

Legislative Analysis



NO DNR RULES PROHIBITING CARRYING CONCEALED WEAPONS

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Senate Bill 221 (Substitute H-2)

Sponsor: Sen. Valde Garcia

House Committee: Conservation and Outdoor Recreation

Senate Committee: Judiciary

First Analysis (4-21-04)

BRIEF SUMMARY: The bill would amend the Natural Resources and Environmental Protection Act to, generally, prohibit the Department of Natural Resources from promulgating rules that prohibit individuals from carrying a pistol if the individual possesses a CCW license or is exempt from licensure.

FISCAL IMPACT: This bill would not have a fiscal impact on the State or on local governmental units.

THE APPARENT PROBLEM:

Earlier this year, State Attorney General Mike Cox issued an opinion (No. 7123) regarding the possession of handguns within state parks or while hunting during the bow and arrow deer season. The opinion was prompted by two questions by State Representatives Rich Brown and James Koetje. The two asked (1) whether a person licensed to carry a concealed weapon may possess a pistol while hiking or camping within a state park, and (2) whether a person licensed to carry a concealed weapon is subject to any restrictions established by the Department of Natural Resources (DNR) related to hunting wildlife in the state, or whether that person may possess or carry a firearm while hunting deer during the bow and arrow season.

In response to the first question, the attorney general concluded that a licensed person may possess a concealed weapon in a state park (1) provided that the weapon is unloaded, or (2) if the weapon is loaded, then only during established hunting seasons on lands that are open to hunting or at a target ranges established by the DNR, or during an officially sanctioned field trial. In response to the second question, the attorney general concluded that a person “may not possess or carry a pistol while hunting during the ‘bow and arrow only’ hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.”

Perhaps more important than either of the two direct answers, the opinion notes that a person licensed to carry a concealed pistol is subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms. It is believed that, given the attorney general’s opinion, application of the concealed weapons law is inconsistent, as an otherwise law-abiding citizen would be in violation of the law.

To remedy this, legislation has been introduced that would prohibit the DNR from enforcing a rule that prohibits an individual from carrying a licensed concealed weapon.

THE CONTENT OF THE BILL:

The bill would amend Part 435 (Hunting and Fishing Licensing) of the Natural Resources and Environmental Act to specify that the NREPA or a rule or order issued by the DNR or the Natural Resources Commission could not be construed to prohibit a person from transporting a pistol or carrying a loaded pistol if the person possesses a license issued under the CCW law, or the person is authorized to carry a concealed pistol without a license. This, however, would not authorize the use of a pistol to take or attempt to take a wild animal except as provided by law.

MCL 324.43510 and 43516

HOUSE COMMITTEE ACTION:

The House Committee on Conservation and Outdoor Recreation adopted a Substitute H-2 of the bill, which had passed the Senate as introduced. The committee substitute adopts language from HB 4687, which stated that provision related to the application of the NREPA, or a rule or order by the DNR or NRC would not authorize the use of a pistol to take or attempt to take a wild animal except as provided by law. The Senate-passed version had stated that it would not authorize the use of a pistol for hunting.

BACKGROUND INFORMATION:

Related Legislation. The bill is nearly identical to House Bill 4867, introduced by Representative James Koetje. That bill passed the House of Representatives in mid-December and is currently pending before the Senate Judiciary Committee. The principal difference between the two bills is that House Bill 4867 contains a provision that would amend Part 5 (General Powers and Duties) to prohibit the DNR from promulgating or enforcing a rule that prohibits an individual who is licensed or exempt from licensure under the concealed weapons statute from carrying a pistol in compliance with that act on property under the control of the DNR.

CCW Law and DNR Rules. The attorney general's referenced above ruling is based on Section 5c of Public Act 372 of 1927, the CCW licensing act. That section provides that a licensed individual may carry a concealed weapon anywhere in the state except certain "gun-free" zones and "except as otherwise provided by law". The opinion notes that the phrase "provided by law" includes administrative rules and orders issued by the Department of Natural Resources.

There are several prohibitions against the carrying of a concealed weapon in the administrative rules and Natural Resources Commission orders, including the following:

- R. 299.927 makes it unlawful for a person to carry or possess a loaded firearm in state parks and state recreation areas, except on lands designated open to hunting during established hunting seasons or at an official established target range or during an officially sanctioned field trial. Department employees acting in the line of duty and certain other individuals are exempt from this rule.
- R. 299.673 prohibits a person from possessing a loaded firearm on a designated shooting range, except at established shooting stations on the firing line.
- Wildlife Conservation Order 3.101(3) provides that a person hunting deer with a muzzle-loading firearm during the muzzle-loading and black-powder firearms only season shall only possess or carry afield, or take a deer with a muzzle-loading shotgun, or black-powder pistol, loaded with black-powder or a commercially manufactured black-powder substitute.
- Wildlife Conservation Order 3.101(5) provides that during the open bow and arrow only season, a person hunting deer with a bow and arrow shall not possess or carry afield a pistol, a revolver, or any other firearm unless the person is properly licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.
- Wildlife Conservation Order 3.101e provides that a parent or legal guardian shall not allow a youth hunter to go afield to hunt unless the youth hunter is accompanied by an adult at least 18 years of age. An adult accompanying a youth firearm deer hunter is prohibited from possessing or carrying a firearm or a bow and arrow. [Youth firearm deer hunting days are the fourth Saturday and Sunday in September.]

ARGUMENTS:

For:

The bill is intended to provide some consistency in the application of the CCW law throughout the state. It is believed that the DNR's regulations restricting a person's ability to possess a concealed weapon essentially trump the CCW law. The problem is that it leaves otherwise law-abiding citizens unaware that they are committing a crime (unlawfully possessing a concealed weapon) that is punishable, in some instances, by license suspension or revocation. The bill appears to take the view that the DNR's concealed weapons regulations and orders should only be construed to prohibit hunters from improperly using a pistol while hunting. In other words, it appears that the bill seeks to establish a clear line of demarcation between the CCW law and the hunting regulations: the CCW applies to possession and transportation, while the NREPA, regulations, and orders apply to use for hunting. DNR regulations and orders related to possession and transportation create problems, particularly if an individual is engaging in some activity where both the CCW law and NREPA or a DNR rule or order apply. Also, if a person is in compliance with the CCW law, with regard to possession and transportation, and clearly not inappropriately using that weapon to hunt, then why are the DNR-related regulations and orders even necessary?

POSITIONS:

The Michigan Coalition for Responsible Gun Owners indicated that it supports the bill.
(4-21-04)

The Department of Natural Resources indicated that it is neutral on the bill. (4-21-04)

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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.