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BILL



ANALYSIS

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Senate Bill 792 (Substitute S-1 as reported)
Senate Bill 793 (as reported without amendment)
Sponsor: Senator Roger Kahn, M.D. (S.B. 792)
Senator Jim Barcia (S.B. 793)
Committee: Hunting, Fishing & Outdoor Recreation

Date Completed: 11-19-09

RATIONALE

Michigan law allows the transport and storage of a firearm if it is unloaded, kept in a storage case, and located in the vehicle's trunk or otherwise inaccessible to the occupants. Apparently, however, some employers have implemented policies completely prohibiting firearms on the premises, including weapons stored in accordance with the law. Due to several recent situations in which people reportedly have been fired for keeping firearms in their vehicles at their workplaces, there are concerns that individual rights to bear arms might not be protected adequately in some situations. It has been suggested that State statute should expressly allow the lawful transport and storage of firearms in vehicles parked at private businesses, government buildings, and places of employment. In a related matter, provisions in the law exempt individuals from a requirement for a concealed pistol license if a pistol is being transported for a "lawful purpose". It has been suggested that the term "lawful purpose" be revised.

CONTENT

Senate Bill 792 (S-1) would amend Public Act 372 of 1927, which provides for concealed weapon licenses, to name the Act the "Michigan Firearms Act", and do the following:

- **Allow a person to transport or store a firearm or ammunition in a privately owned motor vehicle in the parking area of a business,**

- commercial enterprise, place of employment, or government agency.**
- **Prohibit a specified entity from prohibiting a person from transporting or storing a firearm or ammunition as provided in the bill.**
- **Allow a person to bring a civil action against a person or entity that denied him or her the ability to transport or store a firearm or ammunition as permitted.**
- **Prohibit a specified entity from discharging or penalizing an employee who transported or stored a firearm as permitted.**
- **Allow a person who was discharged or penalized to demand that the entity take certain actions, and to bring a civil action if the demand were not met.**

Senate Bill 793 would amend Chapter 37 (Firearms) of the Michigan Penal Code to revise the term "lawful purpose" with regard to certain exceptions to the concealed pistol license requirement.

The bills are described below in further detail.

Senate Bill 792 (S-1)

Under the bill, a person who lawfully possessed a firearm or ammunition could transport it in a privately owned motor vehicle, or store it in a parked and locked privately owned motor vehicle, that was present in parking lot, parking garage, or

other area designated or otherwise used by vehicles on the premises of any of the following entities if the firearm were kept out of plain view and in a manner described in Chapter 37 of the Michigan Penal Code or otherwise allowed by law:

- A business.
- A commercial enterprise.
- A place of employment.
- An agency of the State or of a county, municipality, township, or village.

("Motor vehicle" would mean any vehicle that is required to be registered with the Secretary of State, including an automobile, truck, minivan, sport utility vehicle, or motorcycle.)

Except as provided below, a specified entity could not prohibit a person who lawfully possessed a firearm from transporting or storing the firearm or ammunition in a locked and privately owned motor vehicle that was parked in a parking lot, parking garage, or other area used by vehicles.

An entity could adopt a policy that required a firearm and ammunition to be stored out of plain view. The bill states that it would not create a new duty on the part of any entity beyond the duty specified in the bill.

Except in the case of gross negligence, a specified entity would not be liable in a civil action for damages resulting from or arising out of another person's act involving a firearm or ammunition that was transported or stored as described in the bill.

A person who was or would be denied the ability to transport or store a firearm or ammunition by a business, commercial enterprise, employer, or State service agency in violation of the bill, and who would otherwise be entitled to do so legally, could bring an action to enjoin any person, business entity, commercial enterprise, employer, or State service agency from violating the bill. A prevailing plaintiff would have to be awarded costs and attorney fees.

A specified entity could not discharge, or otherwise penalize, an employee for transporting or storing a firearm as authorized by the bill. An employee of a specified entity who transported or stored a firearm or ammunition as authorized and was discharged for violating a policy or rule

prohibited under the bill could demand that the entity take all of the following actions:

- Reinstatement the employee to the same position he or she held at the time of his or her termination from employment.
- Reinstatement the employee's full fringe benefits and seniority rights, if any.
- Compensation the employee for any lost wages, benefits, or other lost remuneration, including unpaid leave or furlough, caused by the termination.
- Payment reasonable attorney fees and costs incurred by the employee in seeking redress for a violation.

If the business, commercial enterprise, employer, or government agency denied a demand or failed to respond within 14 days, the employee could bring a civil action for wrongfully discharging or penalizing him or her in violation of the bill. As applicable, a prevailing plaintiff would be entitled to all of the remedies described above (reinstatement, compensation, etc.).

The bill would not apply if the motor vehicle were owned or leased by a specified entity and used by its employee in the course and scope of that employment, unless the employee were required to transport or store a firearm in the discharge of his or her duties.

It would be a complete defense to an action under the bill that compliance would necessitate the violation of another applicable Federal or State law or regulation, unless compliance could be reconciled with the other law or regulation.

The bill would not authorize a person who held a license to carry a concealed pistol to possess the pistol in a concealed manner other than as prescribed under the Act. In addition, the bill would not authorize a person to transport or store a firearm in a vehicle at a school if that conduct would violate or conflict with any of the following:

- Section 1311 or 1313 of the Revised School Code.
- Section 237a of the Michigan Penal Code.
- 18 USC 921 to 931.
- The Safe and Drug-Free Schools and Communities Act (18 USC 7101 to 7165).

(Section 1311 of the Revised School Code requires a school board to expel a pupil who possesses a dangerous weapon in a weapon-free school zone (i.e., school property and a vehicle a school uses to transport students to or from school property). Section 1313 provides for the confiscation of a dangerous weapon found in the possession of a pupil while he or she is in attendance at school or a school activity or while on a school bus, and requires the school district to notify the pupil's parent or legal guardian and the local law enforcement agency.

Section 237a of the Penal Code assigns misdemeanor penalties to various Code violations committed in a weapon-free school zone, and felony penalties to certain violations committed in a weapon-free school zone for a second or subsequent time.

Sections 921 through 931 of Title 18 of the U.S. Code prescribe regulations pertaining to firearms and interstate or foreign commerce. The Safe and Drug-Free Schools and Communities Act provides for Federal grants to support school programs to prevent violence and the use of drugs, alcohol, and tobacco.)

Senate Bill 793

Chapter 37 of the Penal Code prohibits a person from carrying a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle he or she operates or owns, except in his or her dwelling house, place of business, or on other land he or she possesses, without a license to carry it as provided by law. Additionally, if licensed, a person may not carry the pistol in a place or manner inconsistent with any license restrictions. These provisions do not apply to a person while transporting a pistol for a lawful purpose that is licensed by the owner or occupant of the vehicle in compliance with Section 2 of Public Act 372 of 1927, if the pistol is unloaded in a closed case designed for the storage of firearms and in the vehicle's trunk or, if the vehicle does not have a trunk, is not readily accessible to the occupants.

(Section 2 of Public Act 372 prohibits a person from purchasing, carrying, possessing, or transporting a pistol in Michigan without obtaining a license.)

Under the Code, "lawful purpose" includes the following:

- While en route to or from a hunting or target shooting area.
- While transporting a pistol en route to or from his or her home or place of business and place of repair.
- While moving goods from one place of abode or business to another.
- While transporting a licensed pistol en route to or from a law enforcement agency for the purpose of having a law enforcement official take possession of the weapon.
- While en route to or from his or her abode or place of business and a gun show or places of purchase or sale.
- While en route to or from his or her abode to a public shooting facility or public land where discharge of firearms is permitted by law, rule, regulation, or local ordinance.
- While en route to or from his or her abode to a private property location where the pistol is to be used as permitted by law, rule, regulation, or local ordinance.

Under the bill, the definition would apply whether a person was *directly or indirectly* en route to or from any of the specified places, moving goods from one place to another, or transporting a pistol to or from a law enforcement agency.

Proposed MCL 28.421b & 28.429d (S.B. 792)
MCL 750.231a (S.B. 793)

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

The Second Amendment to the U.S. Constitution states, "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." The Second Amendment guarantees each U.S. citizen the right to defend himself or herself, including while commuting. Some firearm owners, however, have nowhere to store their weapons while at work without facing penalties, including termination. Workplace

rules prohibiting guns should not trump the rights of individuals who transport and store their firearms responsibly and in accordance with the law. While employers have latitude to establish certain policies, such as an employee dress code, they are prohibited from implementing rules that discriminate against employees or customers based on factors such as race and religion, and should not be allowed to discriminate against law-abiding workers exercising their constitutionally protected right to self-defense. Senate Bill 792 (S-1) would protect gun owners by reinforcing their right to store weapons safely in their vehicles at their workplaces, private businesses that they patronize, and government buildings. Senate Bill 793 would further this goal by including in "lawful purpose" the possession of a firearm while a person was traveling directly or indirectly from one place to another.

Opposing Argument

Senate Bill 792 (S-1) would put the rights of employees and customers above the rights of business owners, who may feel that banning firearms on their property is conducive to maintaining a safe work environment. A mandate that employers allow individuals to possess guns in their vehicles would be an inappropriate reach of government into private business matters.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 792 (S-1)

The bill would have an indeterminate impact on State and local government. The extent to which a governmental unit could be involved in future actions resulting from the bill is not ascertainable.

Senate Bill 792

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman
Matthew Grabowski

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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.