

# HOUSE BILL No. 5499

March 20, 2012, Introduced by Rep. Franz and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 223, 224b, 231a, 232a, and 239a (MCL 750.223, 750.224b, 750.231a, 750.232a, and 750.239a), section 223 as amended by 1992 PA 221, sections 224b and 231a as amended by 2008 PA 196, section 232a as amended by 1990 PA 321, and section 239a as amended by 2010 PA 294; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 223. ~~(1) A person who knowingly sells a pistol without~~  
2 ~~complying with section 2 of Act No. 372 of the Public Acts of 1927,~~  
3 ~~as amended, being section 28.422 of the Michigan Compiled Laws, is~~  
4 ~~guilty of a misdemeanor, punishable by imprisonment for not more~~  
5 ~~than 90 days, or a fine of not more than \$100.00, or both.~~

6           (1) ~~(2)~~ A person who knowingly sells a firearm more than 30

1 inches in length to a person under 18 years of age is guilty of a  
2 misdemeanor, punishable by imprisonment for not more than 90 days,  
3 or a fine of not more than \$500.00, or both. A second or subsequent  
4 violation of this subsection is a felony punishable by imprisonment  
5 for not more than 4 years, or a fine of not more than \$2,000.00, or  
6 both. It is an affirmative defense to a prosecution under this  
7 subsection that the person who sold the firearm asked to see and  
8 was shown a driver's license or identification card issued by a  
9 state that identified the purchaser as being 18 years of age or  
10 older.

11 (2) ~~(3)~~—A seller shall not sell a firearm or ammunition to a  
12 person if the seller knows that either of the following  
13 circumstances exists:

14 (a) The person is under indictment for a felony. As used in  
15 this subdivision, "felony" means a violation of a law of this  
16 state, or of another state, or of the United States that is  
17 punishable by imprisonment for 4 years or more.

18 (b) The person is prohibited under section 224f from  
19 possessing, using, transporting, selling, purchasing, carrying,  
20 shipping, receiving, or distributing a firearm.

21 (3) ~~(4)~~—A person who violates subsection ~~(3)~~—(2) is guilty of  
22 a felony, punishable by imprisonment for not more than 10 years, or  
23 by a fine of not more than \$5,000.00, or both.

24 ~~—(5) As used in this section, "licensed dealer" means a person~~  
25 ~~licensed under section 923 of chapter 44 of title 18 of the United~~  
26 ~~States Code who regularly buys and sells firearms as a commercial~~  
27 ~~activity with the principal objective of livelihood and profit.~~

1           Sec. 224b. (1) A person shall not manufacture, sell, offer for  
2 sale, or possess a short-barreled shotgun or a short-barreled  
3 rifle.

4           (2) A person who violates this section is guilty of a felony  
5 punishable by imprisonment for not more than 5 years or a fine of  
6 not more than \$2,500.00, or both.

7           (3) This section does not apply to the sale, offering for  
8 sale, or possession of a short-barreled rifle or a short-barreled  
9 shotgun ~~which~~ **THAT** the secretary of the treasury of the United  
10 States of America, or his or her delegate, under 26 USC, sections  
11 5801 through 5872, or 18 USC, sections 921 through ~~928~~ **931**, has  
12 found to be a curio, relic, antique, museum piece, or collector's  
13 item not likely to be used as a weapon. ~~, but only if the person~~  
14 ~~selling, offering for sale or possessing the firearm has also fully~~  
15 ~~complied with section 2 or 2a of 1927 PA 372, MCL 28.422 and~~  
16 ~~28.422a.~~

17           (4) Section 20 of chapter ~~16~~ **XVI** of the code of criminal  
18 procedure, 1927 PA 175, MCL 776.20, applies to this subsection.

19           Sec. 231a. (1) Subsection (2) of section 227 does not apply to  
20 any of the following:

21           (a) To a person holding a valid license to carry a pistol  
22 concealed upon his or her person issued by his or her state of  
23 residence except where the pistol is carried in nonconformance with  
24 a restriction appearing on the license.

25           (b) To the regular and ordinary transportation of pistols as  
26 merchandise by an authorized agent of a person licensed to  
27 manufacture firearms.

1 (c) To a person carrying an antique firearm as defined in  
2 subsection (2), completely unloaded in a closed case or container  
3 designed for the storage of firearms in the trunk of a vehicle.

4 (d) To a person while transporting a pistol for a lawful  
5 purpose ~~that is licensed by the owner or occupant of the~~ **IN A** motor  
6 vehicle ~~in compliance with section 2 of 1927 PA 372, MCL 28.422,~~  
7 ~~and~~ **IF** the pistol is unloaded in a closed case designed for the  
8 storage of firearms in the trunk of the vehicle.

9 (e) To a person while transporting a pistol for a lawful  
10 purpose ~~that is licensed by the owner or occupant of the motor~~  
11 vehicle ~~in compliance with section 2 of 1927 PA 372, MCL 28.422,~~  
12 ~~and~~ **IF** the pistol is unloaded in a closed case designed for the  
13 storage of firearms in a vehicle that does not have a trunk and is  
14 not readily accessible to the occupants of the vehicle.

15 (2) As used in this section:

16 (a) "Antique firearm" means either of the following:

17 (i) A firearm not designed or redesigned for using rimfire or  
18 conventional center fire ignition with fixed ammunition and  
19 manufactured in or before 1898, including a matchlock, flintlock,  
20 percussion cap, or similar type of ignition system or replica of  
21 such a firearm, whether actually manufactured before or after 1898.

22 (ii) A firearm using fixed ammunition manufactured in or before  
23 1898, for which ammunition is no longer manufactured in the United  
24 States and is not readily available in the ordinary channels of  
25 commercial trade.

26 (b) "Lawful purpose" includes the following:

27 (i) While en route to or from a hunting or target shooting

1 area.

2 (ii) While transporting a pistol en route to or from his or her  
3 home or place of business and place of repair.

4 (iii) While moving goods from 1 place of abode or business to  
5 another place of abode or business.

6 (iv) While transporting a licensed pistol en route to or from a  
7 law enforcement agency or for the purpose of having a law  
8 enforcement official take possession of the weapon.

9 (v) While en route to or from his or her abode or place of  
10 business and a gun show or places of purchase or sale.

11 (vi) While en route to or from his or her abode to a public  
12 shooting facility or public land where discharge of firearms is  
13 permitted by law, rule, regulation, or local ordinance.

14 (vii) While en route to or from his or her abode to a private  
15 property location where the pistol is to be used as is permitted by  
16 law, rule, regulation, or local ordinance.

17 Sec. 232a. ~~(1) Except as provided in subsection (2), a person~~  
18 ~~who obtains a pistol in violation of section 2 of Act No. 372 of~~  
19 ~~the Public Acts of 1927, as amended, being section 28.422 of the~~  
20 ~~Michigan Compiled Laws, is guilty of a misdemeanor, punishable by~~  
21 ~~imprisonment for not more than 90 days or a fine of not more than~~  
22 ~~\$100.00, or both.~~

23 ~~—— (2) Subsection (1) does not apply to a person who obtained a~~  
24 ~~pistol in violation of section 2 of Act No. 372 of the Public Acts~~  
25 ~~of 1927 before the effective date of the 1990 amendatory act that~~  
26 ~~added this subsection, who has not been convicted of that~~  
27 ~~violation, and who obtains a license as required under section 2 of~~

1 ~~Act No. 372 of the Public Acts of 1927 within 90 days after the~~  
2 ~~effective date of the 1990 amendatory act that added this~~  
3 ~~subsection.~~

4 ~~—— (3) A person who intentionally makes a material false~~  
5 ~~statement on an application for a license to purchase a pistol~~  
6 ~~under section 2 of Act No. 372 of the Public Acts of 1927, as~~  
7 ~~amended, is guilty of a felony, punishable by imprisonment for not~~  
8 ~~more than 4 years, or a fine of not more than \$2,000.00, or both.~~

9 ~~—— (4) A person who uses or attempts to use false identification~~  
10 ~~or the identification of another person to purchase a firearm is~~  
11 ~~guilty of a misdemeanor, punishable by imprisonment for not more~~  
12 ~~than 90 days or a fine of not more than \$100.00, or both.~~

13       Sec. 239a. (1) A law enforcement agency that seizes or  
14 otherwise comes into possession of a firearm or a part of a firearm  
15 subject to disposal under section 239 may, instead of forwarding  
16 the firearm or part of a firearm to the director of the department  
17 of state police or his or her designated representative for  
18 disposal under that section, retain that firearm or part of a  
19 firearm for the following purposes:

20       (a) For legal sale or trade to a federally licensed firearm  
21 dealer. The proceeds from any sale or trade under this subdivision  
22 shall be used by the law enforcement agency only for law  
23 enforcement purposes. The law enforcement agency shall not sell or  
24 trade a firearm or part of a firearm under this subdivision to any  
25 individual who is a member of that law enforcement agency unless  
26 the individual is a federally licensed firearms dealer and the sale  
27 is made pursuant to a public auction.

1 (b) For official use by members of the seizing law enforcement  
2 agency who are employed as peace officers. A firearm or part of a  
3 firearm shall not be sold under this subdivision.

4 (2) A law enforcement agency that sells or trades any pistol  
5 to a licensed dealer under subsection (1)(a) or retains any pistol  
6 under subsection (1)(b) shall complete a record of the transaction  
7 ~~under section 2 or section 2a, as applicable.~~ **IN ACCORDANCE WITH**  
8 **STANDARDS PRESCRIBED BY THE DIRECTOR OF THE DEPARTMENT OF STATE**  
9 **POLICE.**

10 (3) A law enforcement agency that sells or trades a firearm or  
11 part of a firearm under this section shall retain a receipt of the  
12 sale or trade for a period of not less than 7 years. The law  
13 enforcement agency shall make all receipts retained under this  
14 subsection available for inspection by the department of state  
15 police upon demand and for auditing purposes by the state and the  
16 local unit of government of which the agency is a part.

17 (4) Before disposing of a firearm under this section, the law  
18 enforcement agency shall do both of the following:

19 (a) Determine through the law enforcement information network  
20 whether the firearm has been reported lost or stolen. If the  
21 firearm has been reported lost or stolen and the name and address  
22 of the owner can be determined, the law enforcement agency shall  
23 provide 30 days' written notice of its intent to dispose of the  
24 firearm under this section to the owner, and allow the owner to  
25 claim the firearm within that 30-day period if he or she is  
26 authorized to possess the firearm. If the police agency determines  
27 that a serial number has been altered or has been removed or

1 obliterated from the firearm, the police agency shall submit the  
2 firearm to the department of state police or a forensic laboratory  
3 for serial number verification or restoration to determine legal  
4 ownership.

5 (b) Provide 30 days' notice to the public on a website  
6 maintained by the law enforcement agency of its intent to dispose  
7 of the firearm under this section. The notice shall include a  
8 description of the firearm and shall state the firearm's serial  
9 number, if the serial number can be determined. The law enforcement  
10 agency shall allow the owner of the firearm to claim the firearm  
11 within that 30-day period if he or she is authorized to possess the  
12 firearm. The 30-day period required under this subdivision is in  
13 addition to the 30-day period required under subdivision (a).

14 (5) The law enforcement agency is immune from civil liability  
15 for disposing of a firearm in compliance with this section.

16 (6) As used in this section, "law enforcement agency" means  
17 any agency that employs peace officers.

18 Enacting section 1. Section 231b of the Michigan penal code,  
19 1931 PA 328, MCL 750.231b, is repealed.

20 Enacting section 2. This amendatory act does not take effect  
21 unless House Bill No. 5225 of the 96th Legislature is enacted into  
22 law.