

Legislative Analysis



MICHIGAN FIREARMS ACT: ALLOW EMPLOYEES AND OTHERS TO KEEP FIREARMS IN PARKED CARS, TRUCKS, AND MOTORCYCLES

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House Bill 5302 (Proposed Substitute H-2)

Sponsor: Rep. Paul Opsommer

Committee: Tourism, Outdoor Recreation and Natural Resources

Complete to 10-27-09

A SUMMARY OF HOUSE BILL 5302 (PROPOSED SUBSTITUTE H-2)

In general, the bill would amend Public Act 372 of 1927 (and rename it the "Michigan Firearms Act") to allow any person lawfully possessing a firearm or ammunition (1) to transport the firearm or ammunition in a privately-owned motor vehicle, and (2) to store it in a privately-owned motor vehicle parked and locked in the parking lot, parking garage, or other parking area **of any business, commercial enterprise, place of employment, or agency of the State of Michigan or of a county, municipal, township or village** if stored out of plain view in a manner described in the Michigan Penal Code or as otherwise allowed by law.

In addition:

- No business, commercial enterprise, place of employment, or agency of the state or of a county, municipality, township, or village could enforce a policy to the contrary, except where allowing the transportation or storage of the firearm or ammunition would cause it to violate another state or federal law or regulation.
- The terms *business, commercial enterprise, place of employment, agency of the state or of a county, municipality, township or village* are not defined in the bill. The term "place of employment," without a narrowing definition, would appear to apply to *any place* where someone was employed. The H-2 Substitute, however, would not allow individuals to transport or store firearms in vehicles if doing so would conflict with specified state and federal laws pertaining to schools.
- A covered entity could adopt a policy that required a firearm and ammunition to be stored out of plain view and could prohibit the transportation and storage of firearms and ammunition in a motor vehicle it owned or leased for employees to use in the course of their employment
- Except in cases of gross negligence, a covered entity would not be liable in a civil action for damages arising out of another person's act involving a firearm or ammunition that is transported or stored as allowed in the bill.
- Injunctions would be available to address violations and threatened violations of the law. A person who successfully brought a court action to obtain an injunction would be entitled to costs and attorney fees.

- An employee terminated or otherwise penalized by an employer in violation of the bill would be entitled to reinstatement and compensation for lost wages, fringe benefits, costs, and attorney fees.
- In the H-2 Substitute, "motor vehicle" would mean "any vehicle required to be registered with the Secretary of State, including, but not limited to, an automobile, truck, minivan, sports utility vehicle, or motorcycle."

MCL 28.421b & 28.429d

DETAILED SUMMARY:

Transportation of a lawfully-possessed firearm or ammunition. A person lawfully possessing a firearm or ammunition would be allowed to transport it in a privately-owned motor vehicle if the firearm was kept out of plain view and in a manner described in Chapter XXXVII of the Michigan Penal Code, MCL 750.222 to 750.239a, or as otherwise allowed by law.

Right of lawful possessors to store firearms and ammunition in parked vehicles. A person lawfully possessing a firearm or ammunition would be allowed to store it in a parked and locked privately-owned motor vehicle in the parking lot, parking garage, or other area designated or used by vehicles on the premises of a (1) business, (2) commercial enterprise, (3) a place of employment, or (4) an agency of the state of Michigan or of a county, municipality, township, or village so long as the firearm was kept out of plain view and in a manner described in Chapter XXXVII of the Michigan Penal Code or as otherwise allowed by law.

Ban on covered entities prohibiting lawful possessors from storing firearms and ammunition in a parked vehicles. "Except as provided in subsection (3)," no business, commercial enterprise, place of employment, or governmental agency could prohibit a lawful possessor of a firearm or ammunition from transporting or storing it in a locked privately-owned motor vehicle in the entity's parking lot, parking garage, or other area used by vehicles. Subsection (3) would allow the entity to adopt a policy requiring the firearm and ammunition to be stored out of plain view. [Although this provision suggests that subsection (3) contains the only exception, subsection (8) would also create an exception for motor vehicles owned or leased by the employer used by the employee in the course of his or her employment, subsection (9) would prohibit individuals from transporting or storing a firearm in a vehicle at a school if doing so would conflict with specified state and federal laws, and subsection (10) would also allow an entity to defend an action on the grounds that compliance with the bill would necessitate violating another applicable federal or state law or regulation.]

No new duty. The bill would not create a new duty on the part of any business, commercial enterprise, place of employment, or state or local governmental agency beyond the duty specified in this section.

Immunity from liability. A business, commercial enterprise, place of employment, or state and local government agency would not be liable in a civil action for damages relating to another person's actions involving a firearm or ammunition transported or stored as allowed under the bill, except in cases of gross negligence.

Injunctions; attorney fees. The bill would allow someone who was or would be denied the ability to transport or store a firearm or ammunition as allowed under the bill and who was otherwise legally entitled to do so to seek an injunction against the person, business entity, commercial enterprise, employer, or state service agency violating or intending to violate the bill. If successful, the plaintiff would be entitled to costs and attorney fees.

Unlawful discharge or penalty. Covered entities could not discharge or otherwise penalize an employee for transporting or storing a firearm or ammunition as allowed by the bill. An employee who was unlawfully discharged in violation of the bill could demand all of the following things: (1) reinstatement to the same or equivalent position as was held at the time of termination; (2) reinstatement of full fringe benefits and seniority rights, if any; (3) compensation for lost wages, benefits, or other lost remuneration, including unpaid leave or furlough; and (4) payment of reasonable attorney fees and costs incurred by the employee in seeking redress of the violation.

If the entity denied the employee's demand or failed to respond within 14 days, the employee could bring a civil action in a court of competent jurisdiction for wrongful discharge or penalty to receive the remedies demanded of the employer, as applicable.

Application to employer's motor vehicles. The bill would not apply if the motor vehicle was owned or leased by the employer and used by an employee in the course and scope of the employee's employment unless the employee was required to transport or store a firearm to do his or her job.

Application to CPL holders. The bill does not authorize a person who holds a concealed pistol license to possess the concealed pistol in a concealed manner other than as prescribed under this act.

Application to schools. The H-2 Substitute version of the bill would not authorize an individual to transport or store a firearm at a school if doing so 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.
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Irreconcilable conflict defense. An entity could defend an action under the bill on the grounds that complying with the bill would require it to violate another applicable federal or state law or regulation. If, however, the bill and the other law or regulation could be

reconciled, the business, commercial enterprise, employer, or state service agency would have to comply with the requirements of the bill.

Definition of motor vehicle. The bill defines the term "motor vehicle" as "any vehicle that is required to be registered with the Secretary of State, including but not limited to, an automobile, truck, minivan, sports utility vehicle, or motorcycle.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact, since police agencies may experience some costs involved with investigating whether an employee was unlawfully fired for having a pistol in the vehicle.

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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.