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House Bills 4435-4437

Sponsor: Rep. Sal Rocca

Committee: Tourism, Fisheries, & Wildlife

Complete to 7-12-89

***A SUMMARY OF HOUSE BILLS 4435,
4436, and 4437 AS INTRODUCED 3-14-89***

Under the Hunting and Fishing Licensing Act, a person is prohibited from carrying a firearm while under the influence of a controlled substance, alcohol, or both. Violators of the act are guilty of a misdemeanor, punishable by a fine of \$500, 90 days in jail, or both. House Bill 4437 would amend the act to delete this provision, and House Bill 4436 would amend the Michigan Penal Code to add the provision. Under the bill, a person under the influence of intoxicating liquor or a controlled substance, or both, would be prohibited from hunting with a firearm or a bow and arrow. The bill would allow a peace officer to arrest a person without warrant when the officer had reasonable cause to believe that the person was in violation of the bill at the time of a hunting accident or the person was hunting while the person's ability was visibly impaired. A person convicted of violating the bill would be guilty of a misdemeanor, punishable by imprisonment for no more than 90 days, a fine of between \$100 and \$500, or both, with costs of prosecution. A second conviction under the bill would be punishable by imprisonment for one year, a fine of no more than \$1,000, or both. A person who violated the bill's provisions more than two times within a ten year period would be guilty of a felony. In addition to penalty provisions in the bill, persons convicted of violating the provisions of the bill would be prohibited from obtaining or possessing a license to hunt in the state for the remainder of the year in which convicted and for the next three years. A court could also order the person to participate in an alcohol training program. Courts would be required to report convictions under the bill to the Department of Natural Resources.

In a criminal prosecution pertaining to a violation of the bill, the amount of alcohol in a person's blood at the time of the alleged violation as shown by chemical analysis of the person's blood, urine, or breath would be admissible into evidence. If a test was given, the amount of alcohol in the person's blood at the time of the chemical analysis would give rise to the following assumptions:

- if there was .07 percent or less of alcohol in the defendant's blood, it would be presumed that the defendant was not under the influence of intoxicating liquor;
- if there was between .07 and .10 percent of alcohol in the defendant's blood, it would be presumed that the defendant's ability to hunt was impaired;
- if there was more than .10 percent of alcohol in the defendant's blood, it would be presumed that the defendant was under the influence of intoxicating liquor.

The bill would specify that only licensed physicians and nurses (or medical technicians under the direction of a licensed physician) could withdraw blood for the purpose of determining blood alcohol content. Liability for a crime or civil damages predicated on the act of withdrawing blood and related procedures would not attach to a

qualified person unless the withdrawal was performed in a negligent manner. Persons charged with crimes relating to hunting while under the influence of intoxicating liquor who took a chemical test would be informed that they would be given opportunity to have a person of their own choosing administer one of the chemical tests within a reasonable time after detention, and the results of the test would be admissible and would be considered with other evidence in determining the innocence or guilt of the defendant. In addition, a person charged with crimes relating to hunting while under the influence of intoxicating liquor who was requested by a peace officer to take a chemical test would have to be informed that he or she had the right to demand that a blood, urine or breath test be given and that the results would be admissible and considered with other evidence used to determine innocence or guilt. A person charged would have to be advised that he or she could refuse to take a test and that the refusal would be admissible in evidence. However, a person who was afflicted with hemophilia, diabetes, or a condition requiring the use on an anticoagulant under the direction of a physician and who refused a chemical test would not be considered to have refused a chemical test if the test required the withdrawal of blood. A person requested to take a test would be advised that he or she had the option to demand that only a breath test be given, in which case his or her refusal to submit to another test would not constitute a refusal. If after an accident the hunter involved in the accident was deceased, a sample of the decedent's blood would be withdrawn in a manner directed by the medical examiner for the purpose of determining blood alcohol content. The results of an examination of the blood of a deceased hunter would be used for statistical purposes only.

Under the bill, a person would be prohibited from hunting when the person's ability to hunt safely with a firearm or bow and arrow was visibly impaired due to the consumption of an intoxicating liquor, a controlled substance, or a combination of both. Persons that had been charged with hunting under the influence could also be found guilty of hunting while impaired. A person convicted of hunting while impaired would be guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, a fine or not more than \$300, or both, with the costs of prosecution. On a subsequent conviction under this section of the bill, or under a local ordinance similar this provision, a person would be guilty of a misdemeanor punishable by imprisonment for not more than one year, a fine of not more than \$1,000, or both. Upon conviction of a person under this section, a person would be prohibited from obtaining or possessing a hunting license during the remainder of the year in which convicted and the next three years.

Under the bill, any person who hunted with a firearm or bow and arrow within the state could be requested by a peace officer to submit to chemical tests of his or her blood, breath, or urine to determine the alcoholic content of his

or her blood if the person was arrested for hunting under the influence of, or while impaired by, intoxicating liquor or a controlled substance or if the person was arrested for manslaughter resulting from hunting and a peace officer had reasonable grounds to believe that the person was hunting while under the influence of, or while impaired by, intoxicating liquor. The bill would also allow a peace officer to require a person to submit to a chemical breath analysis if the officer had reasonable cause to believe that a person was hunting while being affected by intoxicating liquor. An arrest could be made based in whole or in part upon the results of a preliminary chemical breath analysis. A person who was requested to take a chemical test would be advised of the right to refuse to submit to chemical tests. If the person refused the request to submit to chemical tests, a test would not be given without a court order. The results of a preliminary chemical breath analysis would be admissible in a criminal prosecution for a crime or in an administrative hearing, solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. Persons who submitted to a preliminary chemical breath analysis would remain subject to the requirements of the bill for the purposes of other chemical tests. Persons refusing to submit to a breath test would forfeit any license to hunt and could not obtain or possess a license to hunt for the remainder of the year in which a refusal occurred and for the next three succeeding years.

The bill would also repeal obsolete sections of the law.

House Bill 4435 would amend the Michigan Penal Code to update obsolete terms used in reference to drugs and to specify that a person who possessed intoxicating liquor while hunting with firearm or bow and arrow would be guilty of a misdemeanor, punishable by a fine of not more than \$100.

MCL 750.237 (House Bill 4435), 316.701 (House Bill 4437), and 750.236a et al. (House Bill 4436)