



Senate Fiscal Agency
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BILL ANALYSIS



Telephone: (517) 373-5383
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Senate Bill 49 (as enacted)
Senate Bills 834 and 881 (as enacted)
House Bill 4155 (as enacted)
House Bill 5325 (as enacted)
House Bill 5328 (as enacted)
Sponsor: Senator Tom Casperson (S.B. 49)
Senator Phil Pavlov (S.B. 834)
Senator Goeff Hansen (S.B. 881)
Representative Aric Nesbitt (H.B. 4155)
Representative Hugh Crawford (H.B. 5325)
Representative Kevin Cotter (H.B. 5328)
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 7-30-14

RATIONALE

In December 2012, in the aftermath of a mass shooting at an elementary school in Connecticut, a newspaper in the State of New York published an interactive online map that contained the names and addresses of thousands of handgun permit holders in two of that state's counties. The newspaper evidently obtained the information through the state's Freedom of Information Law. The newspaper's public disclosure of this information was controversial and prompted discussions nationwide regarding access to gun-ownership data and the safety and privacy rights of registered handgun owners. After the report was published, New York enacted a new gun safety law that includes a provision allowing permit holders to request their personal information to be excluded from public databases. To avoid the occurrence of a similar situation, it was suggested that Michigan enact a public disclosure exemption for firearms records while also making nonpersonal data available through a report on the State Police website.

CONTENT

Senate Bill 49 amends the handgun licensure law to specify that firearms records are confidential and not subject to disclosure under the Freedom of Information Act (FOIA), and may be accessible and disclosed only for certain law enforcement purposes. The bill also prescribes a State civil infraction penalty for an intentional violation of the disclosure restrictions.

House Bill 5325 amends the handgun licensure law to define "firearms records".

Senate Bills 834 and 881 and House Bill 5328 amend the handgun licensure law to delete provisions exempting particular records from disclosure under FOIA.

House Bill 4155 amends the handgun licensure law to allow information in a Michigan Department of State Police (MSP) database of people who apply for a concealed pistol license to be disclosed only under certain circumstances. The bill also requires an annual MSP report to include the number of times access to the MSP database is gained.

Each bill was tie-barred to all of the others. The bills were enacted on June 24, 2014, and will take effect on December 21, 2014.

Senate Bill 49

The bill specifies that firearms records are confidential, are not subject to disclosure under FOIA, and may not be disclosed to any person except as provided below.

Firearms records may be disclosed, and access to them may be gained, only by a peace officer or authorized system user as follows:

- The individual whose firearms records are the subject of disclosure poses a threat to himself or herself or other individuals, including a peace officer.
- The individual whose firearms records are the subject of disclosure has committed an offense with the pistol that violates a law of this State, another state, or the United States.
- The pistol that is the subject of the firearms records search could have been used during the commission of an offense that violated a law of this State, another state, or the United States.
- To ensure the safety of a peace officer.
- For purposes of the handgun licensure law.
- A peace officer or an authorized user has reason to believe that access to firearms records is necessary within the commission of his or her lawful duties, and enters and records the specific reason in the system according to the procedures in Section 5e (the section that House Bill 4155 amends).

A person who intentionally violates the access and disclosure restrictions described above will be responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$500.

House Bill 5325

The bill defines "firearms records" as any form, information, or record required for submission to a government agency under Sections 2, 2a, 2b, and 5b of the handgun licensure law, or any form, permit, or license issued by a government agency under that law.

(Section 2 prohibits a person from buying, carrying, possessing, or transporting a pistol without a license, and includes requirements regarding the sale of pistol. Section 2a exempts certain people from the requirements of Section 2, and prescribes requirements regarding the sale of a pistol. Section 2b requires the State Police to notify the person who is the subject of an order or disposition described in that section (which Senate Bill 834 amends), upon entry of that order or disposition into the Law Enforcement Information Network. Section 5b contains requirements for securing a license to carry a concealed pistol.)

Senate Bill 834

Except as otherwise provided under the handgun licensure law, a person may not purchase, carry, possess, or transport a pistol in Michigan without first having obtained a license for the pistol. A commissioner or chief of police or county sheriff must issue licenses to qualified applicants.

An applicant is qualified if he or she meets certain requirements, including that he or she is not subject to an order or disposition entered into the Law Enforcement Information Network for any of the following:

- Involuntary hospitalization and/or alternative treatment for mental health.
- A finding of legal incapacitation under the Estates and Protected Individuals Code.
- A domestic violence or stalking personal protection order.
- Pretrial release of a defendant.
- A finding of not guilty by reason of insanity.

The law provides that information contained in an order or disposition described above is exempt from public disclosure under FOIA. The bill deletes that provision.

Senate Bill 881

The handgun licensure law prohibits a concealed pistol license (CPL) holder from carrying a concealed pistol on certain premises. These so-called "no carry zones" include a bar or tavern licensed under the Michigan Liquor Control Code where the primary source of income is the sale of alcohol by the glass and consumed on the premises. The prohibition does not apply to an owner or employee of the business. The owner or operator of such an establishment may, but is not required to, post a sign developed by the Liquor Control Commission stating: "This establishment prohibits patrons from carrying concealed weapons."

The law provides that a record made available by a licensed establishment necessary to enforce the no-carry requirement is exempt from disclosure under FOIA. The bill deletes that provision.

House Bill 5328

Under the handgun licensure law, an application to obtain a CPL must include the applicant's legal name and date of birth and the address of his or her primary residence. If the applicant lives in a city, village, or township that has a police department, the application also must include the name of that police department.

A CPL application also must include a statement by the applicant authorizing the concealed weapon licensing board to have access to any record, including any medical record pertaining to his or her qualifications for a license.

In addition, a CPL application must include a statement by the applicant regarding whether he or she has a history of mental illness that would disqualify him or her from receiving a license, and authorizing the concealed weapon licensing board to have access to the applicant's mental health records.

A CPL application also must include the names, residential addresses, and telephone numbers of two references.

Each of those requirements provides that the information received, or medical records and personal identifying information, is confidential, is not subject to disclosure under FOIA, and may not be disclosed to any person except for purposes of the handgun licensure law or for law enforcement purposes. The bill deletes those provisions.

House Bill 4155

MSP Database

The bill allows access to information in an MSP database of applicants for a concealed pistol license to be given only according to an access protocol that meets certain conditions.

The handgun licensure law requires the MSP to create and maintain a computerized database of people who apply for a license to carry a concealed pistol. Information in the database is confidential, is not subject to disclosure under FOIA, and may not be disclosed to any person except for purposes of the handgun licensure law or for law enforcement purposes. Under the bill, instead, access to information in the database may be gained, and the information may be disclosed, only according to an access protocol that does the following:

- Requires the requestor of the records to use the Law Enforcement Information Network (LEIN) or another system that maintains a record of the requestor's identity, time, and date that the request is made.
- Requires the requestor in an intentional query of the firearms records by name to attest that the records are sought for one of the lawful purposes provided in Section 1b(2).

(Section 1b(2) is added by Senate Bill 49 and lists the purposes for which firearms records may be disclosed by a peace officer or authorized system user.)

MSP Report

The law requires the MSP to file an annual report with the Secretary of the Senate and the Clerk of the House of Representatives regarding concealed pistol licensing. The report must set forth all of the following information for each county concealed weapons licensing board:

- The number of concealed pistol applications received.
- The number of CPLs issued.
- The number of CPLs denied.
- Categories for denial of CPLs.
- The number of CPLs revoked.
- Categories for revocation of CPLs.
- The number of applications pending at the time the report is made.
- The mean and median amount of time, and the longest and shortest amount of time, used by the FBI to supply a required fingerprint comparison report.
- The number of charges of State civil infractions or criminal violations, categorized by offense, filed against individuals licensed to carry a concealed pistol that resulted in a finding of responsibility or a criminal conviction.
- The number of pending criminal charges, categorized by offense, against CPL holders.
- The number of criminal cases dismissed, categorized by offense, against CPL holders.
- The number of cases filed against CPL holders for criminal violations that resulted in a finding of not responsible or not guilty, categorized by offense.
- The number of suicides by CPL holders.
- Actual costs incurred per permit for each county.

The bill requires the report also to include the number of times access to the database was gained, categorized by the purpose of the access. The MSP also must post the annual report on its website.

MCL 28.421b (S.B. 49)
28.422b (S.B. 834)
28.425o (S.B. 881)
28.425e (H.B. 4155)
28.421 (H.B. 5325)
28.425b (H.B. 5328)

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

Public disclosure of pistol permits and records would reveal personal information, such as the names and addresses of handgun owners. This would allow criminals to target certain homes in order to steal weapons, which would threaten the safety of law-abiding pistol owners and their families. By preventing disclosure of personal information that should be considered private, the bills will protect permit holders, as well as others against whom the stolen guns could be used.

In addition, privacy concerns must be balanced with the public's right to know how the State's gun laws are working and what the government is doing to oversee handgun ownership. While personal information should be exempt from disclosure, nonpersonal information, such as the number of licenses approved and denied, should be subject to FOIA. Although the handgun licensure law has required the MSP to submit such information in an annual report to the Legislature, that does not necessarily mean it is available to the public. By requiring the MSP to post the annual report on its website, House Bill 4155 will ensure that the public has the information it needs without obtaining individual gun owners' private information.

Opposing Argument

The bills will reduce transparency in government by preventing public access to government records regarding handgun ownership. The very premise of the Freedom of Information Act is that members of the public have a right to know what is included in government records.

Response: The value of making personal information available to the public must be balanced against the interest of protecting permit holders. Many other pieces of personal information, such as Social Security numbers, are already exempt from FOIA. In addition, House Bill 4155 makes nonpersonal information available to the public through the MSP's website.

Opposing Argument

House Bill 4155 allows information in the MSP database to be available only through the use of the LEIN system. While that information currently is available more broadly "for law enforcement purposes", access to LEIN is more narrowly restricted and Senate Bill 49 refers to access only by a peace officer or authorized system user. Handgun ownership records should be available to government entities besides law enforcement agencies, such as courts, and their employees or contractors. Some people who serve a law enforcement purpose, but are not peace officers, need to know about gun ownership records in a variety of situations. In Michigan, court officers (who are not designated as peace officers) serve warrants, often in cases that involve firearms violations or the use of firearms in committing violations. Whether the subject of a warrant owns firearms is relevant to the court officer assigned to serve that warrant. Courts also contract with private individuals to serve process in all manner of cases. Whether someone has a firearm is useful for a process server to know before he or she attempts to serve court papers. In addition, courts sometimes appoint private investigators to do investigative work for parties in criminal cases. Having access to individual personal information about gun ownership is vital for private investigators and security companies that employ them to safely perform the work courts hire them to do.

Response: According to administrative rules governing LEIN and other information systems, access is available to a "criminal justice agency", the definition of which includes "a court or other governmental agency, or any subunit thereof, that engages in the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget for the administration of criminal justice" (R 28.5201 and R 28.5101). Pursuant to this authorization, court employees and contractors should be able to retrieve gun-ownership records via LEIN.

Opposing Argument

Nothing in the bills authorizes a court to order access to gun ownership records. Also, since there is no provision for the Auditor General to examine the records, the Legislature will not be able to adequately oversee of the State's handgun licensing laws.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State or local government, except to the extent that State civil infraction fine revenue benefits public libraries.

Fiscal Analyst: Bruce Baker

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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.