

Legislative Analysis



WAIVE LICENSE REQUIREMENT FOR PEACE OFFICERS PURCHASING PISTOLS

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House Bill 4894

Sponsor: Rep. Kim Meltzer

Committee: Tourism, Outdoor Recreation and Natural Resources

Complete to 5-18-09

A SUMMARY OF HOUSE BILL 4894 AS INTRODUCED 5-6-09

The bill would exempt peace officers from handgun licensing requirements.

In general, Section 2 of Michigan's Handgun Licensure Law (Public Act 372 of 1927) prohibits any person from purchasing, carrying, possessing, or transporting a pistol in Michigan unless he or she has a license for the pistol, which is sometimes referred to as a purchase license. Several exceptions have been created to this requirement, including an exemption for concealed pistol license (CPL) holders. Under Section 2a, CPL holders do not have to obtain a license when purchasing a pistol, but they are required to complete a sales record of a newly-acquired pistol on a State Police-provided form. Under Michigan law, a NICS and immigration status background check is required when someone obtains a pistol license or a concealed weapons permit license. An application for a purchase license must be signed under oath under MCL 29.422(4).

House Bill 4894 would exempt all full- and part-time peace officers in Michigan, including volunteer and reserve officers, from the act's licensure requirements when they purchase or acquire a pistol. (Although the bill does not expressly say so, it would appear to cover a pistol that a peace officer acquired for personal use, as police and corrections officers are already exempt from purchase license requirements under MCL 29.432 for pistols used in the course of their duties or while going to or from work.)

A peace officer who sought to purchase, carry, possess, or transport a pistol would simply have to complete and file copies of a State Police-provided form with licensing authorities (the local police or sheriff departments, depending on where the peace officer lived) for purposes of reporting the transaction. The State Police would have to provide this form without charge to licensing authorities, and licensing authorities could not charge applicants any fees with respect to these forms.

Oaths; material false statements; forgery. A purchase license must be signed under oath under MCL 28.422(4). In contrast, the bill would not require pistol purchase records for police officers to be signed under oath.

Although a person who makes a material false statement on the sales record required to be filed when a CPL license holder acquires a new pistol commits a four-year felony

under Section 28.422a, the bill would not subject a peace officer who made a false statement on the sales record form to a similar penalty.

Under existing law, a person who *forges* any matter on an application for a pistol purchase license under Section 2 commits a felony punishable by imprisonment for not more than four years, a fine of not more than \$2,000, or both. The bill would make this same penalty apply to forgery in connection with a record of a pistol acquisition by a peace officer.

Definition of peace officer. As noted above, the bill would allow all full- and part-time peace officers, including volunteer and reserve officers, to purchase pistols without a purchase license.

Under the Handgun Licensure Act, MCL 28.421(d), a "peace officer" means, except as otherwise provided, "an individual who is employed as a law enforcement officer, as that term is defined under Section 2 of the Commission on Law Enforcement Standards Act, by this state or another state, a political subdivision of this state or another state, or the United States, and who is required to carry a firearm in the course of his or her duties as a law enforcement officer."

Section 2 of the Commission on Law Enforcement Standards Act (MCL 28.602) referred to in the definition of peace officer in the Handgun Licensure Act, defines a "police officer" or "law enforcement officer" as any of the following, unless the context indicates otherwise:

- A regularly employed member of a law enforcement agency authorized and established pursuant to law, including common law, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state. Police officer or law enforcement officer does not include a person serving solely because he or she occupies any other office or position.
- A law enforcement officer of a Michigan Indian tribal police force, subject to certain limitations.
- The sergeant at arms or any assistant sergeant at arms of either house of the Legislature who is commissioned as a police officer by that respective house of the Legislature as provided by the Legislative Sergeant at Arms Police Powers Act.
- A law enforcement officer of a multicounty metropolitan district, subject to certain limitations.
- A county prosecuting attorney's investigator sworn and fully empowered by the sheriff of that county.

- A fire arson investigator from a fire department within a city with a population of not less than 750,000 who is sworn and fully empowered by the city chief of police.

Background checks. Under Michigan law, MCL 28.426, neither a purchase license under Section 2 nor a concealed pistol license under Section 5b can be issued unless both of the following requirements are met:

- The issuing agency has determined through the federal national instant criminal background check system (NICS) that the applicant is not prohibited under federal law from possessing or transporting a firearm.
- If the applicant is not a United States citizen, the issuing agency has verified through the United States immigration and customs enforcement databases that the applicant is not an illegal alien or a nonimmigrant alien.

Under the bill, no NICS or immigration status check would be required under this section of state law when a peace officer purchased a pistol.

The U.S. Department of Justice's 2005 Survey of State Procedures Related to Firearm Sales says the following about Michigan's background check procedures:

Checks on applicants for handgun purchase licenses are conducted by 595 sheriffs and police departments, which are partial points of contact for the NICS. Licensed firearms dealers in Michigan must contact the FBI for checks on sales and redemptions of long guns required by the Brady Act. ATF allows a handgun purchase license (but not a concealed carry license) to be used at the point of sale in lieu of a NICS check.

If this portion of the DOJ summary remains current, it would appear that if the bill were enacted, a licensed firearm dealer would still have to run a NICS check on a peace officer who wished to purchase a pistol or a long gun, but this would not apply to a private or gun show sale.

MCL 28.422

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact, since it's unknown how many peace officers would apply for a permit.

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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.