



**House
Legislative
Analysis
Section**

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

GUNS; TRIGGER LOCKS, LAWSUITS

**House Bill 5781 as enrolled
Public Act 265 of 2000
Sponsor: Rep. Susan Tabor**

**House Committee: Conservation and
Outdoor Recreation
Senate Committee: Judiciary (discharged)**

**House Bill 5782 as passed by the House
Sponsor: Rep. Larry DeVuyst**

**House Committee: Conservation and
Outdoor Recreation
Senate Committee: Judiciary**

**House Bill 5783 as passed by the House
Sponsor: Rep. Mike Kowall**

**House Bill 5784 as passed by the House
Sponsor: Rep. Gene DeRossett**

**House Committee: Constitutional Law and
Ethics
Senate Committee: Finance**

Second Analysis (7-7-00)

House Bills 5781-5784 (7-7-00)

THE APPARENT PROBLEM:

On October 30, 1998, the City of New Orleans filed the first lawsuit on behalf of a city or other governmental unit against the firearms industry (including dealers, distributors, and manufacturers). Since then, approximately 30 cities and counties, including Alameda County (CA), Atlanta, Boston, Bridgeport (CT), Camden City (NJ), Camden County (NJ), Chicago, Cincinnati, Cleveland, Detroit, Gary (IN), Los Angeles (including Compton, West Hollywood, and Inglewood), Los Angeles County, Miami/Dade County, Newark (NJ), Philadelphia, St. Louis, San Francisco (including Berkeley, Sacramento, San Mateo County, Oakland, and East Palo Alto), Washington D.C., Wayne County (MI), and Wilmington (DE), have filed lawsuits against gun manufacturers seeking compensation for the public costs associated with gun violence. (Judges in Cincinnati, Bridgeport, and Miami-Dade County have dismissed the lawsuits brought by those governmental entities.) According to the lawsuits, the public costs associated with gun-

related violence, unintentional shootings, and teen suicide include factors such as medical care, police investigation, emergency personnel, public health resources, courts, and prisons. It has been suggested that if lawsuits against gun manufacturers are allowed to proceed in Michigan, they should be taken up by the attorney general, rather than local units of government.

The debate over gun control is one of the most rancorous of issues facing this country. However, gun opponents have begun to move away from attempting to impose stricter limits on the sale, ownership, and possession of firearms, and instead are attempting to focus on ways of reducing accidents, suicides and even homicides by requiring gun owners to engage in certain precautionary measures. One of these suggestions is to require the use of safety or trigger locks on guns. Trigger locks are relatively simple and inexpensive devices that attach to a handgun's trigger, blocking its use. They are removed with a key or a combination. In

an effort to reach a solution for both the issue of lawsuits against gun manufacturers and encouraging the use of trigger locks, legislation has been introduced to require federally licensed firearms dealers to include a trigger lock or similar safety device with each firearm sold and to bar local units of government from bringing certain civil actions against gun manufacturers. In addition, it has been suggested that tax credits for the purchase of trigger locks or other safety or locking devices, or firearm storage containers, would help encourage their use among gun owners and would alleviate the impact of requirements that they be sold with firearms.

THE CONTENT OF THE BILLS:

House Bills 5781 and 5782 would prohibit the sale of firearms unless accompanied by trigger locks or locking containers or proof of ownership of such devices, provide immunity from liability for firearms dealers if they comply with the requirements of the legislation, and generally prohibit local units of government from bringing a civil action against a manufacturer of firearms or ammunition. House Bill 5781 would amend Public Act 372 of 1972, which regulates the selling, purchasing, possessing, and carrying of certain firearms (MCL 28.435). House Bill 5782 would amend the Code of Criminal Procedure (MCL 777.11) to include violations in the statutory sentencing guidelines.

Trigger locks with sale of firearms. House Bill 5781 would prohibit federally licensed firearms dealers from selling a firearm in the state unless the purchaser also bought or could prove that he or she already owned a commercially available trigger lock or other device designed to disable the firearm and prevent its discharge, or bought a commercially available gun case or storage container that could be secured to prevent unauthorized access to the firearm. In order to prove that he or she owned a trigger lock, gun case, or storage container, a purchaser would have to present the lock or other device to the dealer and provide the dealer with a copy of a purchase receipt for the lock or container that the dealer could keep on file. If a purchaser wished to purchase more than one firearm, he or she would have to show a separate lock or device and separate purchase receipt for each firearm purchased. In addition to the above requirements, a dealer would also be required to give the purchaser, free of charge, a brochure or pamphlet that includes safety information on the use and storage of the firearm in a home environment. And finally, both dealer and purchaser would have to sign a statement that the sale

was in compliance with these requirements, and the dealer would have to keep the statement and the receipt given to him or her by the purchaser (if applicable) for at least six years.

The trigger lock or locking container requirement would not apply to a sale of a firearm to a police officer or a police agency, nor would it apply to the sale of an antique firearm, as that term is defined in the Michigan Penal Code. Further, the requirement would not apply if the seller was not a federally licensed firearms dealer.

Notice to purchasers of liability. A federally licensed firearms dealer would be required to post in a conspicuous manner at the entrances, exits, and all points of sale a notice that said, "You may be criminally and civilly liable for any harm caused by a person less than 18 years of age who lawfully gains unsupervised access to your firearm if unlawfully stored."

Immunity for dealers. A federally licensed firearms dealer would not be liable for damages arising from the use or misuse of a firearm if the sale of the firearm complied with the bill, any other applicable state law, and applicable federal law. The bill states that its provisions would not create a civil action or liability for damages arising from the use or misuse of a firearm or ammunition for a person, other than a federally licensed firearms dealer, who produces a firearm or ammunition.

Prohibition against lawsuits. The bill would prohibit a local unit of government from bringing a civil action against any person who produces a firearm or ammunition. The authority to bring a civil action under the bill would be reserved exclusively to the state and could be brought only by the attorney general. The court would be required to award costs and reasonable attorney fees to each defendant named in a civil action filed in violation of this provision.

The bill provides several exceptions to the prohibition against lawsuits, including:

- a breach of contract, other contract action, or an action based on a provision of the Uniform Commercial Code, in which the political subdivision was the purchaser and owner of the firearm or ammunition;
- expressed or implied warranties arising from the purchase of a firearm or ammunition by an employee or agent of the political subdivision; and

- a product liability, personal injury, or wrongful death action when an employee or agent or property of the political subdivision has been injured or damaged as a result of a defect in the design or manufacture of the firearm purchased and owned by the political subdivision.

However, the above exceptions would not allow an action based on any of the following:

- a firearm's or ammunition's inherent potential to cause injury, damage, or death;
- failure to warn the purchaser, transferee, or user of the firearm's or ammunition's inherent potential to cause injury, damage, or death;
- failure to sell with or incorporate into the product a device or mechanism to prevent a firearm or ammunition from being discharged by an unauthorized person, unless specifically provided for by contract.

Applicability of lawsuit provisions. The bill specifies that these provisions would not create a civil action. Further, it specifies that they are intended only to clarify the current status of the law in this state, and therefore would apply to a civil action pending on the date the bill took effect.

Penalties for violations. Beginning September 1, 2000, a person who violated the provisions of the bill would be guilty of a misdemeanor, punishable by up to 93 days imprisonment, a fine of up to \$500, or both. A second conviction would be a misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$1,000, or both. A third or subsequent conviction would be a felony, punishable by up to two years imprisonment, a fine of up to \$5,000, or both.

Sentencing guidelines. House Bill 5782 would amend the Code of Criminal Procedure to place the crime of "firearms sale without trigger lock or other device or gun case or storage container" in the statutory sentencing guidelines. The crime would be a class F crime against public safety with a two year statutory maximum sentence.

House Bill 5783 would amend the Income Tax Act MCL (206.267) to allow, for tax years beginning after December 31, 1999, a taxpayer to claim a credit against the income tax for the purchase of each trigger lock or other safety or locking device designed to render a firearm temporarily inoperable or incapable of being discharged. The credit would be for the purchase price, not to exceed \$25 per device. To be eligible for the tax

credit, the purchase would have to be made for personal use and not for resale. If the amount of the credit exceeded the taxpayer's tax liability for the tax year, the excess credit amount would be refunded to the taxpayer.

House Bill 5784 would amend the Income Tax Act (MCL 206.268) to allow, for tax years beginning after December 31, 1999, a taxpayer to claim a credit against the income tax for the purchase of a firearm storage container designed to safely secure a firearm from unauthorized access. The purchase would have to be made for the taxpayer's personal use and not for resale. The credit would be for the purchase price of the container, up to a maximum of \$100. If the amount of the credit exceeded the taxpayer's tax liability for the tax year, the excess credit amount would be refunded to the taxpayer.

BACKGROUND INFORMATION:

The following is excerpted from the March/April 2000 edition of the Senate Fiscal Agency's *Notes on the Budget and Economy*:

In November 1998, the attorneys general of 46 states entered into a settlement with five tobacco companies promising up to \$206 billion over the next 26 years in compensation for costs associated with smoking-related diseases. The tobacco cases were unusual, if not unique, because they involved liability for products that *did* function as intended, but with damaging outcomes. On a similar notion, some cities and counties recently have filed lawsuits against gun manufacturers to recover public costs associated with gun violence. In addition to product liability, these suits are based on theories of negligence, nuisance, and unfair and deceptive trade practices. The Centers for Disease Control and Prevention report that in 1996, 34,000 people in the United States were killed by gunfire (including more than 14,300 homicides, 18,100 suicides, and more than 1,100 unintentional shooting deaths), making firearms second only to motor vehicles as the most frequent cause of injury-related deaths in the country. With the experience of the states' multibillion dollar settlement with the tobacco companies in mind, the municipalities suing the gun manufacturers may believe that they do not actually have to win a lawsuit, but rather bring enough suits to induce the gun manufacturers to take responsibility for negotiation, reform, and control.

The lawsuits filed by the City of Detroit and Wayne County allege that the gun industry has created a public nuisance. The cause of action is based upon the

assertion that gun dealers knowingly sell, in contradiction of existing law, large numbers of guns to juveniles and convicted felons, thereby contributing to the illegal gun market and to the overall prevalence of illegally possessed guns in society. According to the allegations in the lawsuit, gun manufacturers are fully aware both that these sales occur and that they contribute to incidents of gun violence and significantly interfere with the public health and safety of residents. The lawsuits allege that because of the profitability of these illegal sales, the manufacturers have turned a blind eye to the actions of dealers who make these sales and should be held accountable. The lawsuits also claim that the gun industry ignores its responsibility to monitor and control the sales practices of gun distributors and dealers, who sell guns directly and indirectly into the illegal marketplace. For example, the City of Detroit and Wayne County sued gun manufacturers and local gun dealers on April 26, 1999, for more than \$800 million for “willful blindness” in allowing guns to be sold to criminals, youths, or other irresponsible persons through straw purchases (gun sales in which a dealer knowingly sells a weapon to someone acting as a front-man for a felon or juvenile).

According to an article in the *Detroit Free Press* (4-27-99), Wayne County officials say that from 1990 to 1998, 5,264 children under 16 years of age were charged with carrying a concealed weapon in Wayne County. According to the lawsuit filed by the City of Detroit, from 1992 through 1998, more than 1,550 youths under the age of 16 were shot in Detroit and more than 135 of these children were killed by gunfire. The suit claims that manufacturers knowingly and deliberately exploit, rely upon, and help maintain an active and profitable illegal gun market for felons, juveniles, and other dangerous individuals who could not purchase a gun legally. The lawsuit also asserts that the manufacturers and dealers are negligent in not preventing felons and juveniles from obtaining weapons. Furthermore, according to another article in the *Detroit Free Press* (3-9-99), the Urban Institute found that rapes, robberies, assaults, and murders committed with guns in 1997 cost Detroit taxpayers an estimated \$850 million. The *Journal of the American Medical Association* estimates that nationwide, the yearly financial costs of gun violence are \$1.4 billion to \$4 billion and another \$19 billion in indirect costs, such as loss of productivity.

In light of recent public shootings by minors, President Bill Clinton has urged federal legislation requiring safety locks on all guns sold. According to an article in the *Detroit Free Press* (3-3-00), Wayne County recently reached an agreement with three large retailers

(Gander Mountain, Sports Authority, and Dick’s Sporting Goods) and all of their Michigan chain stores to give free trigger locks to all firearm buyers. This is apparently the first time that retailers anywhere in the nation have voluntarily given free trigger locks to gun buyers without a law requiring them to do so.

The federal government and some state and local governments reached an agreement on March 17, 2000, with Smith & Wesson, the nation’s largest gun manufacturer, which agreed to make some 80 reforms concerning the design, distribution, and marketing of guns. Among other provisions, the agreement requires Smith & Wesson to install mandatory child-safety devices on all guns within one year; introduce personalized gun technology on all new guns within three years; install internal locking devices within two years; offer magazine disconnect safeties to all customers within one year; and install chamber loaded indicators within one year. In addition, the agreement requires Smith & Wesson to allow its guns to be sold only to certain authorized dealers and distributors who follow the specified terms and conditions governing sales and distribution, including mandatory background checks at gun shows, firearms safety training, security procedures to prevent gun theft, and multiple handgun sales limitations. Due to the agreement, the following local governments reportedly have agreed to drop their lawsuits against Smith & Wesson: Atlanta, Berkeley, Bridgeport, Camden, Detroit, Gary, Inglewood, Los Angeles, Miami/Dade County, St. Louis, and San Francisco. The agreement also was signed on behalf of the State of New York and Connecticut.

Meanwhile, Philadelphia became the latest municipality to take gun makers to court when it filed suit against 14 manufacturers (including Smith & Wesson) on April 11, 2000 (Associated Press, 4-12-00). The city is seeking to recover costs from gun violence, including medical care, police protection, emergency services, and prisons, as well as force the defendants to add safety features to guns and change the way weapons are marketed and distributed. Although the State of Pennsylvania recently enacted legislation prohibiting local governments from suing firearms manufacturers, that law reportedly bans lawsuits against the legal marketing of guns, while the city contends that the defendants marketed their products illegally.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, insufficient data exists to accurately assess the fiscal impact of House Bills 5783 and 5784; however, the credits provided in the bills would reduce income tax revenues

by an indeterminate amount and could possibly lead to a decline in the School Aid Fund. (5-15-00)

ARGUMENTS:

For:

The bill takes the spoonful of sugar approach to the competing view points on the issue of gun control. It will give gun control advocates a requirement that trigger locks or other safety devices be sold with each gun, and on the other hand, it will give gun rights advocates a limitation of the right of local units of government to bring certain civil actions against gun manufacturers. It is hoped that those who oppose one part of the bill will be enticed to support it anyway in order to get enacted the part of the legislation with which they agree. Gun control advocates will have to give up the right for local units of government (cities, townships, etc.) (in particular those actions currently being pursued by the City of Detroit and Wayne County, although the attorney general could take up those same causes of action) to sue gun manufacturers; gun owners' rights advocates will have to accept the requirement that trigger locks be sold with each gun (although the application of tax credit for the purchase of those items will help alleviate the costs to the individual gun owners).

Against:

Neither spoonful of sugar is sweet enough to entice the swallowing of the medicine that goes with it. Gun opponents feel that the only reason trigger locks are even being offered is because of the pressure placed on the industry by the current lawsuits and are loathe to abandon the right for cities and other municipalities to bring such suits. Gun supporters, on the other hand, do not feel that the restrictions on the lawsuits go far enough -- the state would still be able to pursue such lawsuits and most are fully aware of what happened to the cigarette manufacturers when the states began instituting lawsuits against that industry. Further, the requirement of trigger locks is seen as just another restriction on lawful gun ownership, while the state and federal governments continue to do little to enforce existing laws against the criminal use of guns.

Limiting lawsuits against gun manufacturers and dealers:

For:

According to gun owners' rights advocates, lawsuits like the ones filed by the city of Detroit and Wayne County represent an unfair attack on gun manufacturers who are being blamed for the bad behavior of both

dealers and purchasers who violate the law. They point out that there is no legal justification for imposing higher standards for gun marketing and sales than already exist or than are imposed on other product manufacturers (i.e., automobile manufacturers). Gun owners' rights advocates argue that these lawsuits are an egregious abuse of the legal system, and represent a blatant attempt to gain through litigation what gun control advocates have been unable to achieve through legislation. Rather than suing gun manufacturers because dealers and others are violating the law by selling guns to minors and/or felons, simply prosecuting those dealers and purchasers who are involved in illegal sales would be a more direct and more effective way of dealing with the problem. There are already a number of laws in existence that prohibit and could be used to punish the behavior that forms the basis of the existing lawsuits; unfortunately they are rarely, if ever, enforced.

Response:

According to a July 23, 1999 article in the New York Times, the Bureau of Alcohol, Tobacco and Firearms is constrained by the Firearms Owners Protection Act of 1986, which limited the bureau's inspections of gun dealers, reduced penalties for keeping false records of gun sales and raised the burden of proof for violations by gun dealers. In addition, since the 1970s, court decisions have limited sting operations by ruling that a dealer could not be convicted of selling to a prohibited buyer, a felon, for example, unless the undercover agent buying the gun was in fact a felon. Gun control proponents also point out that the prosecution of any federal court cases have been delayed by the large number of federal judge appointments that have not been filled.

Rebuttal:

If one accepts the argument that the Bureau of Alcohol, Tobacco and Firearms has limited effectiveness, gun rights advocates suggest it should be remembered that those many of those restrictions stem from abuses by that agency. Furthermore, the same advocates point out that even if the claims that federal laws are too difficult to enforce were true, there are many state laws that could, if better enforced, do a far better job of dealing with the problems complained of in the lawsuits than the lawsuits themselves will.

Against:

According to gun control advocates, the bill's impact considerably favors gun control opponents. They point out that there are already laws which allow courts to dismiss cases that have no merit and point to the fact that part of the ongoing cases brought by Detroit and Wayne County were recently dismissed as proof that

the existing system works. They further argue that the Detroit and Wayne County lawsuits against gun manufacturers and dealers have already resulted in improvements. In exchange for release from the lawsuit, three of the defendants have changed their practices, adopting new policies involving more rigorous training and in-house investigations of their compliance with existing laws. On a national level, Smith & Wesson, the oldest and largest manufacturer of handguns, recently agreed to accept a wide variety of restrictions on the way it makes, sells and distributes its products in exchange for release from lawsuits brought by 15 cities and the assurances of the administration and the attorney generals of New York State and Connecticut that they would not sue the company. Gun control proponents argue that for years they have pressed for stiffer gun control measures and have been thwarted by the gun lobby. Now, suddenly, two years after these lawsuits started, one major gun manufacturer has agreed to make significant changes and, if these lawsuits are allowed to continue, others may follow.

Trigger lock provisions:

For:

Many gun control supporters argue that the trigger lock requirements represent a good first step. The requirements for trigger locks, both for the sale and use of such devices, will help to prevent the deaths of children by accidental shootings. According to an article in U.S. News and World Report (12-2-96), close to 500 children and adolescents are killed in firearms accidents each year, and supporters of the trigger lock provisions argue that many of these accidental shootings could be prevented by use of trigger locks or other devices. The more carefully stored a gun is, the less likely it is that the gun could be involved in an accidental shooting.

Against:

According to proponents of the current lawsuits instituted by the City of Detroit and the County of Wayne, the requirement that trigger locks be sold with each gun purchased from a federally licensed gun dealer will not help keep guns out of the hands of criminals when dealers are selling guns directly to criminals and underage persons through “straw man” purchases. Further, opponents of the bill argue that the trigger lock provisions are so watered down that they will have little positive impact.

Against:

The requirement that a would-be purchaser of a firearm bring the dealer a gun case or other storage container and the receipt for that item in order to purchase a gun would be impractical. While an individual may easily be able to bring a trigger lock in to a firearms dealer, gun cases or other storage containers are often large, heavy and bulky items that are designed to hold several guns and cannot easily be presented to the dealer. Furthermore, the requirement that a firearm purchaser must present a separate gun case or other container for each firearm that he or she would purchase is clearly excessive. Many gun cases and other storage containers are designed to hold several firearms; requiring that a separate case or container be purchased or provided for each individual gun makes little sense and would be unnecessarily and unfairly costly for gun purchasers.

Analyst: W. Flory

■ 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.