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BILL ANALYSIS



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Senate Bill 212 (as enacted)
House Bill 4431 (as enrolled)
Sponsor: Senator Roger Kahn, M.D. (S.B. 212)
Representative Mark Meadows (H.B. 4431)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 295 of 2010
PUBLIC ACT 294 of 2010

Date Completed: 1-3-11

CONTENT

Senate Bill 212 amended the handgun licensure Act to do all of the following:

- Allow a law enforcement agency that seizes or otherwise comes into possession of a firearm or part of a firearm subject to disposal to retain the firearm or part for certain purposes, instead of forwarding it to the Michigan Department of State Police (MSP) for disposal.
- Require an agency to complete transaction records, and keep receipts of firearms sales or trades for at least seven years.
- Require an agency that sells or trades firearms to make receipts available for inspection and audits.
- Require a law enforcement agency to determine whether a firearm has been reported lost or stolen and give the owner 30 days to claim it.
- Require an agency to provide 30 days' notice before disposing of a firearm under the bill.
- Provide that a law enforcement agency is immune from civil liability for disposing of a firearm in compliance with the bill.

House Bill 4431 amended the Michigan Penal Code to do the following:

- Revise procedures for the MSP to dispose of forfeited weapons.
- Allow a law enforcement agency that seizes or otherwise comes into possession of a firearm or part of a

firearm subject to disposal to retain the firearm or part for certain purposes, instead of forwarding it to the MSP for disposal.

House Bill 4431 was tie-barred to Senate Bill 212. Both bills took effect on December 16, 2010.

Senate Bill 212

Under the handgun licensure Act, pistols, weapons, or devices carried or possessed contrary to the Act are forfeited to the State and must be turned over to the MSP for disposal. The MSP must dispose of firearms by conducting a public auction or destroying the weapons, or by any other lawful manner prescribed by the MSP Director. Before disposing of a firearm, the MSP Director must determine whether it has been reported lost or stolen and, if so, give the owner 30 days' written notice of the intent to dispose of the firearm. The Director also must provide an additional 30 days' notice on the MSP website of the intent to dispose of the firearm. The MSP must allow the firearm's owner to claim it within either 30-day period if he or she is authorized to possess the firearm.

Under the bill, a law enforcement agency may retain a firearm or part of a firearm for legal sale or trade to a federally licensed firearm dealer or for official use by members of the seizing agency who are employed as peace officers. The agency may use the proceeds from any sale or trade only for law

enforcement purposes. The agency may not sell or trade a firearm or part of a firearm to an individual who is a member of the agency unless he or she also is a federally licensed firearms dealer and the sale is made pursuant to a public auction. A firearm or part of a firearm retained for official use by members of the seizing agency may not be sold.

A law enforcement agency that sells or trades any pistol to a licensed dealer or retains any pistol for official use must complete a record of the transaction. An agency that sells or trades a firearm or part of a firearm must retain a record of the sale or trade for at least seven years. Receipts must be available for inspection by the MSP upon demand and for auditing by the State and the agency's local unit of government.

Before selling or retaining a firearm, a law enforcement agency must determine through the Law Enforcement Information Network (LEIN) whether the firearm has been reported lost or stolen. If the weapon has been reported lost or stolen and the owner's name and address can be determined, the agency must provide 30 days' notice for the owner to claim the firearm. If the police agency determines that a serial number has been altered or has been removed or obliterated from the firearm, the agency must submit the firearm to the MSP or a forensic laboratory for serial number verification or restoration to determine legal ownership.

The agency also must provide 30 days' notice to the public on a website maintained by the agency of its intent to dispose of the firearm. The notice must describe the firearm and state its serial number, if the serial number can be determined. The agency must allow the owner to claim the firearm during the 30-day period, if he or she is authorized to possess the firearm. This 30-day period is in addition to the 30-day period described above.

A law enforcement agency is immune from civil liability for disposing of a firearm in compliance with the bill.

The bill defines "law enforcement agency" as any agency that employs peace officers.

House Bill 4431

MSP Disposition of Weapons

Under Chapter 37 (Firearms) of the Michigan Penal Code, pistols, weapons, or devices carried, possessed, or used contrary to that chapter are forfeited to the State and must be turned over to the MSP Director for disposition as he or she prescribes.

Under the bill, those weapons must be turned over the MSP for disposition as determined appropriate by the Director or his or her designated representative. The MSP Director must dispose of firearms by one of the following methods:

- Conducting a public auction in which firearms received may be purchased by individuals authorized by law to possess those firearms.
- Destroying the weapons.
- Any other lawful manner prescribed by the MSP Director.

A sale must be conducted in compliance with Section 4708 of the Revised Judicature Act (which governs the sale of forfeited property that is not required by law to be destroyed).

Before disposing of a firearm, the MSP Director must determine through LEIN whether it has been reported lost or stolen and, if so, give the owner 30 days' written notice of the intent to dispose of the firearm and allow the owner to claim the firearm within that period if he or she is authorized to possess it. The Director also must provide an additional 30 days' notice on the MSP website of the intent to dispose of the firearm, including a description of the weapon and its serial number (if it can be determined), and allow the firearm's owner to claim it within this additional 30-day period if he or she is authorized to possess the firearm.

Local Agency Retention of Firearms

The bill deleted previous requirements in Chapter 37 pertaining to a police agency's responsibilities before the agency turned a confiscated firearm over to the MSP. Under those provisions, the police agency that recovered or confiscated a firearm first had to determine if there was a known legal owner and whether the firearm had been reported stolen. If the agency determined

that a serial number had been eradicated from the firearm, the agency was required to submit it to the MSP or a forensic laboratory for serial number restoration to determine legal ownership. In determining ownership, the agency was required to review information in LEIN and examine the agency's stolen property reports. If the police agency determined that the firearm was stolen, it was required to notify the agency reporting the theft and return the firearm to that agency at the conclusion of the criminal case. The receiving agency then was required to notify the legal owner and either return the weapon to the owner or turn it over to the MSP.

Under the bill, instead, a law enforcement agency that seizes or otherwise comes into possession of a firearm or a part of a firearm subject to disposal, instead of forwarding it to the MSP, may retain it for either of the following purposes:

- Legal sale or trade to a federally licensed firearm dealer.
- Official use by members of the seizing agency who are employed as peace officers.

The bill contains the same provisions as those in Senate Bill 212 regarding the law enforcement agency's use of the proceeds; the sale or trade of a weapon to a member of the agency; responsibilities of the agency to maintain records and receipts, determine whether a firearm has been lost or stolen, notify the owner, give public notice, and allow the owner to claim the firearm; civil immunity; and the definition of "law enforcement agency".

MCL 28.434 et al. (S.B. 212)
750.239 & 750.239a (H.B. 4431)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government, but may potentially result in savings for law enforcement agencies from the allowed use of confiscated firearms for official use and some added financial support from their sale. Though the Department of State Police already was allowed under law to sell confiscated weapons sent to it by law enforcement agencies, it has been the

Department's policy for many years to simply dispose of them. For calendar year 2009, the total number of confiscated weapons received by the Department was 8,395, which included 5,250 handguns and 3,145 long guns.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.