

PENALTIES FOR LOCAL LIMITATIONS ON GUN OWNERSHIP

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

House Bill 4616 (H-2) as reported from committee
Sponsor: Rep. Gary Howell
Committee: Local Government
Complete to 6-21-17

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 an ordinance or regulation in violation of the Act. (Proposed MCL 123.1104a-123.1104d)

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, statute specifies which fund would receive the civil fine revenue. 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.

THE APPARENT PROBLEM:

Public Act 319 was enacted in 1990 in an attempt to "occupy the field" of firearms regulation, ensuring that gun laws would be enacted on a state, rather than local, level. Section 2 of that act provides that:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

However, there is concern that some communities continue to enact or enforce measures in violation of the Act. When a similar bill was considered in 2016 (House Bill 4795), that bill sponsor presented a list of 26 local ordinances which allegedly contravene Public Act 319 by implementing stricter gun regulations than those in state law. Many of these ordinances prohibit firearms in public parks and cemeteries. This bill would provide a process to bring local laws that impose stricter gun control measures into compliance with state law, and to penalize those that refuse to comply.

THE CONTENT OF THE BILL:

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 INFORMATION:

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.

ARGUMENTS:

For:

Proponents of this bill argued that the issue for debate is not the constitutional right to keep and bear arms, but whether people who break the law should be held accountable. The state has laws in place to protect the rights of gun owners, and some communities seek to restrict those rights. Proponents argue further that taking away citizens' rights to carry firearms legally on public property removes a right guaranteed by the Michigan and U.S. constitutions.

Even though the law in question, Public Act 319 of 1990, has been in place for 27 years, a number of communities have passed ordinances in violation of state law. Some elected officials in those communities have stated that they have no intention of amending local ordinances to comply with state law. Reportedly, some even say that they are glad that the conflicting laws confuse residents, and hope that confusion will keep more guns out of communities. Proponents argue that this bill is necessary because there is currently no obvious disincentive for violating the law, and some communities are taking advantage of that fact. This bill would fill the need for an enforcement mechanism and give "teeth" to the existing law.

Against:

Opponents of this bill argued that local elected officials are in the best position to keep their citizens safe. Mayors and council members live in the community affected, and can ensure that the local measures respect the interests and views of its citizens. Just as some individuals feel safer when carrying a gun, others feel safer when guns are prohibited or

regulated in the community, and their local ordinances should be able to reflect as much. Several opponents of the bill suggested that if the legislature truly wished to represent the interests of citizens, and to promote local control, they should repeal the initial act rather than "doubling down" on a bad law.

After all they argued, states often bristle when the federal government meddles in the affairs of a state, requiring or prohibiting actions that inspire vastly different emotions across the country—for instance, a policy that works in Texas often has different implications and inspires different emotions when implemented in Maine. Shouldn't that same principle apply in the diverse population of Michigan? Rural, urban, and suburban communities spread across Michigan's 83 counties may react very differently to the display of firearms. In some communities, guns are a way of life, and are no more out of place at a public park than a picnic table. In others—whether because their presence is often a precursor to violence in that community or because they are so rarely seen—just the sight of a gun inspires fear and panic. Are Michigan's nearly-10 million residents really best served when the legislature ignores the innate differences between the communities of North Branch (pop. 1,028 in 2014) and Detroit (pop. 680,250 in 2014)?

Perhaps the better solution would be to repeal the 1990 law and allow communities to exert local control: to determine what makes the most sense for their own residents—with residents free to opt in or opt out of communities that welcome or restrict firearms.

POSITIONS:

Representatives of the following organizations testified in support of the bill:

- Michigan Open Carry (5-24-17)
- Michigan State Police (5-24-17)

Freedom Firearms indicated support for the bill. (6-7-17)

A representative of Moms Demand Action for Gun Sense in America testified in opposition to the bill. (5-24-17)

The following organizations indicated opposition to the bill:

- Michigan Sheriffs' Association (5-24-17)
- Michigan Townships Association (5-24-17)
- ACLU of Michigan (5-24-17)
- Every Town for Gun Safety (5-24-17)
- Michigan Coalition to Prevent Gun Violence (6-7-17)
- Michigan Municipal League (6-7-17)

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Robin Risko
Mike Clossen

■ 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.