

## PISTOL LICENSURE

Senate Bill 528 (Substitute H-8)

Sponsor: Sen. James A. Barcia

Senate Bill 529 (Substitute H-9)

Sponsor: Sen. Jack Welborn

Senate Committee: Family Law, Criminal  
Law & Corrections

House Committee: Conservation,  
Recreation & Environment

Second Analysis (9-24-92)

### ***THE APPARENT PROBLEM:***

A series of bills was passed by the legislature in 1990 to provide for uniform, statewide firearms licensing standards and to prohibit local units of government from implementing stricter standards. Out of concern about exposure to liability for the actions of those granted licenses, some local law enforcement officials, who are authorized by Public Act 372 of 1927 to grant pistol licenses, began to deny applications for licensure or provide them only during certain, restrictive hours of the day or week. Since ownership of firearms is considered by many to be a constitutional right, and since uniform, statewide licensing standards have been enacted, some people feel that local licensing officials should be mandated to issue a license to an applicant who met Public Act 372's criteria to qualify for pistol licensure, unless the official knew that the applicant posed an immediate threat.

### ***THE CONTENT OF THE BILLS:***

The bills would amend Public Act 372 of 1927 and the Michigan Penal Code to require the issuance of a pistol license to a qualified applicant in most cases, and to delete a provision that makes it a misdemeanor, punishable by up to a \$100 fine, for a licensed firearms dealer to sell a pistol and knowingly not provide a basic pistol safety brochure. The bills also include language that agrees with language that would be added to the same sections of law by House Bills 5400 and 5432, which have passed the Senate and await House concurrence. (For further information on these bills, see the Senate Fiscal Agency analysis dated 6-5-92.)

The bills are tie-barred to each other and to House Bills 4822, 5400 and 5432. (House Bill 4822 would revise various provisions of the Michigan Penal Code related to the use of firearms; House Bill 5400 would amend the pistol licensing act to delete language added by Public Act 320 of 1990 regarding the issuance of a pistol license and replace it with new language that would bar a pistol permit from being issued to someone who was prohibited from having a firearm under House Bill 5432; and House Bill 5432 would amend the Michigan Penal Code to restrict firearm ownership and sales by someone who had been convicted of a felony.)

Senate Bill 528 would amend Public Act 372 of 1927 (MCL 28.422), which regulates the sale, purchase, and possession of firearms, to do all of the following:

- \* require the issuance of a pistol license to a qualified applicant in most cases;
- \* specify a penalty for the felony of forging any matter on a pistol license application; and
- \* repeal a requirement that a licensed dealer provide a pistol safety brochure to each person who purchases a pistol.

Public Act 372 currently permits the commissioner or chief of police of a local unit of government's police department, a county sheriff, or the commissioner's, chief's, or sheriff's authorized deputy, to issue to applicants residing in his or her jurisdiction licenses to purchase, carry, or transport a pistol, and provides that a license cannot be granted to a person unless that person meets a list of specified criteria. The bill, instead, provides that,

Senate Bills 528 and 529 (9-24-92)

in discharging the duty to issue licenses, these officials would have to grant licenses to "qualified" local applicants, with due speed and diligence, unless the official had "reasonable cause to believe, based upon knowledge of specific and articulable facts" that the applicant would be an immediate threat to himself or herself or others. An applicant would be qualified if he or she met the act's criteria.

A licensing authority would have to implement the act's licensing procedures during all hours of the authority's normal business hours. It is a felony, under the act, to forge any matter on an application for a license. The bill specifies that the offense would be punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

The bill would repeal a section of the act that requires licensed dealers to provide a basic pistol safety brochure to each purchaser of a pistol and to post information relating to the availability of known local voluntary pistol safety programs (MCL 28.422a). The section to be repealed also specifies content and distribution requirements regarding the brochure.

Senate Bill 529 would amend the Michigan Penal Code (MCL 28.422) to delete a provision from the act that makes it a misdemeanor, punishable by a maximum fine of \$100, for a licensed firearms dealer to sell a pistol knowingly without providing the basic pistol safety brochure.

### **HOUSE COMMITTEE ACTION:**

The House Conservation, Recreation and Environment Committee adopted Substitute H-8 for Senate Bill 528 which, except for language added to the bill that would make it agree with amendments proposed by House Bill 5400, is similar to the bill as it was passed by the Senate. The House committee also adopted Substitute H-9 for Senate Bill 529 which, except for language added to make it comply with amendments proposed by House Bill 5432, is similar to the bill as it was passed by the Senate.

### **BACKGROUND INFORMATION:**

Senate Bills 528 and 529, as passed by the Senate on November 5, 1991, proposed to amend Public Act 372 of 1927 and the Michigan Penal Code to add provisions similar to those proposed in the current House substitutes. Subsequently, the bills were reported from the House Conservation,

Recreation and Environment Committee as vehicle bills used to address the issue of gun possession by ex-felons. (This issue has been resolved in another set of bills, House Bills 5400 and 5432.) The current substitutes return Senate Bills 528 and 529 to their original purpose and subject matter.

### **FISCAL IMPLICATIONS:**

According to the Senate Fiscal Agency (SFA), changing the current pistol licensing procedure, as proposed in the House substitute for Senate Bill 528, from one that authorizes a local police or sheriff agency to issue a license to buy a pistol to one that would require the agency to issue a license to buy to qualified individuals would not affect state or local budget expenditures. However, the SFA also says that in providing for a four-year maximum prison sentence and/or \$2,000 maximum fine for persons forging information on an application, the bill could create additional costs for the Department of Corrections, depending on the number of people arrested and the length of sentence invoked for each conviction. It currently costs about \$25,000 to house a person in a state prison for one year.

The SFA says Senate Bill 529 would not affect state or local budget expenditures. (10-29-91)

### **ARGUMENTS:**

#### ***For:***

A qualified applicant for handgun licensure should not be denied his or her fundamental right to own a firearm simply because the local licensing official decides, arbitrarily, to make licensure difficult or impossible. Public Act 372 lists specific criteria for which licensure can be denied, such as if the applicant is a minor, a convicted felon, or under an order of involuntary commitment due to mental illness, and only the listed reasons should preclude an applicant's licensure. It is conceivable, however, that a local official may know of some immediate threat that an applicant could pose to himself or herself or another individual. Senate Bill 528 would allow the licensing official to deny a license, even to a qualified applicant, in such a case.

#### ***For:***

Senate Bill 529 would remove a requirement that a licensed firearm dealer provide a pistol safety brochure with each sale and the penalty for failure to do so. This requirement is duplicative, since a licensing official is required to provide such a

document. It is not necessary to require the provision of the brochure at both stages of the licensure process or to burden dealers with the threat of penalty for failure to comply.

***Against:***

Local officials have expressed concerns about exposing themselves or their municipalities to liability for the actions of a licensed handgun owner. It is out of these concerns that some of these licensing officials have denied licenses to applicants considered qualified under the act's listed criteria. As it was introduced, Senate Bill 528 included a provision that would excuse local units, agencies, and officials from liability for the actions of licensees, but this language no longer is found in the bill. The bill should include an immunity provision for those entities and individuals. Although the governmental immunity law grants immunity from tort liability to a governmental officer or employee who is acting within the scope of his or her authority and is engaged in the exercise or discharge of a governmental function, immunity is not available if the individual's conduct amounts to "gross negligence that is the proximate cause of the injury or damage". ("Gross negligence" means "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results".) It is conceivable that a litigant could contend that a licensing official's issuance of a license amounted to gross negligence, and since these officials' authority to deny a license would be sharply curtailed under the bill, they should be protected by an explicit grant of immunity.

***Against:***

Senate Bill 528 should require that an applicant provide documentation that he or she had met Public Act 372's listed criteria to qualify for handgun ownership. Currently, local licensing officials have no efficient means of determining whether an applicant meets the licensure criteria. There should be some burden of proof placed on the applicant.

***Response:***

It is not necessary for a licensing official to try to determine if each requirement to qualify for licensure is met by each applicant. A simple oath to that effect, signed by the applicant, is sufficient documentation.

***Against:***

Given the ease with which handguns can be obtained and their widespread use in all types of crimes, local licensing officials should be given more, not less, discretion in issuing handgun licenses. Furthermore, Senate Bill 528 would make the issuance of pistol licenses take precedence over more important duties of police agencies.

***Response:***

Since the right to own firearms is constitutionally protected, any interference with that right should be as minimal as possible and exercised only in the most egregious circumstances. Furthermore, one could argue that licensing officials, under existing law, are not empowered to deny licenses, but that the statute simply authorizes them to effectuate citizens' constitutional right to own firearms.

***SUGGESTED AMENDMENTS:***

The Michigan Association of Chiefs of Police suggests amending Senate Bill 528 (Substitute H-8) to revise a provision that would require a licensing authority to implement the act's provisions during "all of" the licensing authority's normal business hours. The association suggests rewording this to say simply "during the licensing authority's normal business hours," and in a way that allowed an individual to comply with the act's licensing requirements.

***POSITIONS:***

The Michigan United Conservation Clubs supports the bills. (9-23-92)

The Michigan Association of Chiefs of Police supports Senate Bill 529 and would support Senate Bill 528 with its suggested amendment. (9-23-92)