

Legislative Analysis



LOCAL LIMITATIONS ON GUN OWNERSHIP

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4616 (proposed substitute H-2)
Sponsor: Rep. Gary Howell
Committee: Local Government
Complete to 6-6-17

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

House Bill 4616 would add four new sections to Public Act 319 of 1990, regarding firearms and ammunition. It would provide that, if a local unit of government enacts a gun control ordinance or regulation in opposition to state law: (1) the local unit of government must bring that ordinance or regulation into compliance within 60 days; (2) if it does not, a resident can bring an action or file a complaint with the Attorney General to bring an action, after 90 days' notice to the local unit; and (3) if the court finds a violation, it will issue an injunction to stop enforcement of the ordinance or regulation, order the local unit to repeal the ordinance or regulation, and award actual damages, costs, and reasonable attorney fees to the challenging party. The court may also assess a civil fine against elected or appointed officials for knowingly and willfully enacting or enforcing a violative ordinance or regulation. (Proposed MCL 123.1104a-123.1104d)

DETAILED SUMMARY:

Bring ordinances or regulations into compliance within 60 days

The bill would require the local unit of government to bring any existing ordinance or regulation that violates the act into compliance with the act within 60 days of its effective date.

Once 61 or more days have passed after the act's effective date, if a local unit of government enacts, enforces, or refuses to bring into compliance an ordinance or regulation that violates the act, an individual who is a resident of the state of Michigan may either:

- Bring an action to enforce the act in the circuit court in the judicial district in which that local unit of government is located, after 90 days' written notice, or
- File a complaint with the Attorney General (AG).

The AG may receive and investigate these complaints at any time, and the local unit must cooperate with that investigation. Beginning 61 days after the act's effective date, the AG must bring an action to enforce the act in circuit court if the local unit enacts, enforces, or refuses to bring into compliance an ordinance or regulation that violates the act, after giving 90 days' written notice to the local unit of government.

Process and penalty for violation

If an individual or the AG brings an action, as described above, and the court determines that the ordinance or regulation in question violates the act, the court must do all of the following:

- Issue an injunction restraining the local unit from enforcing the ordinance or regulation;
- Order the local unit to amend or repeal the ordinance or regulation; and
- Award actual damages, costs, and reasonable attorney fees to the party challenging the ordinance or regulation. (The challenging party may recover these costs and fees even if the local unit brings the ordinance or regulation into compliance while the action is pending).

Additionally, if the court determines that an elected or appointed official knowingly and willfully enacted or enforced the violative ordinance or regulation, the court must assess a civil fine of no less than \$500 or more than \$2,500 against the elected or appointed official, in addition to any other penalty provided by law.

BACKGROUND:

Reportedly, 43 states currently have broad firearm preemption laws. The remaining seven states—California, Connecticut, Hawaii, Massachusetts, Nebraska, New Jersey, and New York—allow local officials to enact firearms-related public safety laws. Passage of this bill would make Michigan the fourth state to enact a "super preemption" law, or a preemption law with penalties.

FISCAL IMPACT:

Judiciary: The bill would have an indeterminate fiscal impact on the state and on local court funding units. Costs would be incurred depending on how the provisions of the bill affected caseloads in the courts and related administrative costs.

If civil fines are assessed by the courts, an increase in civil fine revenue would occur; however, the bill does not specify where the revenue would be dedicated. Typically, the fund to receive the civil fine revenue would be specified in the legislation. In this case, it could, by default, be an increase to the state's General Fund. Or, it might be subject to the discretion of the court imposing the fine, in the absence of statutory direction.

Attorney General: The bill's fiscal impact to the Department of the Attorney General would depend on the number of complaints submitted to the Attorney General and the number of investigations initiated as a result. If the number of investigations exceeds the case load capacity of the investigators currently staffed by the Attorney General and additional investigators are needed, the Attorney General would incur costs of additional hires. The full-time equivalent cost of an investigator is \$110,000 a year.

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