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House Bill 4431 (Substitute H-3 as passed by the House)  
Sponsor: Representative Mark Meadows  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 11-29-10

## **CONTENT**

**The bill would amend the Michigan Penal Code to do the following:**

- **Revise procedures for the Michigan Department of State Police (MSP) to dispose of forfeited weapons.**
- **Allow a law enforcement agency that seized or otherwise came 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.**
- **Provide that the MSP and a law enforcement agency would be immune from civil liability for disposing of a firearm in compliance with the bill.**

The bill is tie-barred to Senate Bill 212, which would make similar revisions to the handgun licensure law.

### **MSP Disposition of Weapons**

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

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

- Conducting a public auction in which firearms received could 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 would have to 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 would have to determine through the Law Enforcement Information Network (LEIN) whether it had 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 were authorized to possess it. The Director also would have to 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 the firearm's serial number (if it could be determined), and allow the firearm's owner to claim it within this additional 30-day period if he or she were authorized to possess the firearm.

## Local Agency Retention of Firearms

The bill would delete current requirements pertaining to a police agency's responsibilities before the agency turns a confiscated firearm over to the MSP. Under those provisions of Chapter 37, before a firearm is turned over to the MSP for disposal, the police agency that recovered or confiscated it must determine if there is a known legal owner and whether the firearm has been reported stolen. If the agency determines that a serial number has been eradicated from the firearm, the agency must submit it to the MSP or a forensic laboratory for serial number restoration to determine legal ownership. In determining ownership, the agency must review information in LEIN and examine the agency's stolen property reports. If the police agency determines that the firearm is stolen, it must notify the agency reporting the theft and return the firearm to that agency at the conclusion of the criminal case. The receiving agency then must notify the legal owner and provide for the weapon's disposition, either to the owner or to the MSP.

Under the bill, instead, a law enforcement agency that seized or otherwise came into possession of a firearm or a part of a firearm subject to disposal, instead of forwarding it to the MSP, could 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 were employed as peace officers.

The agency could use the proceeds from any sale or trade only for law enforcement purposes. The law enforcement agency could not sell or trade a firearm or part of a firearm to any individual who was a member of that agency unless he or she were a federally licensed firearms dealer and the sale were made pursuant to a public auction.

The law enforcement agency would have to complete a record of the transaction and retain a receipt of the sale or trade for at least seven years. Receipts would have to be made available for inspection by the MSP and for auditing by the State and local unit of government.

Before selling or retaining a firearm, the law enforcement agency would have to do both of the following:

- Determine whether the firearm had been reported lost or stolen and, if it had been and the owner's name and address could be determined, provide 30 days' notice for the owner to claim the firearm.
- Provide an additional 30 days' notice to the public on an agency website of its intent to dispose of the firearm, and allow the owner to claim the firearm during that period.

MCL 750.239 & 750.239a

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government, but could 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. Currently, the Department of State Police is to dispose of any weapons it has confiscated or any weapons sent to it by law enforcement agencies. For calendar year 2009, the total number of confiscated firearms 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.