

Legislative Analysis



FIREARMS RECORDS CONFIDENTIALITY

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4155 (Proposed H-2)

Sponsor: Rep. Aric Nesbitt

House Bill 5324

Sponsor: Rep. Nancy E. Jenkins

House Bill 5325

Sponsor: Rep. Hugh Crawford

House Bill 5326

Sponsor: Rep. Edward McBroom

House Bill 5327

Sponsor: Rep. Bruce R. Rendon

House Bill 5328

Sponsor: Rep. Kevin Cotter

House Bill 5329

Sponsor: Rep. Peter Pettalia

Committee: Judiciary

Complete to 2-19-14

A SUMMARY OF HOUSE BILL 4155 (PROPOSED SUBSTITUTE H-2) AND HOUSE BILLS 5324-5329 AS INTRODUCED 2-13-14

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

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 2a, 2b, and 5b of the act, or any form, permit, or license issued by a government agency under the act.

[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 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 for the following purposes:

- ❖ A peace officer has probable cause to believe 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 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 4155 would amend the Michigan Handgun Act (MCL 28.4212 et al.). The proposed substitute would include the same amendments as contained in House Bills 5324-5328 as described above. The bill would also 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).

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 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.

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.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf
Robin Risko

■ 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.