exempt from state regulations.

Notwithstanding these provisions, prospective buyers sometimes encounter difficulties when purchasing antique firearms. Reportedly, catalog companies and stores located in other states find Michigan laws on antique firearms confusing, and often refuse to ship here. In addition, some individuals have been told by police agencies that they must register the weapons if they intend to fire them. Apparently, a 1967 attorney general opinion has also added to the confusion (see BACKGROUND INFORMATION). The opinion -- which ruled that a license wasn't required for the purchase of an antique firearm that was incapable of using modern ammunition -- has been interpreted by some to mean that, while a license isn't needed to *purchase* an antique firearm, it might be necessary to obtain one in order to *fire* the weapon. Legislation has been introduced to clarify this issue.

THE CONTENT OF THE BILLS:

House Bills 4431 and 4432 would amend the firearms act (MCL 28.421 et al.) and the Explosives Act (MCL 29.43), respectively, to allow the purchase and sale of antique weapons without a license, and to exempt black powder that is intended for use in antique firearms from the permit requirements of the Explosives Act. Under House Bill 4431, "antique firearm" would be defined to mean either of the following:

- A firearm, manufactured in or before 1898, that was not designed or redesigned for using rimfire or conventional center fire ignition with fixed

ammunition, including a matchlock, flintlock, percussion cap, or similar type of ignition system or a replica of such a firearm, whether actually manufactured before or after the year 1898.

- A firearm using fixed ammunition manufactured in or before 1898, for which ammunition was no longer manufactured in the United States, and wasn't readily available in the ordinary channels of commercial trade.

House Bill 4431. Currently, the firearms act specifies that no one -- including a person on leave from active duty, or one who has been discharged from active duty -- may purchase, carry, or transport a pistol within the state without a license. The bill would exempt a person who was buying, selling, or who came into possession of an antique firearm from this provision, unless the person was prohibited from owning a firearm by any other law. The act also specifies that anyone who owns a pistol, or who comes into possession of one, must present the pistol for safety inspection to the police or the county sheriff. House Bill 4431 would exempt the owner of an antique firearm from this provision unless that person was prohibited from owning a firearm under another law.

House Bill 4432. The Explosives Act specifies that no one may handle, store, control, use, sell, purchase, transfer, transport, or otherwise dispose of an explosive without a valid permit. This provision does not apply to the employee or agent of an employer who has a valid permit, unless that person is an independent contractor. The bill would extend the exemption to include a person who sold or purchased black powder, or a substitute for black powder, that was manufactured for and intended for use in antique firearms.

BACKGROUND INFORMATION:

Apparently, much of the confusion regarding licensing exemptions for antique firearms evolved years ago, and resulted, in part, from a perceived inconsistency in the language of the firearms act. In 1967, in response to a request for an interpretation of the act, the attorney general issued an opinion on the exemptions. The issue at hand involved a purchase of pistols in Kalamazoo County, which, although then manufactured in large quantities, were "of ancient design and not made for modern ammunition."

The attorney general first established that, with regard to the act, a general legislative intent could be inferred: the legislature's basic concern was with pistols that had a potential for unlawful use. The question was whether the clause "not made for modern ammunition," as used in the act's exclusion provisions, applied to relics and curios, as well as to antiques, since it could then be inferred that such weapons had no "potential for unlawful use." The problem involved the absence of a comma in the language of the exceptions provision. Specifically, the language excluding antique firearms from the licensing requirements of the act declares:

"This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, or to the sale, barter, or exchange of pistols kept solely as relics, curios, or antiques not made for modern ammunition or permanently deactivated."

In this section, no comma appears after the word "antiques." This would indicate that the clause "not made for modern ammunition" applies only to "antiques." However, the language that excludes antique firearms from the safety inspection provisions of the act *does* include a comma after the word "antique":

"This section does not apply to a wholesale or retail dealer in firearms who regularly engages in the business of selling pistols at retail, or to a person who holds a collection of pistols kept solely for the purchase of display as relics, curios, or antiques, and that are not made for modern ammunition or are permanently deactivated."

In this provision, the attorney general wrote that the clause "not made for modern ammunition" obviously applies to relics, curios, and antiques." According to the attorney general, it was unlikely that the legislature would, in one section, require that relics and curios be excluded from the requirement that they not be "made for modern ammunition," but included in the other section. Accordingly, the attorney general ruled that the legislative intent of the act was that the phrase "not made for modern ammunition" be applied to relics, curios, and antiques, and that a license was not required for retail purchases of these weapons. The attorney general opinion did not address the question of whether a license was required if an antique firearm was fired using black powder. However, some people

have apparently interpreted the opinion to mean that a license is required under these circumstances.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency (HFA), the bills would have no impact on state funds. (4-12-99)

ARGUMENTS:

For:

Historically, state and federal laws regarding gun control have been interpreted as exempting those who use antique firearms from licensing and safety inspection regulations. However, some residents have encountered problems when buying such weapons. Reportedly, some police agencies have interpreted the law, as it refers to the use of antique firearms, to mean that the firearms must be deactivated in order to be exempt from licensing or safety inspections. Others have expressed the opinion that the exemption refers to weapons that are displayed, but not to those that are fired. In addition, catalogs and stores located in other states consider Michigan laws on antique firearms confusing, and often refuse to ship antique firearms here.

Some claim that current laws regulating antique firearms are confusing and contradictory. On the one hand, the Penal Code excludes antique firearms from current prohibitions against carrying concealed weapons, which would seem to acknowledge the common assumption that such firearms are exempt from regulation. The firearms act, on the other hand, could reasonably be interpreted as suggesting that only those antique firearms kept for display by collectors are exempt from current licensing and safety inspection regulations. House Bill 4432 would remedy this problem by specifying that antique firearms which are fired, but which use black powder rather than modern ammunition, are excluded from the permit requirements of the Explosives Act; and House Bill 4431 would clarify that the licensing and inspection provisions of the firearms act do not apply to antique firearm owners.

Against:

If, as suggested in a 1967 attorney general report, the general legislative intent of the firearms act reflects the legislature's basic concern with pistols that have a potential for unlawful use, it might be considered unwise to exempt any weapon from standard licensing regulations, especially in an era where school violence is apparently escalating. In fact, some have

questioned the wisdom of the provisions of the bill during a period that has witnessed the shooting of schoolchildren on school grounds by their classmates.

Response:

As written, the bills specify that the licensing and inspection provisions of the firearms act, and the permit requirements of the Explosives Act, do not apply to a person who buys, sells, or owns an antique firearm. However, persons who are prohibited from owning a firearm under another law are excluded from the provisions of the bills. This exclusion would apply to the bringing of antique firearms to school. In addition, as pointed out by antique firearm owners, it is unlikely that a schoolchild would bring an antique firearm to school. It is also unlikely that a child who brought a muzzle-loading deer rifle to school would be able to fire it successfully. These rifles are complicated, require an extensive knowledge of their operation, and take an excessive amount of time to load.

Against:

House Bill 4432 would specify that antique firearms which use black powder, or a substitute for black powder, are excluded from the permit requirements of the Explosives Act. However, in testimony before the House Conservation and Outdoor Recreation Committee, representatives of sports and gun owners' organizations revealed that black powder is rarely used now, since it is extremely corrosive, and that the preferred substitute for black powder is a synthetic powder named "Pyrodex." Some have expressed concern against the use of a highly explosive chemical such as Pyrodex, especially since those who sell the substance would have no way of knowing whether the purchaser did, in fact, own an antique firearm, or whether the substance was intended for other uses.

Response:

Pyrodex is only one of several explosive powders that can be obtained without a special permit. However, since the occurrence of the bombing in Oklahoma City a few years ago, it has become common knowledge that the ingredients for making explosives are readily available to potential terrorists. On the other hand, Pyrodex is considered relatively safer than black powder when used in muzzle-loading firearms.

Against:

As written, House Bill 4432 would specify that no permit is required for the sale or purchase of black powder, or of a substitute that was intended for use in antique firearms. According to the Department of State Police, this provision could be confusing to

some, since a permit *is* required under federal laws regulating black powder. Therefore, the bill should state specifically which type of permit is excluded.

POSITIONS:

The Michigan Coalition for Responsible Gun Owners (MCRGO) supports the bills. (4-19-99)

The West Walker Sportsman's Club in Ottawa County supports the bills. (4-19-99)

The Michigan Sheriffs' Association is monitoring the bills. (4-19-99)

The Department of State Police opposes the bills. The department maintains that there is the potential, if antique pistols are not regulated, that they could be used to shoot dangerous projectiles. (4-19-99)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.