

Legislative Analysis



PROHIBIT CERTAIN FIREARMS-RELATED PROVISIONS IN AN EMERGENCY OR EPIDEMIC ORDER

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5187 as introduced
Sponsor: Rep. Andrew Fink

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5188 as introduced
Sponsor: Rep. Pat Outman

Committee: Oversight
Complete to 10-27-21

SUMMARY:

House Bills 5187 and 5188 would amend different acts to prohibit the governor, the director of the Department of Health and Human Services (DHHS), and local health officers from issuing orders otherwise authorized during an emergency or epidemic, as applicable, regarding certain activities related to firearms and dangerous weapons. The bills also would provide civil remedies for damages arising from a violation of their provisions. The bills are similar but not identical and are described separately below.

House Bill 5187 would amend the Emergency Management Act, which authorizes the governor to proclaim a state of emergency or state of disaster and take certain actions in response to the emergency or disaster, such as suspending strict compliance with regulatory laws or rules, transferring personnel or functions of state agencies, directing and compelling evacuations, suspending or limiting the sale of alcohol and explosives, and directing all other actions that are necessary and appropriate under the circumstances. However, the governor's powers do not include suspending criminal process and procedures or taking lawfully possessed firearms, ammunition, or other weapons.

The bill would prohibit an executive order, proclamation, or directive issued by the governor under the act from doing any of the following:

- Prohibiting, regulating, or curtailing the otherwise lawful possession, carrying, display, sale, transportation, transfer, defensive use, or other lawful use of a firearm, ammunition, ammunition-reloading equipment and supplies, or a deadly weapon other than a firearm, including any component or accessory of a firearm or of ammunition.
- Requiring registration of firearm owners or of any firearm or ammunition, including any component or accessory of a firearm.
- Seizing, commandeering, or confiscating in any manner any privately owned firearm, ammunition, ammunition-reloading equipment and supplies, or deadly weapon other than a firearm, including any component or accessory of a firearm or of ammunition, that is possessed, carried, displayed, sold, transferred, transported, stored, or used in connection with otherwise lawful conduct.
- Prohibiting, suspending, or limiting the business operations of any entity engaged in the lawful selling or servicing of a firearm or ammunition, including any components or accessories, ammunition-reloading equipment and supplies, or personal weapons other than firearms.

- Prohibiting, suspending, or limiting the business operations of an indoor or outdoor shooting range, whether located on state lands or not, or an entity engaged in providing firearms safety, firearms training, firearms license qualification or requalification, firearms safety instructor courses, or a similar class, course, or program.
- Placing restrictions or quantity limitations on an entity regarding the lawful sale or servicing of a firearm, ammunition, ammunition-reloading equipment and supplies, or a deadly weapon other than a firearm, including any component or accessory of a firearm or of ammunition.
- Suspending, restricting, or prohibiting otherwise lawful hunting, fishing, or trapping activities or business entities conducting or directly facilitating those lawful activities, whether conducted on state lands and waters or not.

A *person*, group, or entity adversely affected by an executive order, proclamation, directive, or other action enacted or enforced in violation of the above provisions could file an action for damages, injunctive relief, declaratory relief, or other appropriate redress in the court having appropriate subject matter jurisdiction. In addition to any actual damages awarded against the governor or a state agency, *political subdivision*, or any elected or appointed official or employee of this state or a political subdivision, and other relief provided with respect to such an action, the court would have to award reasonable court costs and expenses, including litigation costs and attorney fees, to any person, group, or entity that brings the action, regardless of whether the executive order, proclamation, directive, or other action enacted or the manner of its enforcement is repealed or rescinded or expires after the civil action was filed but prior to a final court determination of the action.

Person means an individual, partnership, corporation, association, governmental entity, or any other entity.

Political subdivision means a county, municipality, school district, or any other governmental unit, agency, body, board, or commission that is not a state department, board, commission, or agency of state government.

Finally, the act authorizes the governor, upon the declaration of a state of disaster or a state of emergency, to direct other actions that are necessary and appropriate under the circumstances. The bill would provide an exception from this authority with regard to firearms-related actions as described above.

MCL 30.403 and 30.405

House Bill 5188 would amend the Public Health Code. Under the code, if the director of DHHS or a local health officer determines that it is necessary to control an epidemic to protect the public health, he or she by emergency order can prohibit gatherings and establish procedures that must be followed during the epidemic to ensure continuation of essential public health services and enforcement of health laws.

The bill would prohibit an emergency order issued by the DHHS director or a local health officer under the above provisions from doing any of the following:

- Prohibiting, suspending, or limiting the business operations of any entity engaged in the lawful selling or servicing of a firearm or ammunition, including any components

or accessories, ammunition-reloading equipment and supplies, or personal weapons other than firearms.

- Prohibiting, suspending, or limiting the business operations of an indoor or outdoor shooting range, whether located on state lands or not, or an entity engaged in providing firearms safety, firearms training, firearms license qualification or requalification, firearms safety instructor courses, or a similar class, course, or program.
- Placing restrictions or quantity limitations on an entity regarding the lawful sale or servicing of a firearm, ammunition, ammunition-reloading equipment and supplies, or a deadly weapon other than a firearm, including any component or accessory of a firearm or of ammunition.
- Suspending, restricting, or prohibiting otherwise lawful hunting, fishing, or trapping activities or business entities conducting or directly facilitating those lawful activities, whether conducted on state lands and waters or not.

A *person* adversely affected by an emergency order issued or enforced in violation of the bill could file an action for damages, injunctive relief, declaratory relief, or other appropriate redress in the court having appropriate subject matter jurisdiction. In addition to any actual damages and other relief provided with respect to such an action, the court would have to award reasonable court costs and expenses, including litigation costs and attorney fees, to any person bringing the action, regardless of whether the emergency order is rescinded or expires after the civil action was filed but before a final court determination of the action.

Person means an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity, but does not include a governmental entity.

MCL 333.2253 and 333.2453

FISCAL IMPACT:

House Bills 5187 and 5188 would not have a fiscal impact on the state or on local units of government, except in instances where the state or a local unit of government loses a civil action should one be filed by a person who was adversely affected as outlined in the bills.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.