

## **REPLACE PISTOL LICENSURE WITH REGISTRATION REQUIREMENT; ELIMINATE STATE LAW ELIGIBILITY CRITERIA TO PURCHASE OR POSSESS A PISTOL**

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

### **House Bill 5972**

**Sponsor: Rep. Kim Meltzer**

**Committee: Tourism, Outdoor Recreation and Natural Resources**

**Complete to 6-7-10**

### **A SUMMARY OF HOUSE BILL 5972 AS INTRODUCED 3-18-10**

The bill would amend the law that governs the purchase and possession of a pistol<sup>1</sup> by a member of the general public who does not have a concealed pistol license (or is not otherwise exempt). Section 2 of Public Act 372 of 1927, MCL 28.422, currently prohibits anyone from purchasing, carrying, possessing, or transporting a pistol in Michigan without obtaining a license for it beforehand from the local police or sheriff department. This license is sometimes called a "license to purchase" or a "purchase license." (Form RI-060) The bill would amend Section 2 to do the following things:

- Eliminate the current requirement that anyone who purchases, carries, possesses, or transports a pistol in Michigan must obtain a license for it beforehand from the local police or sheriff department. (Under the Michigan Penal Code, failure to do so is currently a misdemeanor.)
- Eliminate current eligibility criteria in state law for acquiring a pistol, such as the requirement that the person be at least 18 and a lawful resident of Michigan, have correctly answered at least 70 percent of the questions on a basic pistol safety questionnaire, not have been previously adjudged insane or lacking in legal capacity, not be subject to a restraining order for domestic violence or stalking. (The eligibility criteria that the bill would eliminate are described more fully below.)
- Eliminate the authority of a police or sheriff department to deny a pistol license to an otherwise qualified applicant if probable cause existed to believe the person posed a risk to himself or herself or to others or would commit a crime with the pistol.
- Replace the current pistol licensure system with a registration requirement. (After a person acquired a new pistol, he or she would have to submit a registration form in

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<sup>1</sup> Under Michigan law, a "pistol" is any loaded or unloaded firearm that is 30 inches or less in length or a firearm designed to look like something other than a firearm, such as a pen gun, of any length. A term "pistol" under Michigan law includes both traditional handguns as well as semi-automatic military-style firearms such as AK-47s and AR-15s with folding stocks, provided the firearm measures 30 inches or less in length and is operable with the stock folded. A military-style firearm with a so-called "bullpup configuration," such as a FS PN 90, is also considered a pistol under Michigan's definition provided it measures 30 inches or less in length. See the analysis of [House Bill 4501](http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/pdf/2009-HLA-4501-4.pdf), as passed the House, available at <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/pdf/2009-HLA-4501-4.pdf>. Purchase license requirements do not apply to hunting rifles and shotguns more than 30 inches long.

- person or by mail. Failure to mail in or deliver this registration form would be a civil infraction, not a crime.)
- Allow anyone to bring a pistol into Michigan for 30 days without registering it.
  - Allow someone who had a license to carry a pistol from another state and who was in Michigan for no more than 180 days without intending to establish permanent residency, to bring pistols into Michigan, or purchase new ones in Michigan, without registering them.

## **FISCAL IMPACT:**

The bill would have an indeterminate fiscal impact.

## **DETAILED SUMMARY:**

Remove pistol license requirement. Under current law, no person (unless exempt from the licensure requirement) is allowed to purchase, carry, possess, or transport a pistol in Michigan without having first obtained a license for it under Section 2. Several exceptions exist, including one for persons with concealed pistol licenses. The bill would eliminate the requirement of a license for purchasing, carrying, possessing, or transporting a pistol in Michigan. (A person would still need a license under Section 5b to carry a *concealed* pistol.)

30-day grace period for registering pistols brought into Michigan. Under current law, a person who is on leave from active duty with the U.S. armed forces or who has been discharged from the armed forces is allowed 30 days after arriving in the state with a pistol to obtain a license for it. The bill would make this grace period provision apply to pistol registration, not licensure, and would extend the 30-day rule to anyone who brings a pistol into Michigan (not just to recently-discharged military personnel or military personnel on leave from active duty).

Eliminate additional authority to deny a license in specified circumstances. Under current law, the police or sheriff department must issue a purchase license with due speed and diligence to an otherwise qualified applicant, unless the police or sheriff department has probable cause to believe that the applicant would be a threat to himself or herself or to others or would commit an offense with the pistol. The bill would eliminate this additional authority given to sheriffs and police departments.

Remove all eligibility criteria. Current law contains a list of eligibility criteria for obtaining a pistol license. A person cannot be subject to certain orders (such as a finding of legal incapacity or involuntary hospitalization for mental health treatment) and he or she must meet specified affirmative qualifications, including age, residency, and receiving a passing score on a basic pistol safety test. The bill would remove all state law eligibility criteria for acquiring a pistol from Section 2 of Public Act 372 of 1927.

Eligibility criteria. Currently, the following court orders or dispositions disqualify a person for receiving a pistol license (provided that the order was entered, after notice and an opportunity for a hearing, in the law enforcement information network (LEIN)):

- Court-ordered involuntary hospitalization, alternative treatment, or a combination of hospitalization and alternative treatment, under Section 464a of the Mental Health Code, MCL 330.1464a.
- A finding of legal incapacity under Section 5107 of the Estates and Protected Individuals Code, MCL 700.5107, or a predecessor statute.
- A personal protection or restraining order under Section 2950 of the Revised Judicature Act of 1961, MCL 600.2950, barring specified conduct that may include assaulting, injuring, or threatening to kill a spouse or former spouse.
- A personal protection or restraining order against a person for stalking, or threatening sexual assault, including threatening sexual assault of a minor, under Section 2950a of the Revised Judicature Act of 1961, MCL 600.2950a.
- A personal protection or restraining order issued in a divorce case under Section 14 of 1846 RS 84, MCL 552.14.
- An order releasing a person on bail on the condition that he or she not possess a firearm under Section 6b of Chapter V of the Code of Criminal Procedure, MCL 765.6b.
- A court disposition finding a person not guilty of a crime by reason of insanity under Section 16b(1) of Chapter IX of the Code of Criminal Procedure, MCL 769.16b(1).

The bill would also remove current criteria requiring that:

- The person is at least 18 years of age (or 21, if the seller is a federally-licensed firearms dealer).
- The person is a citizen of the United States and a legal resident of Michigan as defined in the act. (Any of the following people qualify as a legal resident of Michigan for the purpose of buying a pistol here: (1) a person with a valid, lawfully-obtained Michigan driver license, or an official state personal identification card; (2) a person who is lawfully registered to vote in Michigan; (3) a person on active duty status with the U.S. armed forces stationed outside of Michigan, but whose "home of record" is in Michigan; and (4) a person on active duty status with the U.S. armed forces who is permanently stationed here, even if the person's "home of record" is outside of Michigan.)
- No felony charge is pending against the person at the time of application.

- No criminal charge listed in Section 5b of the act is pending against the person at the time of application. (Section 5b lists the criminal charges or convictions that disqualify someone from obtaining a concealed pistol license, including any felony and numerous misdemeanors.)
- The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm under Section 224f of the Michigan Penal Code, MCL 750.224f. (Under Section 224f, a person convicted of a felony is prohibited from possessing a firearm for three years after the person has paid all applicable fines, served his or her imprisonment, and completed all parole or probation conditions. The prohibition on firearm ownership lasts eight years if the person was convicted of a specified felony, including certain crimes involving physical force, drugs, explosives, unlawful firearm possession, burglary, breaking and entering, or arson.<sup>2</sup>)
- The person has not been adjudged insane in Michigan or elsewhere (unless the person has been subsequently adjudged restored to sanity).
- The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- The person has not been adjudged legally incapacitated in Michigan or elsewhere (unless the person's legal capacity has been subsequently restored by court order).

Eliminate basic pistol safety questionnaire. Currently, an applicant for a purchase license must correctly answer at least 70 percent of the questions on a basic pistol safety review questionnaire. If the person doesn't pass the questionnaire on the first try, he or she must be told which questions were answered incorrectly, and allowed to try again once more that day (no more than two attempts per day are allowed). In addition, under separate provisions, the applicant must be given a safety brochure before he or she answers the questionnaire, and the questionnaire cannot include any material not covered in the brochure. The bill would eliminate passing the basic pistol safety questionnaire as a requirement for acquiring a pistol.

Eliminate eligibility certification under oath. Currently, purchase license applications must be signed under oath on a quadruplicate form provided by the State Police.<sup>3</sup> By

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<sup>2</sup> A "specified felony" means one in which an element of the crime is (1) the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk of this; (2) the unlawful manufacture, possession, import or export, distribution, or dispensing of a controlled substance; (3) the unlawful possession or distribution of a firearm; or (4) the unlawful use of an explosive. The crimes of burglary, breaking and entering, and arson are also specified felonies. Section 224f(6) of the Michigan Penal Code, MCL 750.224f(6).

<sup>3</sup> The form in current use (RI-10) requires an applicant certify as follows: "I certify that I have passed the basic pistol safety questionnaire, am either a United States citizen or a resident legal alien, a Michigan resident, 18 years of age or older, have never been adjudged insane or legally incapacitated unless competency has been restored by court order. I am not under: involuntary hospitalization or alternative treatment program due to mental illness; indictment for, pending charges for, nor convicted of, a felony; or if convicted, my rights to purchase or possess

signing the application, the applicant certifies that he or she meets all eligibility requirements. Once the license has been issued to the applicant, it must be used within 10 days after issuance or it is void. The bill would eliminate this eligibility certification. (The bill does not specify that the new registration form would contain an eligibility certification.)

Registration record. Under current law, if a person has been issued a license to purchase or otherwise acquires a pistol, the seller must fill out the portion of the form that describes the pistol. The form must be signed in ink by both the purchaser and seller, each of whom may keep one copy. The purchaser must then return two copies of the completed license to the licensing authority. A purchaser who fails to comply with the requirements of this section (e.g., returning two copies of a completed license within 10 days) is responsible for a state civil infraction and may be assessed a fine of not more than \$250 (no minimum). If a court finds that someone has committed this state civil infraction, the court must also notify the Department of State Police.

Under the bill, when an individual purchased or otherwise acquired a pistol, the seller would have to complete a record in quadruplicate on a form provided by the State Police. Both the seller and purchaser would have to sign their names in ink, and each could retain one copy of the record of the transaction. The purchaser would have to return two copies of the record to the "registering authority" within 10 days after the date the pistol was purchased or acquired. (The term "registering authority" would mean "the commissioner or chief of police or his or her designee, or the county sheriff or his or her designee, [if] the person lived in [a part] of a county not included within a city, village, or township having an organized police department.")

Copies of the registration form could be returned to the registering authority in person or by first-class or certified mail sent within 10 days to the proper address. A purchaser who failed to comply with these requirements would be responsible for a state civil infraction and could be assessed a civil fine of not more than \$250 (no minimum). A court would have to notify the Department of State Police after it found that a purchaser had committed this state civil infraction.

Transfer of registration information to State Police. Under current law, a licensing authority (local police or sheriff department) that receives a completed purchase license under current subsection (5) must forward one copy to the Department of State Police within 48 hours, and, if the licensing authority has the ability to do so, must also enter the information into the pistol entry database within 10 days of receipt. (If the authority doesn't have the ability to make electronic entries, it must provide the information in another manner acceptable to the State Police.) The bill would require "registering authorities" that receive registrations under subsection (1) (the requirement to register some pistols within 30 days) and subsection (2) (the requirement to register some pistols within 10 days) to forward them to the State Police.

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firearms have been restored. I have not been found guilty by reason of insanity nor am I subject to a conditional bond release, a personal bond release, personal protection order or other court order which prohibits me from purchasing or possessing a firearm. I have not unlawfully used a controlled substance in the last year."

Possession of registration or transfer record for first 30 days after the purchase or acquisition. Under current law, during the first 30 days after a person has purchased or acquired a pistol, beginning on the date of the purchase or acquisition, the licensee must have a copy of the purchase license in his or her possession in order to carry, use, possess, or transport the pistol. After 30 days, this is no longer required. Under the bill, the word "licensee" would be changed to "purchaser" and this requirement would refer to a "registration" or a "transfer record under subsection (4)" (which deals with inherited pistols, as described below), rather than a license.

Inherited pistols. Under current Section 2(7), Section 2 "does not prevent the transfer of ownership of pistols that are inherited if the license to purchase is approved by the commissioner or chief of police, sheriff, or their authorized deputies, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol." Under the bill, Section 2 would not "prevent the transfer of ownership of pistols that are inherited if "a transfer record is filed with the registering authority and signed by [the personal representative or next of kin]."

Non-residents licensed to carry a pistol in their home state and who are in Michigan for not more than 180 days. Under current law, a person who is not a Michigan resident is not required to obtain a license for a pistol under Section 2 if the person: (1) is licensed in his or her state of residence to purchase, carry, or transport a pistol; (2) is in possession of this license; (3) owns the pistol he or she possesses, carries, or transports; (4) possesses the pistol for a "lawful purpose" as defined in Section 231 of the Michigan Penal Code, MCL 750.231a; and (5) is in Michigan for 180 days or fewer and does not intend to establish residency here. The bill would change "obtain a license" to "register a pistol." The bill would retain the current requirement that a non-resident must present the license from his or her state or residence upon the demand of a police officer. [Note: Under current law, non-residents are not allowed to purchase a pistol in Michigan, so this exemption simply relieves a non-resident who is here temporarily from needing to obtain a license for their existing pistols. Under the bill, non-residents here temporarily would apparently not only be relieved from having to register their existing pistols, but they would no longer be prevented from purchasing new ones while in Michigan as a matter of state law.]

Active duty military personnel. Under current law, a licensing authority may require a person claiming active duty status with the United States armed forces to provide proof of the person's home of record and the person's active duty assignment in Michigan. The bill would change "licensing authority" to "registering authority." [This provision apparently relates to an existing provision (to be removed by the bill) that allows military personnel who meet the definition of "Michigan resident" to purchase and possess pistols here. Under the bill, Michigan residency would no longer be required to purchase a pistol here as a matter of state law.]

Minors. As noted previously, the bill would remove Section 2(3)(b), a provision that requires a person to be at least 18 to purchase, carry, possess, or transport a pistol (unless the seller is a federally-licensed dealer, in which case a buyer must be 21.) Under current



Section 2(11), the requirements of Section 2 do not apply to minors who are using a pistol at a recognized target range under the supervision of his or her parent or guardian provided all other conditions of that subsection are met. The bill would retain the provision regarding minors at recognized target ranges, as an exception to Section 2. In other words, under the bill, this provision would now exempt minors from any obligation to *register* a pistol used as described at a target range.

[Note: Under the bill, there would no longer be a minimum age to purchase or possess a pistol in Michigan as a matter of state law. It would remain a misdemeanor under Section 223(2) of the Michigan Penal Code, MCL 750.223(2), to sell a *long gun* to a minor, but it would no longer be a crime to sell a *pistol* to a minor under state law. The corresponding Penal Code provision dealing with *pistol* sales, MCL 750.223(1), makes it a misdemeanor to sell a pistol without complying with Section 2. Under the bill, Section 2 would no longer contain a minimum age. Thus, under the bill, so long as a seller signed the required registration form and added in the pistol description when selling a pistol to a minor, a seller would not be violating Section 2 (or the Penal Code) to sell a pistol to a minor. A separate provision of the Penal Code, MCL Sec. 234f, makes it a misdemeanor for a person under the age of 18 to possess a firearm in public except under the direct supervision of an individual 18 years of age or older. That provision does not appear to prohibit a minor from possessing a firearm in private, or from purchasing a firearm.]

Pistol safety brochure. Under current Section 2(13), MCL 28.422(13), a licensing authority must provide a basic pistol safety brochure produced by a national nonprofit membership organization to each applicant for a purchase license before the person answers the basic pistol safety questionnaire required for a license. This brochure is required to contain, at a minimum, information about the rules for the safe handling and use of pistols; the safe storage of pistols; the nomenclature and description of various types of pistols; and the responsibilities of owning a pistol. The act currently mandates that this brochure be supplied in addition to the safety pamphlet required by Section 9b (MCL 28.429(b)).

Under the bill, "licensing authority" would be changed to "registering authority" and it would be optional, rather than mandatory, for the "registering authority" to supply this brochure. The requirement that this brochure be supplied in addition to the one required by Section 9b would be deleted.

Forgery. Under current Section 2(16), a person who forges any matter on an application for a license under Section 2 is guilty of a felony punishable by imprisonment for not more than four years, a fine of not more than \$2,000, or both. Under the bill, this penalty would be retained for forgery on a registration form or transfer record.

Notices required when certain orders entered into LEIN. Under current Section 2b, when certain court orders are entered into the law enforcement information network or LEIN, the State Police are required to immediately send a written notice by first-class mail to the last known address of a person subject to the order. The notice must include the person's name, the date the order or disposition was entered into LEIN, a statement that

the person cannot obtain a license to purchase a pistol or a concealed weapon license until the order or disposition is removed from LEIN, and a statement that the person may request that the police correct or expunge inaccurate information that has been entered into LEIN. The bill also prescribes procedures for requests to correct or expunge inaccurate information. This notice provision currently applies to the following orders or dispositions, described in Section 2(3)(a):

- Court-ordered involuntary hospitalization, alternative treatment, or a combination of hospitalization and alternative treatment, under Section 464a of the Mental Health Code, MCL 330.1464a.
- A finding of legal incapacity under Section 5107 of the Estates and Protected Individuals Code, MCL 700.5107, or a predecessor statute.
- A personal protection or restraining order under Section 2950 of the Revised Judicature Act of 1961, MCL 600.2950, barring specified conduct that may include assaulting, injuring, or threatening to kill a spouse or former spouse.
- A personal protection or restraining order against a person for stalking, or threatening sexual assault, including threatening sexual assault of a minor, under Section 2950a of the Revised Judicature Act of 1961, MCL 600.2950a.
- A personal protection or restraining order issued in divorce case under Section 14 of 1846 RS 84, MCL 552.14.
- An order releasing a person on bail on the condition that he or she not possess a firearm under Section 6b of Chapter V of the Code of Criminal Procedure, MCL 765.6b.
- A court disposition finding a person not guilty of a crime by reason of insanity under Section 16b(1) of Chapter IX of the Code of Criminal Procedure, MCL 769.16b(1).

The bill would change the reference to "Section 2(3)(a)" to "Section 5b(7)(d)," a provision that contains a similar list of orders and dispositions, because current Section 2(3)(a) would be removed from the act.

Tie-bar. The bill is tie-barred to House Bill 5973, meaning that it will not take effect unless that bill is also enacted into law.

Legislative Analyst: Shannan Kane  
Fiscal Analyst: Jan Wisniewski

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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.