



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 221 (as enrolled)  
House Bill 4867 (as enrolled)  
Sponsor: Senator Valde Garcia (S.B. 221)  
Representative James Koetje (H.B. 4867)  
Senate Committee: Judiciary  
House Committee: Conservation and Outdoor Recreation

**PUBLIC ACT 129 of 2004**  
**PUBLIC ACT 130 of 2004**

Date Completed: 2-1-05

### **RATIONALE**

Until recently, there appeared to be conflicting statutory provisions regarding the carrying of concealed weapons in hunting areas. Public Act 381 of 2000 amended the handgun licensure Act to impose restrictions on carrying a pistol and revise the criteria for obtaining a license to carry a concealed pistol. That Act prohibits a licensed individual from carrying a concealed pistol on certain premises, including schools, sports arenas, religious facilities, hospitals, and bars. Part 435 (Hunting and Fishing Licensing) of the Natural Resources and Environmental Protection Act, however, prohibits a person from carrying or transporting a firearm while in an area frequented by wild animals unless the person possesses a hunting license as required under Part 435. Since the concealed weapons provisions enacted in 2000 do not prohibit a licensee from carrying his or her pistol afield, it was suggested that the restriction in Part 435 should not apply to those who have a concealed pistol license or individuals who are exempt from licensure, such as police officers and military personnel.

### **CONTENT**

**Senate Bill 221 amended Part 435 of the Natural Resources and Environmental Protection Act (NREPA) to allow certain people to transport a pistol or carry a loaded pistol in an area frequented by wild animals.**

**House Bill 4867 amended Part 5 (Department of Natural Resources) of NREPA to provide that the Department of Natural Resources (DNR) may not prohibit a concealed pistol licensee, or someone exempt from licensure, from**

**carrying a pistol on property under the DNR's control.**

The bills were tie-barred and took effect on June 3, 2004.

### **Senate Bill 221**

Part 435 prohibits a person from carrying or transporting a firearm, slingshot, bow and arrow, crossbow, or a trap while in an area frequented by wild animals unless the person possesses a hunting license as required under Part 435. Under the bill, this prohibition is subject to the following: The Act, or a rule promulgated or order issued under it by the DNR or the Natural Resources Commission, may not be construed to prohibit a person from transporting a pistol or carrying a loaded pistol, whether concealed or not, if the person has in his or her possession a license to carry a concealed pistol under the handgun licensure Act, or if the person is authorized under Section 12a of that Act or under Section 227, 227a, 231, or 231a of the Michigan Penal Code to carry a concealed pistol without obtaining a license. (Those sections are described below in **BACKGROUND**.) The bill states that it does not authorize an individual to take or attempt to take a wild animal except as provided by law.

In addition, Part 435 does both of the following:

-- Provides that a person who has a hunting, fishing, or fur harvester's license, when hunting, fishing, or trapping or while possessing firearms or other hunting, fishing, or trapping apparatus in an area frequented by wild animals or fish, must

carry his or her license and exhibit it upon the demand of a conservation officer, a law enforcement officer, or the owner of the land where the person is hunting, fishing, or trapping.

- Prohibits a person from carrying or possessing afield a shotgun with buckshot, slug loads, or ball loads; a bow and arrow; a muzzle-loading rifle or black powder handgun; or a centerfire handgun or centerfire rifle during firearm deer season unless the person has a valid firearm deer license with an unused kill tag, issued in his or her name.

Under the bill, those provisions are subject to the new language that allows a person to carry or transport a pistol in an area frequented by wild animals.

(A violation of Part 435, unless another penalty is specified, is a misdemeanor punishable by imprisonment for up to 90 days, a fine of at least \$25 but not more than \$250 plus the costs of prosecution, or both.)

### **House Bill 4867**

Part 5 of NREPA requires the DNR to "promulgate rules for the protection of the lands and property under its control...to protect the lands and property from depredations and to preserve the lands and property from molestation, spoilation, destruction, or any other improper use or occupancy". The Department must issue orders necessary to implement promulgated rules. A person who violates a rule or order is responsible for a State civil infraction punishable by a maximum civil fine of \$500.

Under the bill, the DNR may not promulgate or enforce a rule that prohibits an individual who is licensed or exempt from licensure under the handgun licensure Act, from carrying a pistol in compliance with that Act on property under the DNR's control, whether the pistol is concealed or otherwise.

MCL 324.43510 & 324.43516 (S.B. 221)  
324.504 (H.B. 4867)

### **BACKGROUND**

Under Section 12a of the handgun licensure Act (MCL 28.432a), the requirements for obtaining a license to carry a concealed pistol do not apply to any of the following:

- A peace officer of a duly authorized police

agency of the United States, this State, or a political subdivision of the State, who is regularly employed and paid by the United States, this State, or a political subdivision of the State, except for a township constable.

- A constable who is trained and certified under the Commission on Law Enforcement Standards Act, while engaged in, going to, or coming from his or her official duties, and who is regularly employed and paid by a political subdivision of the State.
- A person regularly employed by the Department of Corrections (DOC) and authorized by the DOC Director to carry a concealed pistol while performing, going to, or returning from his or her duties.
- A member of the United States Army, Air Force, Navy, or Marine Corps, while carrying a concealed pistol in the line of duty.
- A member of the National Guard, Armed Forces Reserves, or other duly authorized military organization, while on duty or drill, going to or returning from his or her place of assembly or practice, or carrying a concealed pistol for purposes of that military organization.
- A resident of another state who is licensed by that state to carry a concealed pistol.
- The regular and ordinary transport of a pistol as merchandise by an authorized agent of a person licensed to manufacture firearms.
- A person, while carrying a pistol unloaded in a wrapper or container in the trunk of his or her vehicle or, if the vehicle does not have a trunk, while transporting the pistol unloaded in a locked compartment or container that is separated from the ammunition for the pistol, from the place of purchase to his or her home or business or to or from a place of repair, or in moving goods from one residence or business to another.
- A Canadian peace officer or law enforcement officer.

Section 227 of the Michigan Penal Code (MCL 750.227) prohibits a person from carrying certain knives or other dangerous weapons, concealed on or about the person or in a vehicle operated by the person, except in his or her home or place of business, or on land he or she owns. That section also prohibits a person from carrying a concealed pistol, or carrying a pistol in a vehicle, without a license to carry the pistol, except in his or her home or business or on land he or she owns. Also, Section 227a prohibits a person who is

licensed to carry a pistol because he or she is engaged in the business of protecting another's person or property, from possessing the pistol while not actually engaged in the business of that protection, except in his or her home or on land he or she owns (MCL 750.227a).

Section 231 of the Code (MCL 750.231) exempts all of the following from various weapons possession prohibitions:

- A peace officer of an authorized police agency of the United States, this State, or a political subdivision of the State, who is regularly employed and paid by the United States, this State, or a political subdivision.
- A DOC employee who is authorized by the DOC Director to carry a concealed weapon while performing, going to, or returning from his or her official duties.
- An employee of a private vendor that operates a youth correctional facility under contract with the DOC, who meets the same criteria established by the DOC Director for carrying a concealed weapon and is authorized by the Director to carry a concealed weapon while performing, going to, or returning from his or her official duties.
- A member of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard, while carrying a weapon in the line of or incidental to duty.
- An organization authorized by law to purchase or receive weapons from the United States or this State.
- A member of the National Guard, Armed Forces Reserve, Coast Guard Reserve, or any other authorized military organization, while on duty or drill, going to or returning from a place of assembly or practice, or carrying weapons used for purposes of that military organization.

Section 231a of the Code (MCL 750.231a) exempts all of the following from the prohibition against possessing or transporting a pistol:

- A person holding a valid license to carry a concealed pistol issued by his or her state of residence, unless the pistol is carried in nonconformance with a restriction on the license.
- The regular and ordinary transport of a pistol as merchandise by an authorized agent of a person licensed to manufacture firearms.
- Carrying an antique firearm, completely

unloaded in a closed case or container designed for the storage of firearms, in the trunk of a vehicle.

- A person transporting for a lawful purpose a pistol that is licensed by the owner or occupant of the vehicle, if the pistol is unloaded in a closed storage case in the trunk of a vehicle.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Conflicting provisions in the handgun licensure Act and Part 435 of NREPA resulted in confusion over whether a concealed pistol license holder could carry and transport his or her weapon in a hunting area. The handgun licensure Act allows a licensee to carry his or her weapon except on specified premises, which do not include hunting areas. Part 435, on the other hand, prohibits a person from possessing certain weapons in an area frequented by wild animals unless he or she has the proper hunting license. This left some concealed pistol licensees unsure of whether they could carry their handguns while hunting or engaging in other outdoor activities, such as hiking.

Apparently, confusion over this issue also existed within the DNR. According to testimony before the Senate Judiciary Committee, DNR law enforcement officials, by policy but not by rule or law, generally exempted concealed weapons licensees and police officers from the prohibition in Part 435 if they were not engaged in hunting activities. Since these people were not hunting, DNR officials did not expect them to know or abide by hunting rules and policies. Hunters, however, must comply with those rules and policies, and the DNR did not allow hunters to carry concealed weapons, even if they were licensed to do so.

Senate Bill 221 eliminated this confusion by clearly stating that a person who has a concealed pistol license, or who is authorized by law to carry a concealed weapon without a license, may transport and carry that weapon while in an area frequented by wild animals. This exception applies regardless of whether the person is engaged in hunting or other activities.

### **Opposing Argument**

Hunters should be restricted to carrying and using only the weapon appropriate for the type of hunt they are participating in and the season of the hunt, and a hunter's weapon should never be concealed. Although hunting with certain types of handguns is allowed under the DNR's hunting regulations in certain areas of the State, those rules require that the handguns be carried in plain view, not concealed. There simply is no need for a hunter to carry a concealed pistol while afield. Doing so could tempt a hunter to use the pistol on game, even if he or she were participating in another type of hunt, such as deer archery season. Rules and policies that prohibit possessing a concealed pistol while hunting have long been enforced and hunters are well aware of them. There was no need to expand the areas where a concealed pistol license holder may carry and transport his or her weapon.

**Response:** The inconsistency between the handgun licensure Act and Part 435 of NREPA needed to be addressed. In addition to resolving this conflict, the Senate bill explicitly states that it does not authorize licensees to hunt except as provided by law. Also, it is a misdemeanor under Part 401 (Wildlife Conservation) of NREPA for a hunter to use an inappropriate weapon or to take game in violation of law or an order issued under NREPA. The bills do not affect that sanction.

In addition, there seems to have been confusion regarding the concealed pistol issue even within the DNR. For example, although hunting policies provide that a weapon (including a handgun properly used for hunting) must not be concealed while it is used for hunting, the "Statewide Handgun Regulations" portion of the Department's "2003-04 Michigan Hunting and Trapping Guide" included a note that the guidelines "may not apply to a person having a concealed pistol license" who carries his or her handgun according to the restrictions on the license. By providing that the Act or a rule promulgated or order issued under it may not prohibit a person from transporting a pistol or carrying a loaded pistol if he or she possesses a concealed pistol license, and providing that the DNR may not prohibit a concealed pistol licensee, or someone exempt from licensure, from carrying a pistol on property under the DNR's control, the bills clarify to all concerned that a licensee may legally carry his or her concealed pistol while afield.

### **Opposing Argument**

The bills could cause other problems for the DNR. According to a Department analysis of the legislation, State land use administrative rules for parks and recreation areas generally prohibit the possession of a loaded firearm in areas not open for hunting, such as campgrounds, beaches, and day-use areas. Since the bills do not allow a rule or order to prohibit a concealed pistol licensee from carrying a loaded pistol, the DNR now has no authority to ensure the safety of people using recreational facilities like beaches and campgrounds.

**Response:** The handgun licensure Act, as amended by Public Act 381 of 2000, lists premises where a concealed pistol licensee may not carry his or her weapon. That list does not include campgrounds, beaches, or parks.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Jessica Runnels

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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.