



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4611 (Substitute S-2 as reported)  
House Bill 4612 (as reported without amendment)  
Sponsor: Representative Rick Jones (H.B. 4611)  
Representative John Espinoza (H.B. 4612)  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 7-17-08

### **RATIONALE**

In July 2004, President George W. Bush signed into law the Law Enforcement Officers Safety Act. This law provides nationwide authorization for qualified active and retired law enforcement officers to carry a concealed weapon (18 USC 926B and 18 USC 926C). One of the provisions of that law requires a qualified retired officer to have identification or certification that he or she meets his or her state's standard for training and qualification for active law enforcement officers to carry a firearm. Michigan, however, does not currently have a system for certification of a retired officer's qualifications to carry a firearm. The Michigan Commission on Law Enforcement Standards (MCOLES) has suggested the establishment of a concealed weapons certification program for retired law enforcement officers, to enable them to carry a concealed weapon nationwide under the Federal law.

### **CONTENT**

**House Bill 4611 (S-2)** would create the "Michigan Law Enforcement Officer's Firearm Carry Act" to do all of the following:

- Require MCOLES to establish requirements and procedures for a qualified retired law enforcement officer to be certified to carry a concealed firearm.
- Require an applicant for certification to submit to fingerprint-based

**identification and criminal history searches.**

- Establish requirements for carrying a certificate and identification and disclosure that a certificate holder was carrying a concealed firearm.
- Require a certificate holder to report to MCOLES the circumstances of any arrest or conviction, lab result showing the bodily presence of alcohol or a controlled substance, or various court orders.
- Prohibit a certificate holder from carrying a concealed firearm while under the influence of alcohol or a controlled substance or while having a prohibited bodily alcohol content.
- Provide that acceptance of a certificate would constitute implied consent for chemical analysis of the blood, breath, or urine.
- Specify civil sanctions and criminal penalties for various violations of the proposed Act.
- Require the Michigan Department of State Police (MSP) to create and maintain a computerized database of applicants for certificates under the proposed Act.
- Require the MSP to file with the Senate and House of Representatives an annual report regarding the certificate program.
- Subject a firearm carried in violation of the Act to seizure and forfeiture proceedings.
- Create the "Retired Law Enforcement Officer Safety Fund" and authorize

**MCOLES to establish and collect fees for deposit into the Fund.**

**-- Immunize certain entities and people from civil liability for acting in good faith in discharging responsibilities under the Act.**

**House Bill 4612 would amend the Code of Criminal Procedure to include in the sentencing guidelines making a false statement on a concealed firearm certificate application. The violation would be a Class F felony against the public safety, with a statutory maximum sentence of four years' imprisonment.**

The bills would take effect on June 1, 2009. House Bill 4612 is tie-barred to House Bill 4611.

A more detailed description of House Bill 4611 (S-2) follows.

#### Certification Requirements

The bill would require MCOLES to establish requirements and procedures through which a qualified retired law enforcement officer could be certified to carry a concealed firearm under Federal law (18 USC 926C) and the proposed Act. The Commission would have to establish requirements and procedures through which certification could be denied or revoked. The Commission could promulgate rules to implement the Act. ("Qualified retired law enforcement officer" would mean that term as defined in 18 USC 926C, which is described below in **BACKGROUND.**)

In order to be eligible to carry a concealed firearm, a qualified retired law enforcement officer would have to meet the Federal requirements.

A retired law enforcement officer would not be eligible for certification by MCOLES if he or she were prohibited under Federal law from being certified.

The Commission would have to establish application requirements and procedures in order to verify the identity of an applicant, conduct a complete criminal history, and conduct a background investigation into an applicant's fitness to carry a concealed firearm. An applicant would have to submit to fingerprint-based identification and criminal history searches. The Commission

or its agent could conduct criminal history inquiries on applicants for certification through the Law Enforcement Information Network (LEIN) operated through the MSP, and the National Crime Information Center operated through the FBI.

The Commission would have to create an application form for certification. The applicant would have to sign the application, acknowledging that all information contained in it was true and accurate. An applicant who knowingly provided false or misleading information on the application, in whole or in part, would be guilty of a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000.

The Commission or its agent would have to issue a certificate to a qualified retired law enforcement officer who had complied with the active duty firearms standard and was eligible to carry a concealed firearm under Federal law and the proposed Act. ("Active duty firearms standard" would mean the in-service standard for the training and qualification of active duty law enforcement officers as mandated by MCOLES under the Commission on Law Enforcement Standards Act.)

#### Certificate Possession, Disclosure

A certificate holder would have to carry the certificate and a valid driver license or Michigan personal identification card at all times while in possession of a concealed firearm and would have to produce those documents upon demand by a peace officer. A certificate holder who was carrying a concealed firearm and who was stopped by a peace officer immediately would have to disclose to the officer that he or she was carrying a concealed firearm or was transporting a firearm in his or her vehicle.

Upon notice of revocation, a certificate holder would be required to forfeit his or her certificate to MCOLES by returning it in person or by certified mail.

Violating the certificate possession requirements would subject the certificate holder to penalties provided in Section 5f of the handgun licensure Act, including forfeiture of the firearm. (Section 5f includes requirements for a concealed pistol license holder to carry his or her license and other identification and to disclose to a peace

officer that he or she is carrying a concealed pistol. A violation regarding carrying the license and identification is a State civil infraction and the person may be fined up to \$100. A violation regarding disclosure of a concealed pistol to a peace officer is a State civil infraction. A person responsible for a first offense may be fined up to \$500 and/or have his or her concealed pistol license suspended for up to six months. For a subsequent disclosure offense within three years of a prior offense, the person may be fined up to \$1,000 and have his or her license to carry a concealed pistol revoked. A pistol carried in violation of Section 5f is subject to seizure by a peace officer and forfeiture proceedings under the handgun licensure Act.)

Reporting Requirements

A certificate holder under the proposed Act immediately would have to report to MCOLES in writing the circumstances of an arrest or conviction for a violation of any State or Federal law, a laboratory result reflecting the unauthorized presence of controlled substances following a drug test, or becoming the subject of an order or disposition in any jurisdiction that did one or more of the following:

- Restrained the person from harassing, stalking, or threatening an intimate partner or the child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
- Prohibited or limited the transport, possession, carrying, or use of firearms or ammunition.
- Involved an adjudication of mental illness, a finding of insanity, a finding of legal incapacity, or an order for involuntary commitment in an inpatient or outpatient setting.

A certificate holder who failed to file a written report described above would be guilty of a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$5,000.

Alcohol, Controlled Substances, & Chemical Testing

Acceptance of a certificate issued under the proposed Act would constitute implied

consent to submit to a chemical analysis. A certificate holder could not carry a concealed firearm while he or she was under the influence of alcohol or a controlled substance or while having a prohibited bodily alcohol content (BAC). A violation would be a State civil infraction or crime as shown in Table 1.

Table 1

Violation	Status	Penalty
Under the influence of alcohol and/or a controlled substance or a BAC of .10 gram or more*	Misdemeanor	Up to 93 days and/or \$100 maximum fine, and permanent revocation of certificate.
BAC of .08 or more but less than .10*	Misdemeanor	Up to 93 days and/or \$100 maximum fine, and possible revocation of certificate for up to 3 years.
BAC of .02 or more but less than .08*	State Civil Infraction	\$100 maximum fine, and possible revocation for up to 1 year, or mandatory revocation for subsequent violation.
*Per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.		

An individual certified under the proposed Act who had any bodily alcohol content would not be prohibited from transporting the firearm in the locked trunk of his or her motor vehicle or another motor vehicle in which he or she was a passenger or, if the vehicle did not have a trunk, from transporting it unloaded in a locked compartment or container separated from the ammunition, or on a vessel if the firearm were unloaded in a locked compartment or container separated from the ammunition.

A peace officer who had reasonable cause to believe a certificate holder was carrying a concealed firearm in violation of the alcohol and controlled substance provisions could require the certificate holder to submit to a chemical analysis of his or her breath, blood,

or urine. The peace officer would have to inform the certificate holder that he or she could refuse to submit to the chemical analysis, but if he or she did so, the officer could obtain a court order requiring the analysis and refusal could result in revocation of the certificate. The peace officer also would have to inform the person that if he or she submitted to the chemical analysis, he or she could obtain the analysis from a person of his or her own choosing.

The collection and testing of breath, blood, and urine specimens would have to be conducted in the same manner as for alcohol-related and controlled substance-related motor vehicle operation violations under the Michigan Vehicle Code.

If a certificate holder refused to take a chemical test, the peace officer promptly would have to report the refusal in writing to MCOLES. If a certificate holder took a chemical test and the results indicated that he or she had any bodily alcohol content while carrying a concealed firearm, the peace officer promptly would have to report the violation in writing to MCOLES.

#### MSP Database

The MSP would have to create and maintain a computerized database of individuals who applied for a certificate under the proposed Act. The database could contain only the following information as to each individual:

- His or her name, date of birth, address, and county of residence.
- If the individual were issued a certificate, the certificate number and expiration date.
- If the individual were denied a certificate, a statement of the reasons for the denial.
- A statement of all criminal charges pending and criminal convictions obtained against the individual during the certificate period.
- A statement of all determinations of responsibility for civil infractions of the proposed Act pending or obtained against the individual during the certificate period.

If an individual who was denied a certificate were subsequently issued a certificate, the MSP would have to delete from the database the previous reasons for the denial.

The MSP would have to enter the identifying information and certificate number and expiration date into LEIN.

Information in the database would be confidential, would not be subject to disclosure under the Freedom of Information Act, and could not be disclosed to any person except for purposes of the proposed Act or for law enforcement purposes.

#### MSP Annual Report

The MSP would have to file an annual report with the Secretary of the Senate and the Clerk of the House of Representatives setting forth all of the following information:

- The number of certificate applications received.
- The number of certificates issued.
- The number of applications that were denied, and categories for denial.
- The number of certificates revoked, and categories for revocation.
- The number of applications pending at the time the report was made.
- The number of pending criminal charges, categorized by offense, against certificate holders.
- The number of criminal cases dismissed, categorized by offense, against certificate holders.
- The number of cases filed against certificate holders for criminal violations that resulted in a finding of not responsible or not guilty, categorized by offense.
- The number of suicides by certificate holders.
- Actual costs incurred per certificate.

The report also would have to include the number of charges of State civil infractions or charges of criminal violations, categorized by offense, filed against certificate holders that resulted in a finding of responsibility or a criminal conviction. The report would have to indicate the number of crimes in each category of criminal offense that involved the brandishing or use of a firearm, the number that involved the carrying of a firearm by the certificate holder during the commission of a crime, and the number in which no firearm was carried by the certificate holder during the commission of a crime.

### Seizure & Forfeiture

A firearm carried in violation of the proposed Act would be subject to seizure and forfeiture in the same manner as property under Chapter 47 (Forfeiture or Seizure of Certain Property) of the Revised Judicature Act. This would not apply if the violation were a State civil infraction under Section 5f(7) of the handgun licensure Act unless the individual failed to present his or her certificate within the 45-day period described in that section. (Under Section 5f(7), if a peace officer seizes a pistol, the individual has 45 days in which to display his or her license or documentation to a law enforcement entity, which then must return the seized pistol unless the individual is prohibited by law from possessing a firearm.)

### Fund & Fees

The bill would create the Retired Law Enforcement Officer Safety Fund in the State Treasury. The State Treasurer would have to credit to the Fund deposits from the collection of application fees under the proposed Act. The State Treasurer would have to direct investment of the Fund and credit to it interest and earnings from investments.

The unencumbered balance remaining in the Fund at the end of a fiscal year would have to remain in the Fund and could not revert to the General Fund. The MSP would be the administrator of the Fund for auditing purposes. The Commission could spend money from the Fund, upon appropriation, only for the purposes of the proposed Act.

The Commission could set and collect a fee for actual costs associated with administration under the proposed Act and 18 USC 926C by any method of payment. The fees would have to be deposited in the Fund.

### Immunity

The Commission or any law enforcement agency, governmental entity, agent, employee, volunteer, designee, or individual who acted in good faith in discharging his or her responsibilities under the proposed Act would be immune from civil liability for any damages resulting from the ownership, possession, carrying, use, or discharge of a firearm by any qualified retired law

enforcement officer who was certified under the Act or whose certification was denied. This immunity would be in addition to any immunity otherwise provided by law.

### Other Provisions

The Commission would have to identify public entities eligible to administer the active duty firearm standard to qualified retired law enforcement officers for purposes of carrying out the proposed Act and 18 USC 926C. ("Active duty firearms standard" would mean the in-service standard for the training and qualification of active duty law enforcement officers mandated by MCOLES.)

The bill specifies that it would not preempt any existing State or Federal statute, regulation, or other authority governing the use, possession, carrying, or receipt of firearms or ammunition in Michigan, including application by a qualified retired law enforcement officer to carry a concealed firearm under 18 USC 926C.

The Commission's authority to issue certificates under the proposed Act would expire immediately upon the repeal of 18 USC 926C.

MCL 777.11b (H.B. 4612)

### **BACKGROUND**

Under 18 USC 926C, notwithstanding any other provision of the law of any state or any political subdivision of a state, an individual who is a qualified retired law enforcement officer and who carries the required identification may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce. This does not supersede or limit the laws of any state that either 1) permit private people or entities to prohibit or restrict the possession of concealed firearms on their property or 2) prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

"Qualified retired law enforcement officer" means an individual who:

- Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability.

- Before retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest.
- Before retirement was regularly employed as a law enforcement officer for an aggregate of 15 years or more, or retired from service after completing any applicable probationary period due to a service-connected disability.
- Has a nonforfeitable right to benefits under the agency's retirement plan.
- During the most recent 12-month period, has met, at the individual's own expense, the state's standards for training and qualification for active law enforcement officers to carry firearms.
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
- Is not prohibited by Federal law from receiving a firearm.

Required identification under 18 USC 926C includes either of the following:

- A photographic ID issued by the agency from which the individual retired from service that indicates that he or she has, within the previous year, been tested or otherwise found by the agency to meet its standards for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.
- A photographic ID issued by the agency from which the individual retired from service and a certification issued by the state in which the individual lives that indicates that he or she has, within the previous year, been tested or otherwise found by the state to meet its standards for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Under the Federal Law Enforcement Officers Safety Act, a qualified retired law enforcement officer who carries the required identification may carry a concealed firearm

that has been shipped or transported across state lines. In order to meet the definition of "qualified retired law enforcement officer", during the most recent 12-month period, the retired officer must have met the state's standards for training and qualification for active law enforcement officers to carry firearms. Michigan currently has no mechanism for retired law enforcement officers to meet those standards. By requiring MCOLES to establish requirements and procedures for a qualified retired law enforcement officer to be certified to carry a concealed weapon, House Bill 4611 (S-2) would allow those retirees to meet the qualifying requirements for carrying a concealed weapon interstate, as authorized under Federal law.

In addition, the bill would provide safeguards by requiring that applicants for certification submit to criminal background checks; requiring that a certificate holder identify himself or herself and disclose to police that he or she was carrying a firearm; and prohibiting a certificate holder from carrying a concealed weapon while under the influence of alcohol or a controlled substance or while having a prohibited bodily alcohol content. The bill also would require a certificate holder to report to MCOLES the circumstances of any arrest or conviction; lab result showing the bodily presence of alcohol or a controlled substance; or the existence of an order or disposition that restrained the certificate holder for various purposes, prohibited or limited the transport, possession, carrying, or use of firearms or ammunition, or involved an adjudication of mental illness, insanity, legal incapacity, or involuntary commitment. These safeguards would be backed up by civil sanctions and criminal penalties, as well as firearm seizure and forfeiture.

The bill also would provide for the administration of the certification program for retired law enforcement officers by authorizing MCOLES to set and collect fees, which would have to be deposited into a proposed fund; requiring the Commission to identify public entities eligible to administer the active duty firearms standard to qualified retired law enforcement officers; and requiring the MSP to maintain a database of applicants for certification, enter identifying and certificate information into LEIN, and report annually to the Legislature regarding the certification program.

### **Supporting Argument**

It is important to have as many trained people as possible prepared to respond to a crisis such as a terrorist attack or natural disaster. After events like the World Trade Center attack and Hurricane Katrina, it may be necessary or desirable for active duty and retired law enforcement officers from across the country to volunteer their services regardless of the jurisdiction where the incident occurred. Their assistance may be needed, for instance, to protect public safety, deter looting, and assist in rescue efforts. It makes sense to allow trained and qualified law enforcement officers, both active and retired, to be armed in those circumstances. Reportedly, this was one of the reasons for the enactment of the Law Enforcement Officers Safety Act. Michigan should provide for the certification of retired officers to carry concealed weapons so that they can be adequately prepared if called upon to respond in times of crisis.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

House Bill 4611 (S-2) would have a moderate fiscal impact on MCOLES and the Department of State Police, depending on the number of applicants for a concealed weapon certificate, a number that cannot be determined at this time. Costs to the Department would be required for administrative purposes, creation and maintenance of a required database, completion of background checks (which currently cost \$49.25 each), identification of public entities to administer firearm standards, the receipt and storage of applicant and certificate-holder information, and the creation of reports to the Legislature. The bill would allow MCOLES to create and collect a fee (which would be deposited in a Treasury fund) for its actual costs in satisfying the bill's provisions.

The criminal penalties in House Bills 4611 (S-2) and 4612 would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many retired law enforcement officers would be convicted of the proposed offenses involving concealed firearms. In 2007, one offender was convicted of violating MCL 28.425b(3) (making a false statement on a concealed pistol permit application), and the offender received a

sentence to jail. An offender convicted of the Class F offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Bruce Baker  
Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.