

Legislative Analysis



FIREARMS RECORDS CONFIDENTIALITY

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House Bill 4155 (Substitute H-3)
Sponsor: Rep. Aric Nesbitt

House Bill 5327 (Substitute H-1)
Sponsor: Rep. Bruce R. Rendon

House Bill 5324 without amendment
Sponsor: Rep. Nancy E. Jenkins

House Bill 5328 without amendment
Sponsor: Rep. Kevin Cotter

House Bill 5325 with committee amendment
Sponsor: Rep. Hugh Crawford

House Bill 5329 without amendment
Sponsor: Rep. Peter Pettalia

House Bill 5326 without amendment
Sponsor: Rep. Edward McBroom

Committee: Judiciary
First Analysis (3-12-14)

BRIEF SUMMARY: As a package, the bills would amend the Michigan Handgun Act to make firearms records confidential and not subject to FOIA requests, only allow access for certain purposes, provide penalties for unlawful access or disclosure, and place the new felony provision within the sentencing guidelines. "Firearm records" would include forms, information, or records required to be submitted to a government agency to obtain a pistol license or permit to carry a concealed pistol or contained in certain orders and dispositions entered into or removed from LEIN.

Tie-bars: House Bills 4155 and 5324-5329 are tie-barred to each other and to Senate Bill 49. A bill cannot take effect unless all bills to which it is tie-barred are enacted into law.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local law enforcement agencies, depending on the extent to which the limits on disclosure differ from current practice and affect law enforcement operations.

An analysis of the fiscal impact on state and local corrections is in process.

THE APPARENT PROBLEM:

In 2012, a newspaper in the state of New York published a list of names of persons owning gun permits in two counties. Though some may say that licenses or permits issued by a governmental agency are public documents, many gun owners and gun rights groups claimed that such public disclosure endangered gun owners and the public at large. Just as thieves target homes with expensive electronics, jewelry, or illegal drugs, so can thieves target homes where guns are known or suspected to be. Easy access to governmental records showing the location of handguns may increase the risk of break-ins and personal assaults of gun owners.

In 1999, a Michigan Supreme Court case held that releasing personal information regarding gun ownership in response to a request under the Freedom of Information Act (FOIA) constituted an unwarranted invasion of privacy. Since then, the Department of State Police has not released person information contained in license and permit applications for handguns in response to FOIA requests.

Still, in light of the incident in New York State, some feel that the Supreme Court holding should be codified. In addition, gun rights groups feel that to further protect gun owners, there should be some restrictions placed on access to firearms records by law enforcement personnel.

THE CONTENT OF THE BILLS:

House Bill 5325 would amend Section 1 of the Michigan Handgun Act (MCL 28.421) to define the term "firearms records" to mean any form, information, or record required for submission to a government agency under Sections 2, 2a, 2b, and 5b of the act, or any form, permit, or license issued by a government agency under the act.

[Section 2 pertains to obtaining a license in order to purchase, carry, possess, or transport a pistol within the state. Section 2a pertains to records of pistol sales and entry of a purchase into the pistol entry database. Section 2b pertains to entry of certain orders or dispositions into LEIN. Section 5b pertains to applications for a license to carry a concealed pistol.]

House Bill 4155 would amend the Michigan Handgun Act (MCL 28.425e). The bill would delete a provision that information in a database of individuals who apply for a license to carry a concealed pistol is confidential, not subject to disclosure under the Freedom of Information Act, and disclosed only for purposes of the act or for law enforcement purposes.

Instead, the bill would amend Section 5e of the act to specify that information in the database could only be accessed and disclosed according to an access protocol that includes the following requirements:

- ❖ The requestor of the firearms records identifies himself or herself in a log that maintains a record of the requestor's identity, time, and date that the request was made.
- ❖ The requestor attests that the firearms records are being sought under one of the lawful purposes provided in the new Section 1b(2) proposed by House Bill 5327.

Further, the Department of State Police would have to include the number of times the database was accessed, categorized by the purpose for which the database was accessed, in the annual report that it files with the Legislature.

House Bill 5327 would add a new section to the Michigan Handgun Act (MCL 28.421b, proposed). Under the new provision, firearms records would be confidential, and not

subject to disclosure under the Freedom of Information Act. They could not be disclosed to any person except as provided in the bill.

Specifically, firearms records could only be accessed and disclosed by a peace officer or authorized system user for the following purposes:

- ❖ A peace officer has a reasonable suspicion that:
 - The individual whose firearm records are the subject of disclosure poses a threat to himself or herself or other individuals.
 - The individual has committed an offense with the pistol that violates a state law, law of another state, or the U.S.
 - The pistol was used during the commission of an offense that violates a state law, law of another state, or the U.S.
- ❖ To ensure the safety of a peace officer before a lawful search and seizure.
- ❖ For purposes of the Michigan Handgun Act.
- ❖ A peace officer has reason to believe that access to the firearms records is necessary within the commission of the officer's lawful duties. The peace officer or authorized system user must enter and record the specific reason in the system in accordance with the procedures in Section 5e (contained in House Bill 4155).

A violation would be a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500. A second or subsequent offense would be a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,000.

House Bill 5324 would amend Section 2b of the Michigan Handgun Act (MCL 28.422b) to eliminate the provision that information contained in an order or disposition entered into the Law Enforcement Information Network (LIEN), such as PPOs, legal incapacity, and involuntary treatment for a mental illness, is exempt from disclosure under the Freedom of Information Act.

House Bill 5326 would amend Section 5o of the Michigan Handgun Act (28.425o), which prohibits the carrying of a concealed pistol on certain premises. Currently, a bar or tavern owner or employee is exempt from the prohibition on carrying a concealed pistol under a concealed pistol license on the premises. The bill would delete a provision exempting from disclosure under the Freedom of Information Act a record made available by a licensed establishment necessary to enforce the provision.

Further, Section 5o contains several references to a list of individuals who are not required to obtain a concealed pistol license (such as a peace officer). The bill would revise those references to include two other categories of people: a resident of another state licensed by that state, and also a member of the National Guard or armed forces reserves under certain conditions.

House Bill 5328 would amend Section 5b of the Michigan Handgun Act (MCL 28.425b) to delete the requirement that certain information obtained during the application process

for a concealed pistol license be confidential and exempt from disclosure under the Freedom of Information Act.

House Bill 5329 would amend the Code of Criminal Procedure (MCL 777.11b) to specify that unlawful access or disclosure of firearms records (second and subsequent offense) is a Class F felony against the public safety with a four-year maximum term of imprisonment.

ARGUMENTS:

For:

The bills do two things. First, the bills codify an old court decision to clarify that firearm records are exempt from public disclosure under FOIA. Secondly, the bills establish a protocol that law enforcement personnel would have to follow or face criminal penalties. The latter is needed, gun rights groups maintain, to protect against undue harassment from law enforcement officers or civilian personnel such as dispatchers who may access the information for their own, rather than a law enforcement, purpose. The accountability provided by signing the log, the annual report to the Legislature on how the firearms records were accessed, and the criminal penalties will all deter potential abuses.

Against:

Some say the bill package is a solution in search of a problem. Michigan does not disclose firearms records information to the general public. There appears to be broad consensus for codifying the old court decision, but, critics say, absent a demonstrated problem of law enforcement officers abusing their access to information contained in the firearms records, there is no reason for the restrictive protocol established in House Bills 4155 and 5327.

The committee substitutes for House Bills 4155 and 5327 are better than the introduced versions, but may still be too problematic for law enforcement officers and personnel. Unless a peace officer or other authorized person accessed firearm records for a reason listed in HB 5327, the individual would face harsh criminal penalties. If, in the heat of the moment, an officer or other user attested in the log that the records were being sought for an approved reason, could that person be subject to perjury charges later if the reason given wasn't substantiated? Is it really good public policy to put officers – whether responding to an incident-in-progress call or investigating a crime – in the position of having to decide if accessing the firearms records in that instance would fit the parameters in the bills or essentially end their careers?

POSITIONS:

A representative of the National Rifle Association testified in support of the bills. (2-20-14)

The Michigan Coalition for Responsible Gun Owners indicated support for the bills. (2-20-14)

A representative of the Department of State Police indicated a neutral position on House Bills 5324-5326 and 5328-5329, and testified that though the department had no position on House Bills 4155 and 5327, it did have serious concerns about those bills. (2-20-14)

A representative of the Michigan Sheriffs' Association testified in opposition to House Bill 5327. (2-20-14)

The Michigan Press Association indicated opposition to the bills. (2-27-14)

The ACLU of Michigan indicated opposition to House Bills 4155 and 5327. (2-27-14)

A representative of the Oakland County Sheriff indicated opposition to House Bills 4155 and 5327.

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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.