

## **PENALTIES FOR LOCAL LIMITATIONS ON GUN OWNERSHIP**

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**House Bill 4795 (H-4) as reported from committee**  
**Sponsor: Rep. Lee Chatfield**  
**Committee: Local Government**  
**Complete to 5-27-16**

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

**BRIEF SUMMARY:** The bill would increase the penalties for local enactment or enforcement of gun control measures in opposition to state law. The bill provides that the local unit of government must pay damages to an organization that has succeeded in challenging a local ordinance, and provides that the elected officials of that unit must notify each elector of the violation and the costs incurred.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on the state and on local units of government. Costs to local units would be incurred if an elected or appointed official, or the council, commission, or board of a local unit government violated the provisions set forth in the bill. Costs would be incurred by the judiciary and local court funding units and would depend on how the provisions of the bill affected caseloads in the courts and related administrative costs.

### ***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.*

The 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. In an attempt to ensure that communities adhere to state law, this bill would penalize violation, by requiring communities to pay the court costs of successful challenges to an ordinance, and also to notify all electors of the violation and costs.

### ***THE CONTENT OF THE BILL:***

House Bill 4795 would amend Public Act 319 of 1990, regarding firearms and ammunition, to provide that if local gun control measures are imposed in opposition to state law, (1) a

party that feels it has been adversely affected by a measure may bring an action in the circuit court where the local unit of government is located; (2) if the party is successful, the court will award remedies; and (3) if the party is successful, the local unit of government has certain notice requirements. The courses of action vary based on when the measure takes effect, as described below:

- If the measure in question predated enactment of this act, an individual or organization may bring an action 90 days after giving written notice to the local unit of government.
- If the measure is enacted or adopted after this act takes effect, the individual or organization may bring an action immediately or at any time after the measure is enacted.
- If the measure is repealed or amended while an action is pending, the court should award costs and reasonable attorney fees to the individual or organization challenging the measure.

Currently, local units of government may not impose certain restrictions on 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. This bill supplements the law by assigning remedies, penalties, and notice requirements.

If the court finds that the measure violates this act, it would issue an injunction restraining the local unit of government from enforcing the measure, order it to repeal the measure, and award actual damages, costs, and reasonable attorney fees to the individual or organization challenging the measure.

Further, if the court finds that an elected or appointed official, or the council, commission, or board of the local unit of government, knowingly and willfully violated the act, the elective or highest appointive executive official must notify by mail all registered electors in the local unit of government. The notice may not include the name of the individual or organization that brought the action, and must include both of the following:

- The circuit court's finding that the local unit of government knowingly and willfully violated this act; and
- The aggregate cost incurred by defending the action brought under this act, including, but not limited to, the amount of actual damages, costs, and reasonable attorney fees that were awarded to the party bringing the action.

This act would take effect 90 days after its enactment.

MCL 123.1101 through 123.1105

### ***BACKGROUND INFORMATION:***

Reportedly, 42 states currently have broad firearm preemption laws. The remaining eight states—California, Connecticut, Hawaii, Illinois, 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 argue 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 violate those laws. 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 26 years, a number of communities have passed ordinances in violation of state law. Some elected officials have stated that they have no intention to amend local ordinances to comply with state law, and some 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 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. Although this bill imposes additional penalties and notice requirements for a statute enacted in 1990, 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.

Further, some argued that this legislation reflects the interest of outside lobbying groups rather than the interests of Michigan citizens. If a community feels safest with stricter gun regulations, they argued, that community should not be threatened with lawsuits by out-of-state gun lobbies and interest groups, which can sue and force the community to pay their court costs.

Moreover, the notice requirements in the bill are costly and time-consuming, opponents say. Current law already states that local units of government may not regulate the ownership, regulation, purchase, sale, transfer, transportation, or possession of firearms except as otherwise provided by federal law or a law of this state. Passing the costs of a

violation along to taxpayers, in the form of court costs and postage for notifications, seems ill-conceived and unnecessarily punitive.

***POSITIONS:***

Representatives of the following organizations testified in support of the bill

National Rifle Association—Institute for Legislative Action (2-10-16)

Michigan Coalition for Responsible Gun Owners (2-10-16)

Michigan Open Carry (2-10-16)

Freedom Firearms (5-4-16)

Calhoun County Gun Owners Association (5-4-16)

Michigan Airgun Alliance (5-4-16)

The Michigan Sheriff's Association is neutral on this bill. (5-4-16)

Representatives of the following organizations testified in opposition to the bill

Physicians for the Prevention of Gun Violence (2-10-16)

Michigan Coalition to Prevent Gun Violence (2-10-16)

Mayors Against Illegal Guns (2-10-16)

Representatives of the following organizations oppose the bill

Wayne RESA (2-10-16)

Michigan Municipal League (2-10-16)

Michigan Townships Association (2-10-16)

Everytown for Gun Safety (2-10-16)

Moms Demand Action for Gun Sense in America (2-10-16)

Greater Lansing Network Against War and Injustice (2-10-16)

Unitarian Universalist Church (2-10-16)

Michigan Association of School Boards (5-4-16)

Michigan Association of Intermediate School Administrators (5-4-16)

Middle Cities Education Association (5-4-16)

Michigan Association of Secondary School Principals (5-4-16)

Bay Region Against Gun Violence (5-4-16)

Calhoun Intermediate School District (5-4-16)

South Central Education Policy Consortium, representing Barry, Branch, Jackson, Lenawee, and Monroe Intermediate School Districts (5-4-16)

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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.