

Legislative Analysis



ALLOW UNLICENSED PISTOLS TO BE TRANSPORTED IN MOTOR VEHICLES

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

House Bill 4568 (Substitute H-1)

Sponsor: Rep. Jeff Mayes

Committee: Tourism, Outdoor Recreation and Natural Resources

First Analysis (10-27-09)

BRIEF SUMMARY: Under the Michigan Penal Code, unless someone has a concealed pistol license (CPL) or another exception applies, it is a felony to transport a pistol, concealed or unconcealed, in a vehicle. An existing exception allows the transport of a pistol in a vehicle *for a lawful purpose* but to qualify for this exception, a person without a CPL must have a license for the pistol under Section 2 of Michigan's handgun licensure law and other rules must be followed. (The pistol must be unloaded, encased, and stowed in the vehicle's trunk or in an area inaccessible to the vehicle's occupants, if the vehicle has no trunk.) The bill would remove the requirement that the pistol be licensed to the owner or occupant of the vehicle to qualify for the "lawful purpose" exception to the Penal Code's ban on transporting a pistol in a motor vehicle.

FISCAL IMPACT: This bill would have an indeterminate fiscal impact because its effect on the number of felony prosecutions and convictions is unknown.

THE APPARENT PROBLEM:

Section 227(2) of the Michigan Penal Code, which makes it a felony for a person to carry a pistol in a vehicle unless licensed to do so, states:

A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license. MCL 752.227(2)

Section 231a of the Michigan Penal Code, however, exempts many persons from the ban on carrying a concealed pistol. Among others, persons who hold concealed pistol licenses from Michigan or their home state are exempt. An exemption also presently exists under Section 231a for any person transporting a pistol for a lawful purpose **if the pistol is licensed to the owner or occupant of the vehicle under Section 2 of Michigan's handgun licensure law**, and if the pistol is unloaded, in a closed case designed for the storage of firearms, and is in the trunk if the vehicle has one, or in an area not readily accessible to the vehicle's occupants, if the vehicle does not have a trunk.

It has been suggested that the legislature should remove the current requirement that a pistol be licensed to the owner or occupant of the vehicle in order to be lawfully

transported in a vehicle. The bill's proponents point to the situation in which someone inherits or finds a pistol after a family member's death and, unaware of Michigan's gun laws, takes it to the local police station for guidance before getting a license for it (although it is no longer necessary to bring a pistol into a police station to license it). Such a person may have technically committed a felony under Michigan's Penal Code, even if a prosecution in this situation is unlikely. As amended by committee, the bill addresses this situation by removing the requirement that a person without a CPL must have a purchase license for a pistol in order to lawfully carry it in a motor vehicle.

THE CONTENT OF THE BILL:

Carrying a pistol, concealed or not, in a vehicle constitutes a felony violation of Section 227(2) of the Michigan Penal Code, MCL 750.227(2), punishable by up to five years in prison or a fine of up to \$2,500. The H-1 substitute version of the bill would amend an existing exception to this provision, found in MCL 750.231a(1)(d), that allows an unloaded, properly encased and stowed pistol that has been licensed under Section 2 of Public Act 372 of 1927 to the owner or occupant of the vehicle to be transported in the vehicle so long as it is being transported for a lawful purpose. **Specifically, the bill would remove the requirement that the pistol be licensed to the owner or occupant of the vehicle under Michigan law in order to be transported in a vehicle in a vehicle for a lawful purpose.**

In addition, the bill would broaden the existing definition of "lawful purpose." Currently, "lawful purpose" includes the following:

- While en route to or from a hunting or target shooting area.
- While transporting a pistol en route to or from his or her home or place of business and place of repair.
- While moving goods from one place of abode or business to another place of abode or business.
- While transporting a *licensed* pistol en route to or from a law enforcement agency *or for the purpose of having a law enforcement official take possession of the weapon.*
- While en route to or from his or her abode or place of business and a gun show or places of purchase or sale.
- While en route to or from his or her abode to a public shooting facility or public land where discharge of firearms is permitted by law, rule, regulation, or local ordinance.
- While en route to or from his or her abode to a private property location where the pistol is to be used as is permitted by law, rule, regulation, or local ordinance.

Under the bill, the language listed in italics above would be removed, leaving the amended phrase to read simply, "While transporting a pistol en route to or from a law enforcement agency." The other lawful purposes expressed in this section would be retained.

ARGUMENTS:

For:

Under current law, some otherwise law-abiding people may unwittingly violate state gun laws, placing themselves in jeopardy of a felony prosecution. For instance, a personal representative or family member transporting a pistol found among the effects of a deceased person could inadvertently commit a felony by moving such a pistol to a more secure location or delivering it to the person who has inherited it before getting a purchase license for it. Although in such a situation, it could be argued that it is not difficult for someone to take the cautious approach and contact law enforcement officials before transporting a pistol in a motor vehicle, a felony conviction is viewed by many as too harsh a penalty for failure to do so.

Response:

Is the bill necessary? Michigan law no longer requires a person who inherits a pistol to bring it in to a police station for a safety inspection before obtaining a license for it. There is no reason why family members or personal representatives settling the affairs of a deceased person who owned a pistol could not simply follow the law and obtain a license for the pistol under Section 2 before transporting it in a motor vehicle in most situations.

In any event, even if the procedures that apply in a gun inheritance situation could be improved, addressing gun inheritance issues by allowing any person who wishes to do so to carry an unlicensed concealed pistol in his or vehicle is an overly broad solution.

Against:

One of the main reasons people go to the trouble and expense of obtaining a concealed pistol license is to be able to carry a pistol with them in their vehicle without risking criminal prosecution. To obtain a CPL, someone must pay application fees, go through a background check, undergo extensive firearms training, and meet all other requirements. As the rules are further relaxed to allow those without a CPL (*or, under the bill, without even a purchase license*) to transport a pistol in a vehicle for any lawful purpose, will people stop bothering to obtain a CPL and undergoing the required training and education? Would this be a good thing?

Likewise, would fewer people license their handguns, as required by Section 2 of the Public Act 372 of 1927, if they could transport an unlicensed pistol freely for a lawful purpose without fear of felony prosecution? Although it would remain a misdemeanor to obtain a pistol without licensing it under Section 2 of the handgun licensure law (MCL 28.422), the penalty for violating Section 2 is light — not more than 90 days in prison, or a fine of not more than \$100, or both. Under current law, the much stiffer felony provision found in Section 227a of the Penal Code, applies to carrying a concealed pistol in a vehicle, punishable by up to five years or a \$2,500 fine. Does the Legislature intend to weaken the incentive to comply with the handgun licensure law?

Response:

An unlicensed pistol could only be carried in a vehicle if all of the rules were followed, e.g., the pistol is unloaded, encased, out of reach, and carried for a lawful purpose. If a person without a CPL carried a pistol that was loaded or easily accessible, or carried it for an unlawful purpose, the felony penalty would still apply.

Against:

By allowing people who do not comply with the handgun licensure law to nevertheless carry around a pistol in a motor vehicle, it may make it harder for prosecutors to secure convictions on gun-carrying felony charges. Someone carrying an unlicensed pistol in their vehicle with criminal intent would now be able to argue to a jury they were carrying for a lawful purpose, and it would be up to the jury to decide if they were telling the truth. Under current law, many criminals do not get to argue a "lawful purpose" because their pistol is unlicensed and only licensed pistols qualify for the lawful purpose exception. Unlawful gun possessors would now be able to defend themselves on "lawful purpose" grounds. .

POSITIONS:

The Michigan State Police support the bill. (6-16-09)

Legislative Analyst: Shannan Kane
Fiscal Analyst: Jan Wisniewski

■ 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.