

Legislative Analysis



PROHIBIT MOST BUSINESSES & GOVERNMENT AGENCIES FROM BANNING GUNS IN PARKING LOTS

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House Bill 5302 (Substitute H-2)

Sponsor: Rep. Paul Opsommer

Committee: Tourism, Outdoor Recreation and Natural Resources

Revised First Analysis (12-2-09)

BRIEF SUMMARY: The bill would require businesses, commercial enterprises, places of employment, and state and local governmental agencies to allow people to transport and store firearms and ammunition in locked vehicles in parking lots. Gun owners could sue a business or agency that bans guns in the parking lot to get the no-gun rule enjoined and to recover their costs and attorney fees. Employees discharged or otherwise penalized for bringing firearms or ammunition to a workplace parking lot could sue for reinstatement and to recover lost compensation, costs, and attorney fees.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on law enforcement agencies, as they may experience some costs involved with handling calls relating to firearms in parking areas. The bill would have an indeterminate fiscal impact on the judiciary. Any fiscal impact would be the result of the bill's effect on court caseloads.

THE APPARENT PROBLEM:

"No-guns allowed" rules are anathema to those gun owners who believe they should have the right to carry firearms in their vehicles wherever they want go—driving to work, shopping, or visiting government offices—provided they leave their firearms in their locked vehicles once they arrive at their destination. In their view, the benefits of gun ownership or having a concealed pistol license are greatly diminished if they cannot carry firearms in their vehicle wherever they travel. Some gun owners are especially bothered by employer rules prohibiting guns from being brought to work and stored in locked vehicles in employee parking lots. They say that this type of work rule interferes with their ability to carry guns in their vehicle for self-defense on their way to and from work or to go hunting or to a shooting range immediately before or after work. Generally speaking, many gun groups contend that Michigan should eliminate gun restrictions in as many places as possible to allow gun owners to travel more freely with their firearms without fear of inadvertently breaking the law. It is hard for gun owners to deal with a patchwork of laws and restrictions, they say.

Without a law affording gun owners the right to carry firearms onto the property of all businesses and government agencies (even those that currently ban guns and want to continue to do so), the legality of possessing guns on someone else's property depends on state and federal laws governing weapons in that location as well as the policies of individual property owners and employers. (It should be noted that federal law restrictions, such as those covering federal building parking lots, will remain in place

even if the proposed new law is enacted.) Among other things, gun owners risk being charged with criminal trespass if they refuse to leave the property of a business or agency with a no-gun policy after being asked to leave. If employed by a company or agency with a no-gun rule, they risk discipline and discharge if they bring firearms to work. If their employer has a no-gun rule, gun-owning employees who might otherwise wish to bring their firearms to work (and leave them in their locked vehicle while they work) must either leave their firearms at home or park off their employer's property. At some workplaces, employees have little choice but to park on their employer's property.

On the other hand, some employers and business owners say that they have good reason not to allow firearms on their property and that, in any event, as property owners, they have the right to determine if guns are allowed on their property whether gun owners agree with their rationale or not. Many employers adopt no-gun rules to try to minimize gun violence in the workplace. According to an American Bar Association report opposed to parking lot laws such as HB 5302:

Each year, on average, at least 1,000,000 people in the United States are victims of workplace violence and 1,000 of these are victims of homicide, according to the Bureau of Labor statistics. The Bureau estimates that firearms are used in close to 80 percent of workplace homicides and that nearly 90 percent of workplace firearm homicides take place in the private sector. Murder was the third leading cause of occupational fatalities in 2003, but the leading cause of death for women in the workplace.¹

In addition, some people say that certain facilities such as nuclear power plants and correctional facilities have additional security concerns beyond those common to all places of employment that make weapons bans in those locations essential. For example, Michigan law currently prohibits weapons that could be used to help prisoners escape from being brought onto prison property.

To expand the rights of gun owners to travel more freely with their firearms, at least 11 states² have adopted some version of a "guns-at-work" or "parking lot" law in recent years as urged by National Rifle Association (NRA) and other gun groups. Generally speaking, these laws override the traditional right of property owners and employers to restrict firearms on their premises, and they create a right for gun owners to keep firearms and ammunition in a locked vehicle at almost any location.

According to the NRA,³ the first state law of this type was passed in Oklahoma after the Weyerhaeuser Corporation fired about seven workers for having firearms in their

¹ 2007 American Bar Association report accompanying its resolution opposing laws requiring employers to allow guns in parking lots, page 2, available at <http://www.abanet.org/leadership/2007/midyear/docs/journal/hundredseven.doc>, citing *Women's Safety and Health Issues at Work*, National Institute for Safety and Health, available <http://www.cdc.gov/niosh/topics/women>.

² States with some version of a guns-in-the-parking-lot law include Alaska, Arizona, Florida, Georgia, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Oklahoma, and Utah. See Background Information.

³ NRA-ILA, *Parking Lot Gun Laws and the Right to Transport Firearms*, <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=193>.

vehicles on company property at a paper mill in rural Oklahoma. Concerned about employee drug abuse, Weyerhaeuser arranged for trained dogs to search for drugs in employee vehicles. The dogs, trained in detecting both drugs and firearms, found firearms in some employee vehicles. Workers with firearms in their vehicles in violation of the work rule were fired. The fired workers challenged their discharges in federal court claiming that the work rule violated their right to bear arms under the state constitution. In Bastible v. Weyerhaeuser, 437 F.3d 999 (10th Cir. 2007), a federal appellate court upheld the workers' terminations, rejecting the argument that the right to bear arms under the state constitution extends to the workplace. After the workers were fired, but before the appellate court decision, Oklahoma passed the nation's first parking lot bill.

While some supporters consider this type of bill to be a form of "worker protection" or "gun owner protection," some critics such as the Brady Center to Prevent Gun Violence describe them as "forced entry" bills because they force property owners to accept guns on their property against their will. Parking lot laws adopted by other states vary as to whether they protect only workers or both workers and the general public (such as people who are shopping), whether or not they only apply to concealed pistol licensees, as to what locations are excluded, and in other many other ways. It has been proposed that that Michigan pass a broad parking lot bill covering all businesses, commercial enterprises, "places of employment," and state and local government agencies. The bill would give rights to both workers and members of the general public, to persons with and without concealed pistol licenses, and would contain very few exceptions. In addition, members of the general public or workers who successfully challenged a parking lot gun ban would be entitled to recover their costs and attorney fees.

THE CONTENT OF THE BILL:

Michigan Firearms Act. The bill would amend and rename Public Act 340 of 1927, sometimes referred to as the handgun licensure act, as the "Michigan Firearms Act."

Right to transport and store firearms and ammunition in parking areas. A person lawfully possessing a firearm or ammunition could transport or store them in a privately-owned motor vehicle that is present in the parking lot, parking garage, or other parking area on the premises of a (1) business, (2) commercial enterprise, (3) place of employment, or (4) a state, county, municipal, township, or village agency, provided that the firearms were kept out of plain view in a manner described in the Michigan Penal Code or as otherwise allowed by law. [Note: Unlike the laws of some other states, the bill would protect anyone in lawful possession of a firearm, not just persons with concealed pistol licenses.]

Ban on prohibiting 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 someone lawfully possessing a firearm or ammunition from transporting or storing them 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 firearms 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 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. [Although it is not entirely clear, we assume that the "duty specified in this section" is the duty not to prohibit the transport or storage of firearms or ammunition in locked vehicles on the premises.]

Immunity from liability. A business, commercial enterprise, place of employment, or state or local 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. An employer could not discharge or otherwise penalize an employee for transporting or storing firearms or ammunition as allowed by the bill. An employee who was unlawfully discharged in violation of the bill could demand the following: (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 in seeking redress of the violation. If the employer 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.

Vehicles owned or leased by employers excluded. The bill would not apply to motor vehicle 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 would not authorize a person who holds a concealed pistol license to possess the concealed pistol in a concealed manner other than as prescribed under the bill.

Application to schools. The H-2 Substitute version of the bill would not authorize an individual to transport or store a firearm in a school parking area if doing so would violate or conflict with any of the following:

- Section 1311 or 1313 of the Revised School Code.⁴
- Section 237a of the Michigan Penal Code.⁵
- 18 USC 921 to 931.⁶
- The Safe and Drug-Free Schools and Communities Act, [20] USC 7101 to 7165.⁷

Irreconcilable conflict defense. An entity could defend a lawsuit 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 agency⁸ 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." [Note: Other vehicles required to be registered with the Secretary of State include snowmobiles, mopeds, and watercraft. Some off-road vehicles, such as ATVs, are registered (licensed) with the Department of Natural Resources, not the Secretary of State, and thus would not be covered by the bill.]

⁴ Section 1311 of the Revised School Code, MCL 380.1311, describes the authority of primary and secondary schools to expel and suspend students on grounds that include possessing a dangerous weapon in a weapon-free school zone. Section 1313, MCL 380.1313, defines "dangerous weapon" and the steps required if a student is found with a dangerous weapon in a weapon-free school zone.

⁵ Section 237a of the Michigan Penal Code, MCL 750.237a, provides additional penalties for certain felony firearms violations committed in a weapon-free school zone and also makes possession of a weapon in a weapon-free school zone a misdemeanor crime, subject to exceptions for: (1) employees or contractors providing security services for the school; (2) peace officers; (3) individuals licensed by Michigan or another state to carry a concealed weapon; (4) people possessing weapons provided by a school or a school's instructor for the purpose of providing or receiving instruction in use of the weapon; (5) people with permission of the school's principal (or an agent of the principal or the school board); (6) people aged 18 and older (who are not students) possessing a firearm on school property while transporting a student to or from the school under certain conditions.

⁶ These provisions of federal law include restrictions on the possession and discharge of firearms in school zones and restrictions on dangerous weapons in federal facilities and federal court facilities.

⁷ The bill includes an incorrect statutory citation for the Safe and Drug-Free Schools and Communities Act. A floor amendment is anticipated to change the reference from **18** USC 7101 to 7165 to **20** USC 7101 to 7165. Among other things, this federal law requires each state receiving "No Child Left Behind" funds to have a law requiring school officials to expel for one year any student who brings a weapon to school (subject to modification by school officials on a case-by-case basis). The Revised School Code provisions cited above (Sections 1311 and 1313) appear to contain Michigan's law regarding expulsion for bringing a weapon to school.

⁸ "State service agency" is language from the bill as introduced and may need to be changed to include all state and local government agencies to be consistent with the rest of the H-2 Substitute.

BACKGROUND INFORMATION:

Local units of government. Public Act 319 of 1990 stripped local units of government of their right to adopt or enforce most types of firearm regulations. Section 3 of that law, however, still allows local units of government to prohibit or regulate the "transportation, carrying, or possession of pistols and other firearms by *employees* of that local unit of government in the course of their employment with that local unit of government." MCL 123.1103(b).

Concealed pistol licensees. Under Public Act 340 of 1927, an employer cannot prohibit an employee from applying for or receiving a concealed pistol license. An employer, however, *can* prohibit an *employee* from carrying a concealed pistol in the course of employment with that employer. MCL 28.425n(2).

State civil servants. In general, Civil Service Rule 2-20.2, concerning workplace safety, prohibits most state civil servants from carrying or possessing a firearm at a state workplace or during actual-duty time. Exceptions exist for (1) law enforcement, correctional, investigative, security, and military employees who are permitted or required by departmental work rules to carry or possess a firearm at a state workplace or during actual-duty time; (2) employees specifically authorized in writing by the appointing authority to carry or possess a firearm at a state workplace or during actual-duty time; and (3) *employees who carry or possess a firearm inside a personal vehicle while the firearm is completely unloaded and enclosed in a case in the vehicle or carried in the trunk of the vehicle, except when prohibited by law or a departmental work rule.* Employees allowed to carry or possess firearms under these exceptions must do so in a reasonable manner in compliance with all applicable laws, including the civil service commission rules and regulations, all departmental work rules, and any instructions or limitations imposed by the appointment authority. At least one department, the Department of Corrections, has a work rule prohibiting many employees from bringing firearms to work even if they are left in locked vehicles in the parking lot.

States that have passed "parking lot" laws. States that have enacted some version of a guns-at-work or parking lot gun law include Alaska, Arizona, Florida, Georgia, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Oklahoma, and Utah. Bills have been introduced but not enacted in other states.

Additional reading:

Forced Entry/The National Rifle Association's Campaign to Force Businesses to Accept Guns at Work, Brady Center to Prevent Gun Violence, November 2005, available online at: <http://www.bradycampaign.org/xshare/pdf/reports/forced-entry-report.pdf>

Workplace Violence/Issues in Response, a 2002 report by the Critical Incident Response Group, U.S. Department of Justice, Federal Bureau of Investigation National Center for the Analysis of Violent Crime, available online at: <http://www.fbi.gov/publications/violence.pdf>

Parking Lot Gun Laws and the Right to Transport Firearms, National Rifle Association-Institute for Legislative Action, available online at:
<http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=193>

Workers Protection and Private Property, National Rifle Association-Institute for Legislative Action, available online at:
<http://www.nraila.org/Issues/Articles/Read.aspx?id=244&issue=53>

ARGUMENTS:

For:

The bills would broaden the right to carry firearms for self-defense and other lawful purposes. Some gun owners believe that having a firearm on their person or nearby at all times is critical to their personal security. Law enforcement officials or security guards cannot be everywhere at all times and cannot be counted on to respond to an emergency situation quickly enough. Although most gun owners acknowledge that once they get to work or enter a building owned by someone else they must abide by whatever firearms rules that the property owner or occupant has established (and state and federal laws prohibiting guns in certain locations), supporters say that the bill would at least stop most businesses and government agencies from preventing law-abiding gun owners from having one or more guns on the property if left in a locked vehicle in the parking lot. It is unfair for employers, businesses, or government agencies to adopt "no-gun" rules covering parking lots, they say, especially at workplaces where there is no place to park except for the employee parking lot. Parking lot gun bans interfere with gun owners' ability to defend themselves while commuting to and from work and their ability go hunting or to engage in recreational shooting before or after work, while adding very little to the security of the facility.

The bill would protect the privacy of gun owners' vehicles. Some people say that a person's motor vehicle is a private zone that is essentially an extension of the person or the person's home. The bill would protect the privacy of people's vehicles against searches such as those that took place at the Weyerhaeuser paper mill in Oklahoma. In their joint written statement in support of this bill, the Shooters Alliance for Firearms Rights and Michigan Gun Owners say that this bill "will strike a blow for the privacy rights of employees against large, monolithic employers and their over-reaching rules."

At least 11 other states have already protected gun owners with similar bills. In the last five years, the National Rifle Association and other gun groups have successfully promoted similar bills in approximately 11 states. Thus, the bill is part of a continuing expansion of gun rights promoted by gun groups. Michigan should join the growing list of states protecting the right of gun owners in parking lots.

The bill is consistent with an expansive interpretation of the constitutional right to bear arms. Supporters claim that the right to bear arms under both the federal and state constitutions protects their right to self defense with a firearm in any location, not just at their home or on their own property, and that a concealed pistol license or a right to carry a gun under state law for any lawful purpose would be of little value if they couldn't carry on their way to and from work, given the importance of a person's daily commute to

everyday life. They argue that the bill will help extend the right to bear arms outside of person's own home or business.

Safety concerns are exaggerated. Supporters say that firearms stored in locked vehicles out of plain view are unlikely to be stolen or used in shooting incidents and that gun control advocates tend to overstate the risk of allowing guns in more locations or allowing guns to be carried more freely. Safety concerns expressed when Michigan became a "shall issue" state with respect to concealed license permits were overblown and have not been borne out by experience. The safety concerns expressed by opponents of guns stowed in locked vehicles in parking lots are likewise exaggerated, they say. Although opponents of the bill say that disgruntled employees could easily retrieve weapons from their vehicles to shoot supervisors or co-workers, it is also true that weapons could also be retrieved for self-defense or to subdue a violent or belligerent individual, perhaps preventing a shooting. In any event, "no-guns allowed" policies are only followed by law-abiding citizens and are ignored by persons intent on committing crimes.

Against:

The constitutional right to bear arms does not extend to someone else's private property. Although in *DC v Heller*, the Supreme Court recently ruled that the Second Amendment protects an individual, not collective, right to bear arms, the Court has not yet ruled on whether this individual right applies outside of a person's home or whether it applies to state laws, rather than federal laws.⁹ In any event, however, neither the Second Amendment to the U.S. Constitution nor the Michigan constitution limits in any way the right of businesses and homeowners to adopt gun rules for their own property. The Second Amendment restricts government laws that infringe on the right to bear arms, not rules established by private property owners and employers.

On the other hand, the bill would interfere with *private property rights* protected under the federal and state constitutions. Even strong Second Amendment advocates such as Robert A. Levy of the conservative Cato Institute oppose parking lot laws such as HB 5302 on the grounds that they interfere with the rights of private property owners. (Levy was co-counsel for gun owners in *DC v. Heller*.) Writing in opposition to Florida's parking lot law, Levy argued that there is no Second Amendment right to take a gun onto someone else's property¹⁰:

⁹ In *DC v. Heller*, 128 S. Ct. 2783 (2008), the United States Supreme Court decided that the Second Amendment to the United States Constitution protects an individual right to bear arms in one's home, overturning Washington, D.C.'s handgun ban. But *Heller* did not decide whether that right extends to a person's car or outside of the home, as is advocated by gun groups. The Court noted that the right secured by the Second Amendment is not unlimited and that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." Also, because the District of Columbia is a federally-controlled territory, *Heller* did not address whether the Second Amendment applies to states, a question that will likely be decided by Court this term in the case of *McDonald v. Chicago*. Oral arguments in the *McDonald* case are set for March 2, 2010.

¹⁰ *Employers Must Pull Trigger*, first appearing in the Tampa Tribune on October 28, 2008, now available on the Cato Institute website.

Private property does not belong to the public. Employing a large staff, providing services to lots of customers, or permitting public access to a parking lot is not sufficient to transform private property into public. The litmus test for private property is ownership.

The owner of the property should be able to determine—for good reasons, bad reasons, or no reason at all—whether to admit gun owners, non-gun owners, neither or both. Customers, employees and guests who object may go elsewhere. That's the controlling principle.

Similarly, in 2007, the American Bar Association's House of Delegates passed a resolution opposing laws such as HB 5302 on the grounds that they interfere with private property rights. That resolution states:

The American Bar Association supports the traditional property rights of private employers and other private property owners to exclude from the workplace and other private property persons in possession of firearms or other weapons and opposes federal, state, territorial and local legislation that abrogates those rights.

In fact, HB 5302's coverage is so broad that it would even apply to private homes that are "places of employment." For example, many people have home-based businesses with one or two employees or employ domestic workers such as home health aides. A private home might also be a "place of employment" for the employee of a contractor working on someone's home. Shouldn't homeowners be able to decide whether firearms are allowed on their own private property?

The bill infringes on the right of employers to set terms and conditions of employment and to take actions to improve workplace safety. Despite the fact that workplace violence is a serious problem in the United States, the bill would interfere with the right of employers to set workplace safety rules they deemed appropriate. Many employers have policies prohibiting firearms in the workplace, including parking lots, as part of their efforts to prevent violence. Although no policy can prevent every incident of workplace violence, the bill would interfere with employers' ability to adopt the recommendations of safety experts and set policies of their own choosing. The fact that that disgruntled employees would have almost no "cooling-off" period if guns were allowed in the parking lots increases workplace safety risks. The bill would also make it harder for employers to prevent domestic violence from spilling over into the workplace. A frequently-cited study published in the American Journal of Public Health in 2005 found that "workplaces where guns were specifically permitted were 5 to 7 times more likely to be the site of a worker homicide compared to those where all weapons were

prohibited."¹¹ For recent examples of workplace violence, a compilation can be found on the website of the Brady Center to Prevent Gun Violence.¹²

As previously noted, many workplace safety experts are opposed to laws like HB 5302. See, for example, an ASIS International Foundation Research Council Report, *Preventing Gun Violence in the Workplace*, Dana Loomis, 2008. Page 24 of that report states: "Unfortunately, employers' ability to implement effective no-weapons policies is being called into question by new state laws that require property owners to allow weapons on their premises under a wider range of circumstances. To date, this new legislation only expands workers' rights to keep weapons in parking areas, but it is problematic from the standpoint of preventing workplace violence. If employees have access to firearms stored in their vehicles parked at work, then the potential for workplace disagreements to become lethal increases." (ASIS International is an organization of professionals responsible for security at corporate and government facilities.)

Some employers challenged Oklahoma's parking lot law on the grounds that it interfered with their duty under the Occupational Safety and Health Act of 1970 (OSHA). That act contains a provision known as the "general duty clause" that requires each employer to provide a workplace that is "free from recognized hazards that are causing or that are likely to cause death or serious physical harm" to employees. [Note: In a decision this year, a federal appellate court rejected the employers' argument, ruling that OSHA's general duty clause did not preempt the state gun law. See *Winch v. Henry*, 555 F.3d 1199 (10th Cir. 2009).]

The immunity provision is too broad and may prevent injured workers from receiving workers' compensation. The bill's proponents have tried to assuage employer concerns about increased liability resulting from shootings by providing immunity from legal liability for the employers and businesses covered by the bill, except in cases of gross negligence. Some say this provision is too broad as it would protect employers who have been truly negligent from liability for workplace violence. It has also been suggested that if this immunity provision extends to workers' compensation claims, it is unfair. Why should a worker injured in workplace shooting be deprived of workers' compensation to pay for medical treatment and rehabilitation when all other workers injured on the job are eligible for workers compensation? In contrast, Oklahoma's parking lot law specifically exempts workers compensation cases from the legal immunity provision.

To the extent the bill applies to churches (as places of employment), it may violate religious freedom protections in the U.S. and Michigan Constitutions. Freedom of religion is protected by the First Amendment to the U.S. Constitution and Article 1, §4 of the Michigan Constitution. The Michigan Constitution specifically protects the freedom of every person to worship God according to the dictates of his or her own conscience. Any church with at least one employee would likely be considered a "place of

¹¹Dana Loomis, Stephen W. Marshall, and Myduc L. Ta, *Employer Policies Toward Guns and the Risk of Homicide in the Workplace*, 95 Am. J. of Pub. Health 830 (2005). This study, supported by the National Center for Injury Prevention and Control of the U.S. Centers for Disease Control and Prevention, is available online at: <http://ajph.aphapublications.org/cgi/reprint/95/5/830>.

¹² See <http://www.bradiycampaign.org/xshare/pdf/facts/workplace-shootings.pdf>.

employment" and would therefore have to allow firearms in its parking lot regardless of the church's religious views on gun and gun violence. In 2007, a group of Minnesota churches successfully challenged a Minnesota parking lot law as unconstitutional under the Minnesota Constitution which, like Michigan's, protects freedom of conscience.¹³ The Legislature should allow churches to make their own decisions about whether to allow firearms on their property.

The bill contains no restriction on the type or number of firearms allowed and makes no exceptions for places with critical infrastructure or correctional facilities. The Brady Center has noted that parking lot bills generally do not restrict the type or number of guns allowed onto property, thus allowing any number of assault weapons or .50 caliber sniper rifles powerful enough to bring down an airplane to be brought onto virtually any private or government property. This would include locations with critical infrastructure such as nuclear power plants. Is this a good idea in light of homeland security concerns? Should additional exceptions for places containing critical infrastructure be considered?

The Michigan Department of Corrections notes that the bill in its current form conflicts with Section 3(3) of Public Act 17 of 1909, MCL 800.283(3), which bans weapons and other items that could be used to help a prisoner escape from being brought to correctional facility. The bill also conflicts with a Department of Corrections work rule (Rule 21, concerning contraband in vehicles) that prohibits many corrections employees (except for certain employees in authorized categories) from bringing weapons to a correctional facility. The bill would allow all corrections employees as well as the friends and family members of prisoners to bring weapons onto prison property. The parking lot laws of at least two states, Florida and Kentucky, have excluded correctional or detention facilities.

The bill interferes with the ability of colleges and universities to maintain gun-free campuses. Like House Bill 5474, the bill would interfere with the ability of colleges and universities to regulate the possession, carrying, and storage of firearms on campuses. College and university officials say that they are in the best position to determine what health and safety rules are most appropriate to protect their students, employees, and guests.

The attorney fee pay provision is unfair. If this bill were enacted, courts would be faced with many difficult questions of interpretation or gray areas. For example, it may be difficult to predict in advance how a court would rule on whether an entity would be in violation of another law or rule if it complied with the bill. It might also be difficult to predict how a court would rule on questions of religious freedom or private property

¹³See Edina Community Lutheran Church v. State of Minnesota (MN Ct. App., Feb. 5, 2008). Other Methodist, Episcopalian, Evangelical Lutheran, Roman Catholic, Jewish, and Zen Buddhist institutions joined the lawsuit challenging the Minnesota law. In a letter to the Minnesota Senate before the law was passed, Roman Catholic bishops explained that they opposed the law (which included provisions relating to parking lots as well as making Minnesota a "shall issue" concealed pistol license state) because of their duty and obligation to confront a culture of violence and to build a culture of peace. The bishops specifically requested that their churches, parking lots, grounds, organizations, and facilities be exempt from the law.

rights. Is it fair to require a defendant to pay the costs and attorney's fees of a gun owner who successfully challenged a no-gun rule, if the defendant had a good-faith belief that compliance with the bill would cause it violate another law or that the bill conflicted with its right to control its own private property or its religious freedom? The attorney fee provision would place a particularly severe burden on small businesses, churches, or non-profit agencies that may lack the resources to defend their right to keep guns off their property.

POSITIONS:

Freedom Firearms indicated support for the bill. (10-20-09)

The Michigan Coalition for Responsible Gun Owners indicated support for the bill. (10-20-09)

Michigan Gun Owners supports the bill. (10-20-09)

Michigan United Conservation Clubs indicated support for the bill. (10-20-09)

Service Employees International Union Local 526M (Michigan Corrections Organization) supports the bill. (10-29-09)

Shooters Alliance for Firearms Rights supports the bill. (10-20-09)

The Michigan State Police indicated neutrality on the bill. (10-27-09)

The American Bar Association adopted a resolution in 2007 opposing bills such as this one because they interfere with the traditional rights of private property owners.

The Michigan Association for Justice is opposed to the blanket immunity provision. (11-24-09)

The Michigan Department of Corrections has concerns about the bill in its current form because it conflicts with MCL 800.283 and a departmental work rule and does not contain an exception for correctional facilities. (11-24-09)

The Michigan Coalition Against Domestic Violence is opposed to the bill. (11-18-09)

The President's Council, State Universities of Michigan opposes the bill. (11-19-09)

Legislative Analyst: Shannan Kane
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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.