



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

UNATTENDED FIREARMS WITHIN REACH OR ACCESS OF A MINOR

House Bills 5745 and 5746
Sponsor: Rep. Marc Shulman

House Bill 5747
Sponsor: Rep. James Koetje

**Committee: Conservation and Outdoor
Recreation**

Complete to 5-8-00

A SUMMARY OF HOUSE BILLS 5745, 5746, AND 5747 AS INTRODUCED 5-4-00

House Bill 5745 would amend the Michigan Penal Code to add civil and criminal penalties for leaving firearms unattended where children under the age of 18 had access to them, but would exempt people who had taken any one of a number of actions to secure their firearms. House Bill 5746 would amend the Code of Criminal Procedure (MCL 777.16m) to add the new crimes proposed by House Bill 5745 to the sentencing guidelines, and would not take effect unless House Bill 5745 were enacted. House Bill 5747 would amend the Revised Judicature Act to impose civil liability for leaving a firearm unattended within reach or access of a minor.

House Bill 5745 would add a new section to the Michigan Penal Code (MCL 750.223a) that would make it a state civil infraction, punishable by a fine of up to \$100, to leave a firearm “unattended in any place in which the person [knew] or recklessly disregard[ed] that a juvenile [could] be lawfully present, not under adult supervision, and able to gain access to the firearm.” The violation would be a crime if a juvenile gained access to, and possessed, the unattended firearm, or someone else obtained the firearm from the juvenile and any of the following circumstances existed:

- The possession of the firearm created a substantial risk that injury or death would occur;
- The discharge of the firearm caused injury to any individual;
- The discharge of the firearm killed or caused serious injury to any individual.

Possession creating “a substantial risk that injury or death would occur” would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$500, or both; hurting someone by discharging the firearm would be a felony punishable by imprisonment for up to 2 years or a fine of up to \$1,000, or both; killing or seriously injuring someone by discharging the firearm would be a felony punishable by imprisonment for up to 10 years or a fine of up to \$5,000, or both.

A firearm would not be subject to forfeiture for the state civil infraction unless the person had previously been found responsible for such a state civil infraction or for one of the three listed crimes. (Section 239 of the penal code otherwise requires that “all pistols, weapons or devices carried, possessed or used” contrary to the penal code be otherwise forfeited to the state.)

Exemptions. The bill would not apply to a person if any of the following circumstances existed:

- The person equipped the firearm with a trigger lock or other locking or safety device or mechanism (other than the firearm's "safety") that was designed to render a firearm temporarily inoperable or otherwise incapable of being discharged;
- The person placed the firearm in a container, compartment, or location that a reasonable person would believe was secure from access by the juvenile;
- The person placed the firearm in a locked storage container, compartment, or case that was operated by a key or combination or was equipped with a locking device or other device designed to prevent unauthorized access to, or operation of, that firearm by the juvenile;
- The person unloaded the firearm in chamber and magazine and stored the ammunition for that firearm in a locked container, compartment, or case that was operated by a key or combination or was equipped with a locking device or other device designed to prevent unauthorized access to that ammunition by the juvenile;
- The person carried the firearm on his or her person, or kept the firearm within such close proximity that it could be readily retrieved by the individual as if it were carried on his or her person;
- The person permitted or allowed access by the juvenile to the firearm to lawfully use, possess, or transport it on the person's own property or as otherwise provided by law (including, but not limited to, lawful hunting or target shooting, or lawful self-defense or the lawful defense of another person); or
- Another individual gained access to the firearm by unlawful means.

It would be a rebuttable presumption that someone was exempt from the bill's provisions if he or she presented either (1) a certificate of inspection from the safety inspection required of all pistols or (2) proof of purchase of either (a) a trigger lock or other locking or safety device or mechanism that was designed to render a firearm temporarily inoperable or otherwise incapable of being discharged, or (b) a container, compartment, or case that was operated by a key or combination or was equipped with a locking device or other device designed to prevent unauthorized access to, or operation of, that firearm by the juvenile.

The bill would define "juvenile" to mean someone less than 18 years old who was not legally emancipated, and would specify that it would not prohibit someone from being charged with, convicted of, or sentenced for another violation of law arising out of the violation of the bill's provisions.

House Bill 5747 would add a new section to the Revised Judicature Act (MCL 600.2951a) to impose civil liability on anyone who left a firearm unattended in any place in which he or she knew or "recklessly" disregarded that a juvenile might be lawfully present, not under adult supervision, and able to gain access to the firearm under circumstances that would violate the

provisions of House Bill 5745. More specifically, such a person would be liable for any death, injury, or damages caused by the discharge of that firearm and the access created a substantial and unjustifiable risk that injury or death would occur.

A person who obtained a firearm that was left unattended in violation of the bill's provisions would not be entitled to recover damages, nor would the person's estate, if the person committed or attempted to commit a crime while possessing the firearm.

The bill would apply regardless of whether the person were charged with or convicted of violating the provisions of House Bill 5745. The same exemptions would apply to the bill's provisions as those under House Bill 5745 (see above).

Effective date. All three bills, if enacted, would take effect September 1, 2000.

Analyst: S. Ekstrom

■ 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.