

FIREARMS RECORDS

Senate Bill 49 (Substitute H-1)

Sponsor: Sen. Thomas Casperson

Senate Bill 834 without amendment

Sponsor: Sen. Phil Pavlov

Senate Bill 881 without amendment

Sponsor: Sen. Goeff Hansen

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (5-20-14)

BRIEF SUMMARY: 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, and provide a civil penalty for unlawful access or disclosure.

The bills would take effect 180 days after enactment.

Tie-bars: Senate Bills 49, 831, and 881 are tie-barred to each other and to House Bills 4155, 5325, and 5328. 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.

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 do 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 on 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 personal 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:

Senate Bill 49 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:

- ❖ The individual whose firearm records are the subject of disclosure poses a threat to himself or herself or other individuals, including a peace officer.
- ❖ The individual has committed an offense with a pistol that violates a state law, law of another state, or the U.S.
- ❖ The pistol that is the subject of the firearms records search may have been 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.
- ❖ For purposes of the Michigan Handgun Act.
- ❖ A peace officer or authorized user has reason to believe that access to the firearms records is necessary within the commission of 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 (amended by House Bill 4155).

A person who intentionally accessed the firearms records in violation of the above would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than \$500.

Senate Bill 834 would amend 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.

Senate Bill 881 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, the bill would correct a reference that was overlooked when Public Act 559 of 2006 was enacted. PA 559 amended Section 12A to allow local corrections officers and certain employees of jail lockups to carry a concealed weapon during the performance of their duties without having to obtain a concealed license permit. When those provisions were added, the ordering of the subsequent subsections were changed. Section 425o contains two references to Section 12A (1)(f). Prior to PA 559, that subsection referred to persons who were licensed to carry a concealed weapon by another state. Because of the additional subdivisions added by PA 559, it refers to a member of the armed forces while carrying a pistol in the line of duty. The bill would simply correct the reference in Section 425o to once again apply to persons licensed to carry a concealed weapon by another state.

HOUSE COMMITTEE ACTION:

The House adopted a substitute bill that revised the conditions under which a peace officer or other authorized user could access firearm records, made a violation a civil (rather than a criminal) penalty, and added an effective date.

ARGUMENTS:

For:

The bills do two things. First, along with legislation to which the bills are tie-barred, the bills work together to codify an old court decision to clarify that firearm records are exempt from public disclosure under FOIA. Gun owners maintain that without such protection, public access to the records could make them targets of criminals intent on locating firearms to steal. Secondly, the bills establish a protocol that law enforcement personnel would have to follow or face civil 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 legitimate law enforcement, purpose. The accountability provided by recording the specific reason for the access and the civil penalties will all deter potential abuses.

Against:

The bill package seems to be a solution in search of a problem. Michigan does not disclose firearms records information to the general public, and hasn't for more than a decade. Thus, the bills would not necessarily increase the safety of gun owners.

As written, however, the bills could endanger the safety of process servers, licensed private investigators, and court officers. Various court documents, including notices of being sued and Personal Protection Orders (PPOs), must be hand-delivered by process servers. Court officers, professional private process servers, and licensed private investigators all serve civil process in the state. Besides serving process, private

investigators and public defender investigators aid the criminal justice and civil justice systems by investigating criminal and civil cases, some of which involve gun violations. Whether conducting an investigation or serving process on an uncooperative subject, investigators and process servers, and court officers who may be evicting persons or seizing possessions under a court order, need to know if the person they are approaching is armed or if guns are present in the home (and who is the proper owner). In some cases the presence of weapons can create danger, especially when emotions run high, as they can when a person is being sued or watches a court officer seize possessions. Just as law enforcement personnel have a reasonable right to know if they are walking into a potentially dangerous situation, so do investigators, process servers, and court officers.

If the old court decision is to be codified to ensure firearm record information is not released to the general public, at the very least, those who investigate crimes and civil actions, and who serve process, should be allowed access in the performance of their duties. Even granting a court the judicial discretion over this civilian access could help protect the safety of investigators, process servers, and court officers without compromising the intent of protecting the personal information of responsible gun owners.

POSITIONS:

A representative of the Michigan Process Servers Alliance testified in opposition to the bills. (5-8-14)

The Michigan Sheriff's Association indicated a neutral position on the bills. (5-8-14)

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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.