

# Legislative Analysis

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## MICHIGAN LAW ENFORCEMENT OFFICER'S FIREARM CARRY ACT

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### House Bill 4611

Sponsor: Rep. Rick Jones

### House Bill 4612

Sponsor: Rep. John Espinoza

Committee: Judiciary

Complete to 7-16-07

## A SUMMARY OF HOUSE BILLS 4611-4612 AS INTRODUCED 4-19-07

The federal Law Enforcement Officers Safety Act of 2004 (LEOSA) provides for the carrying of concealed firearms across state lines by qualified retired law enforcement officers (18 USC 926C). One of the requirements is that within the most recent 12-month period, the retired officer must meet, at his or her own expense, the same state standards for training and qualifications for weapons proficiency as active law enforcement officers. Retired officers must also carry a photographic identification issued by the agency from which they retired showing that they met the weapons qualifications for the type of concealed weapon carried. However, there currently is no statewide provision or policy in place for local law enforcement agencies to certify that a retired officer has proficiency in a particular firearm or to issue documentation to that effect.

House Bill 4611 would create the Michigan Law Enforcement Officer's Firearm Carry Act to establish requirements and procedures through which a qualified retired law enforcement officer could be certified to carry a concealed firearm under the federal law and the proposed act. The bill would prescribe powers and duties of the Michigan Commission on Law Enforcement Standards (MCOLES), establish requirements for persons issued a certificate under the bill, impose criminal and civil penalties for violations of the bill, establish fees, create funds, provide for civil immunity, require forfeiture of the firearm under certain conditions, and allow for the promulgation of administrative rules. House Bill 4612 would place the felony penalty within the sentencing guidelines. The bills would take effect January 1, 2008. More specifically, the bills would do the following:

### House Bill 4611

- Define "qualified retired officer" as that term is defined in the federal legislation. (Elements of the federal definition include the officer being retired in good standing; having at least 15 years of service, unless retired due to a service-connected disability; meeting the home state's standard for weapons training and proficiency for active officers at his or her own expense; not being under the

influence of alcohol or other intoxicating or hallucinatory drug or substance; and not being otherwise prohibited by federal law from receiving a firearm.)

- Require the Michigan Commission on Law Enforcement Standards (MCOLES) to establish requirements and procedures for use in certifying a qualified law enforcement officer to carry a concealed firearm under the federal LEOSA and in identifying public entities eligible to administer the active duty firearm standard to the retired officers.
- Apply the bill to qualified retired law enforcement officers meeting the requirements of the LEOSA and who are legal residents of the state.
- Require retired officers applying for certification to submit to a fingerprint-based identification and criminal history inquiry (this would entail a search of the state and national criminal databases).
- Make providing false or misleading information on the application for certification a felony punishable by up to four years imprisonment and/or a fine of not more than \$2,000.
- Require the retired officer to carry the certificate and a valid driver license or state ID at all times while in possession of a concealed firearm; produce the documents upon demand by a peace officer; disclose to a peace officer that he or she is carrying a concealed firearm or transporting a firearm in his or her vehicle if stopped by a peace officer; and forfeit the certification to MCOLES upon notice of revocation. A violation of these provisions subjects the retired officer to the civil infraction penalties under the state concealed weapons law, including forfeiture of the weapon.
- Specify that certification constitutes implied consent to submit to a chemical analysis (i.e., breathalyzer test).
- Require a certificate holder to report in writing on specific circumstances to MCOLES, including an arrest or conviction of any state or federal law, being the subject of a personal protection order, or failing a drug test. Failure to file a report would be a misdemeanor punishable by imprisonment for not more than a year and/or a fine of not more than \$5,000.
- Prohibit, in general, a certificate holder from carrying a concealed weapon while under the influence of alcohol and prescribe state civil infraction penalties, misdemeanor penalties, and permanent or temporary certification revocation based on the underlying bodily alcohol content (BAC) level.
- Require the Department of State Police to create and maintain a database of applicants for certification under the bill and include, among other information, the applicant's name, date of birth, and address and the certificate number and

date of expiration or reason for denial of a certificate. Information in the database would not be disclosable under the Freedom of Information Act (FOIA).

- Require the department to file an annual report with the Legislature that includes, among other information, the number of certificate applications received, issued, denied, or revoked as well as the number of charges of state civil infractions and criminal violations that resulted in a finding of a responsibility or a criminal conviction. This information would be subject to disclosure under FOIA.
- Subject firearms carried in violation of the bill to seizure and forfeiture in the same manner as property is under provisions of the Revised Judicature Act.
- Allow MCOLES to set and collect a fee to cover actual costs associated with administering the federal LEOSA and the proposed bill. Fees would be deposited into a newly created Retired Law Enforcement Officer Safety Fund to be used only for the purposes of the act. Unencumbered balances remaining at the end of a fiscal year would not lapse to the General Fund.
- Provide civil immunity for the commission and various agencies and entities, and their employees, volunteers, and agents, who acted in good faith in discharging their duties from civil liability for damages resulting from a retired officer, either certified or denied certification, owning, possessing, carrying, using, or discharging a firearm.
- Specify that the bill would not preempt any existing state or federal statute, regulation, or other authority governing the use, possession, carrying, or receiving of firearms or ammunition in this state.
- Require MCOLE's authority to issue certificates under the bill to expire immediately upon the repeal of the federal LEOSA.

#### House Bill 4612

The bill would amend the Code of Criminal Procedure (MCL 777.11b) to specify that a false statement on the concealed firearm certificate application would be a Class F felony against the public safety with a four-year maximum term of imprisonment. The bill is tie-barred to House Bill 4611.

#### **FISCAL IMPACT:**

House Bill 4611 would have an indeterminate fiscal impact on state and local governments. Under this bill, a retired police officer that applies for a certificate to carry a concealed weapon would be required to submit fingerprint identification and would be subject to criminal history searches, both of which would probably be paid by the applicant. It is unknown how many retired police officers would apply for a concealed

weapon certificate under this bill and therefore how many fingerprint identification and criminal history searches would be performed.

The State Police would incur small administrative costs for collecting information from applicants, maintaining computerized databases to store this information, and preparing reports to the Legislature containing information prescribed in this bill.

A Retired Law Enforcement Officer Safety Fund would be created in the Department of Treasury from application fees set by the Michigan Commission on Law Enforcement Standards (MCOLES). The State Treasurer may also invest money in this fund as authorized under state law. MCOLES may expend money from this fund for administering the various components of this bill.

In addition, the bills would have an indeterminate fiscal impact on the state and local correctional systems, depending on how they affected numbers of and sentences for people held responsible for state civil infractions, found guilty of misdemeanors, or found guilty of felonies. Depending on circumstances, offenders sentenced for criminal offenses may receive probation, a period of incarceration, a fine, or some combination thereof. The following table shows how the revenues and costs of various penalties would affect the state and local units of government.

<b>Responsible for/Guilty of:</b>	<b>Fine</b>	<b>Court-ordered Costs ("Minimum State Costs")</b>	<b>Costs of Incarceration</b>	<b>Costs of Probation Supervision</b>
<b>State Civil Infraction</b>	To local library	\$10 to state Justice System Fund	Not applicable	Not applicable
<b>Misdemeanor</b>	To local library	\$40 to state Justice System Fund	Local costs of incarceration in county jail; costs vary by county	Local.
<b>Felony</b>	To local library	\$60 to state Justice System Fund	Can be sentenced to jail or state prison. Appropriated costs of prison incarceration average about \$31,000 per prisoner per year, including various fixed costs. Actual cost varies by location and security level. Jail costs vary by county	State. Probation and parole supervision average about \$2,000 per supervised offender annually.

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■ 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.