



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

**House
Legislative
Analysis
Section**

CONCEALED WEAPON LICENSES

**House Bill 4530 (Substitute H-2)
Sponsor: Rep. Michael Green**

**House Bill 4532 as introduced
Sponsor: Rep. Steve Vear**

**House Bill 4533 as introduced
Sponsor: Rep. Gloria Schermesser**

**House Bill 4534 as introduced
Sponsor: Rep. Michael Kowall**

**House Bill 4535 as introduced
Sponsor: Rep. Sue Tabor**

**House Bill 4537 (Substitute H-1)
Sponsor: Rep. Stephen Ehardt**

**House Bill 4538 as introduced
Sponsor: Rep. Ken Bradstreet**

**House Bill 4545 as introduced
Sponsor: Rep. Eileen DeHart**

**Revised First Analysis (6-8-99)
Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Many citizens view as unfair current laws which grant county "gun boards" the entire authority for reviewing applications for carrying concealed weapons (CCW). They cite the fact that not only must a person who applies for a license establish that he or she is qualified, he or she also has the burden of establishing that there is a special need for such a license. Also, it is maintained that, while some county gun boards have liberal policies and grant thousands of licenses each year, other boards are extremely restrictive in their policies and grant licenses only to certain citizens, such as elected officials or former police officers.

Under current law, there are 83 separate county CCW licensing boards. Each board has three members, representing the sheriff, prosecutor, and state police.

(For details on current requirements, see *Background Information*.) Many people believe that each of these gun boards should be required to use uniform standards for granting CCW licenses. In response, legislation has been introduced to require that specific criteria be used to determine whether a CCW license should be granted. The legislation is intended to provide uniform standards across the state.

In addition, some gun owners maintain that current restrictions under the Natural Resources and Environmental Protection Act (NREPA) and the Penal Code regarding the transportation of firearms is confusing. For example, under the NREPA, a person may carry a hunting weapon while going to and from a hunting or target shooting area if the weapon is unloaded and enclosed in a case or the trunk of a

House Bills 4530, 4532, 4533, 4534, 4535, 4537, 4538 and 4545 (6-8-99)

vehicle; and under the Penal Code a person may transport firearms only for certain purposes, but only if a person has a hunting license, to and from a place of repair, from the place of purchase, or from one place of business, or a home, to another. It has been suggested that these laws could be clarified.

THE CONTENT OF THE BILLS:

Currently, licenses to carry concealed weapons are issued by one of 83 separate county "gun boards." The individual applying for the license has the burden of establishing that he or she has a special need for such a license. House Bill 4530 would amend the handgun licensure act (MCL 28.421 et al.) to change the rules and procedures by which citizens may apply for and receive licenses to carry concealed weapons. House Bills 4532, 4533, 4534, 4535, 4537, 4538, and 4545 would amend various acts: some to delete current restrictions regarding the transportation of firearms; some to conform to the provisions of House Bill 4530; others to exempt certain information concerning concealed weapon licenses from provisions of the Open Meeting Act and the Freedom of Information Act, and to establish a fund to reimburse county prosecuting attorneys for expenses involving firearm crimes. These bills are each tie-barred to House Bill 4530. All the bills would take effect on September 30, 1999.

House Bill 4530. The bill would amend the title of the handgun licensure act to specify that certain conduct against individuals applying for or receiving concealed weapon permits, or against individuals who acted -- or refused to act -- as references for these individuals, would be prohibited; and to prescribe remedies and penalties. In addition, among other provisions, the bill would replace current provisions concerning concealed weapons licenses with provisions that would:

- Require that county sheriffs, local law enforcement agencies, and county clerks issue license application kits to all applicants.
- Require that each handgun licensing board issue a license if a person is a U.S. citizen, is 21 years of age (or age 18 to 21 if required for employment), has never been convicted of a felony, has never been committed due to mental illness or found guilty but mentally ill of a crime, and meets other specific requirements.

- Permit an applicant to appeal a denial or restriction to the circuit court for the judicial district in which the applicant lived.

- Require that the licensing board place a concealed pistol licensee decal on a license at the time it was issued, and prescribe penalties for removing a decal in violation of the act.

- Require that the Department of State Police create and maintain a computerized data base to keep track of applicants.

- Require that license applicants complete a firearm safety education course that has 8 hours of instruction and 3 hours of shooting range time.

- Require that a license be revoked if a licensee is charged with legal intoxication, and require license suspension for other misdemeanors involving intoxication.

- Prohibit a licensee from carrying a concealed weapon in certain public places, such as a school, theater, sports arena, or hospital, which have posted "no concealed weapons allowed" signs.

Legislative Intent. The legislation states that: "It is the intent of the legislature to create a standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining licenses to carry a concealed pistol, to allow law abiding residents to obtain a license to carry a concealed pistol, and to prescribe the rights and responsibilities of individuals who have obtained a license to carry a concealed pistol. It is also the intent of the legislature to grant an applicant the right to know why his or her application for a concealed pistol license is denied and to create a process by which an applicant may appeal that denial."

County Concealed Weapon Licensing Boards. Under House Bill 4530, each county would continue to have a concealed weapon licensing board with exclusive authority over issuing or denying licenses to carry a concealed pistol to residents of that county. The boards would review the concealed weapon license applications of county residents, determine whether or not to issue a license, and perform other duties as required by law. The boards would continue to have the following persons or their designees as members: the county prosecuting attorney, the county sheriff,

and the director of the Department of State Police. The prosecuting attorney or his or her designee would act as the board's chairperson and the county clerk would serve as the clerk of the board. Two members would constitute a quorum; however, the business of the board would be conducted by a majority vote of all of its members.

Record Purchase Requirements. An individual who received a license to carry a concealed pistol under the bill would not be required to also get a license to purchase, carry, or transport a pistol. If a person with a license purchased a pistol, the seller would have to complete a sales record in triplicate as provided by the state police, including the individual's concealed weapon license number. The seller would retain one copy of the record, provide a copy to the purchaser and forward the original to the state police within 10 days of the purchase. The state police would be able to promulgate rules to implement this. The triplicate record purchase requirements would not apply to wholesalers or those purchasing antiques. A person who made a materially false statement on a sales record would be guilty of a felony punishable by imprisonment for up to four years, a fine of up to \$2,500, or both.

Application for license. In order to receive a license to carry a concealed pistol, an individual would have to obtain and complete an application form provided by the director of the Department of State Police. County sheriffs, local law enforcement agencies, and county clerks would be required to provide an application kit during normal business hours to anyone who wanted to apply for a license to carry a concealed pistol. The kit would contain an application form, fingerprint cards, and written information regarding the procedures involved in obtaining a license, including where the individual could receive the necessary training to qualify for such a license, the applicant's right to appeal the denial of a license, and the form required for making an appeal. An individual who was denied an application kit and obtained an *order of mandamus*, directing the licensing board to provide him or her with the kit, would be awarded actual and reasonable costs, plus attorney fees, for obtaining the order. The concealed weapon licensing board would be required to retain a copy of each application as an official record.

Information received by a concealed weapon licensing board would be considered confidential and could not be disclosed except for the purposes of the act. The application form would provide the applicant a place

to indicate whether he or she needed a temporary license while waiting for the regular license to be issued. The applicant would have to file the completed application with the county clerk during normal business hours. The licensing board would have to provide each applicant with a copy of a compilation of the state's firearms laws created by the Legislative Service Bureau. The compilation would be provided to the applicant at the time the application was submitted and the board would have to require the applicant to sign a written statement indicating that he or she had received a copy of the compilation. An individual would not be eligible to receive a license until he or she had signed the statement.

The application would have to be signed under oath and include the following: the applicant's name and address and, if appropriate, a statement indicating that the applicant resides in a city, village, or township that has a police department. Certain testimony would have to be included with the application, such as statements indicating the following:

- that the applicant met the criteria for a license to carry a concealed pistol,
- whether the applicant has a history of mental illness that would disqualify him or her from receiving a license ("mental illness" would be defined under the bill to mean a substantial disorder of thought or mood that significantly impaired judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and which would include -- but not be limited to -- clinical depression.),
- whether the applicant has been convicted in this state or elsewhere for an assaultive crime,
- whether the applicant had been dishonorably discharged from the U.S. Armed Forces,
- whether the applicant sought a temporary license, pending issuance of a regular license, and the facts supporting issuance of the temporary license,
- that the concealed weapon licensing board would have access to any record relating to the applicant's eligibility to receive a license, and to the applicant's medical records that relate to his or her statements about history of mental illness. However, the applicant could request that these records or information be reviewed by the board in a closed session which the applicant and his or her representative would have the right to attend.

Information received regarding these records or information would be confidential and could not be disclosed to any person except for the purposes of determining whether to issue a concealed weapon license to the applicant.

Finally, the application would also have to contain a conspicuous warning that an application was executed under oath, and that intentionally making a material false statement on the application would be a felony punishable by imprisonment for up to 4 years, a fine of up to \$2,500, or both.

Fees. Each applicant would pay a \$49 fee for an application. The fee would be divided between the county and the state -- \$10 would go to the county treasurer to be deposited in the county's general fund and credited to the county clerk and \$39 would be forwarded to the state treasurer for deposit into the state general fund to the credit of the Department of State Police.

Fees for a license renewal would be \$35, payable to the county for deposit in the general fund of the county. An individual who was licensed to carry a concealed pistol as of September 30, 1999, would be eligible for a license renewal at the prescribed fee. This provision would apply regardless of whether the license issued before September 30, 1999, was restricted. The firearm safety requirements specified under the bill would be waived for an individual who was licensed on or after September 30, 1999, and who was applying for a license renewal.

Requirements for license. Each county sheriff would be required to verify an applicant's eligibility for a license on behalf of the concealed weapon licensing board, using the Law Enforcement Information Network (LEIN) to verify that an applicant met the requirements. In order to be eligible to receive a concealed weapon license an individual would have to:

- be at least 21 years old, or at least 18 years old if the individual were required to carry a concealed weapon as part of his or her employment. (A license issued to an 18-, 19-, or 20- year-old under this exception would only allow the individual to carry a concealed weapon in the course of his or her employment);
- be a citizen of the United States or a resident legal alien, and a resident of Michigan who has resided in the state for at least six months;

- not be the subject of a LEIN order or disposition entered as the result of his or her involuntary hospitalization or alternative treatment under the Mental Health Code or legal incapacity under the Revised Probate Code; or due to the existence of an injunction or restraining order for domestic violence or stalking under the provisions of the Revised Judicature Act; or for having been declared not guilty of any crime by reason of insanity, or having been released from incarceration subject to conditions or restrictions placed upon him or her for the protection of others, under the Code of Criminal Procedure;

- not be prohibited under the Michigan Penal Code from having a firearm;

- never have been convicted of a felony in this state or elsewhere (a felony would include a violation of a law designated as a felony, or a violation of law punishable by imprisonment for more than one year), have no other felony charges pending, and have had no convictions or confinement for a specified criminal offense for the eight years immediately prior to the application ("specified criminal offenses" would include hindering or obstructing a weights and measures enforcement officer; hindering, obstructing, assaulting, or committing bodily injury upon a director or other authorized representative under the Motor Fuels Quality Act; negligent, careless, or reckless operation of a vessel resulting in crippling or death; exhibiting or providing sexually explicit materials to minors; assault or domestic assault; aggravated assault or aggravated domestic assault; solicitation to commit a felony; impersonating an officer; stalking; careless, reckless, or negligent use of a firearm; or a violation of a substantially corresponding law of the United States, another state, or a local unit of another state);

- not have been dishonorably discharged from the U.S. Armed Forces;

- never have been found guilty, but mentally ill, of a crime, and not offered a plea of insanity;

- never been subject to an order of involuntary commitment due to mental illness;

- not suffer from a diagnosed mental illness at the time of applying, regardless of whether he or she is receiving treatment ("mental illness" would mean a substantial disorder of thought or mood that significantly impaired judgment, behavior, capacity to

recognize reality, or ability to cope with the ordinary demands of life, including, but not limited to, clinical depression; and "treatment" would mean care, or any therapeutic service, including, but not limited to, the administration of a drug, and any other service for the treatment of a mental illness);

- not be under a court order of legal incapacity in this state or any other state; and,
- show evidence of knowledge or training in the safe use and handling of a pistol (see below);

In addition, the board would have to determine that issuing a license to the applicant would not threaten the safety of the applicant or any other person. The bill would specify that a determination under this provision would be based only upon the actions of, or statements of, the applicant.

Fingerprinting. As part of the application process, the applicant would be required to have two sets of fingerprints taken. The fingerprints would be taken by the local county sheriff on forms supplied in the application kit. The sheriff's office would be required to take the applicant's fingerprints within three business days after the applicant's request to be fingerprinted. The fingerprints would be forwarded immediately - one set of fingerprints would be sent to the FBI or an entity designated by the FBI and the other would be sent to the Department of State Police. Both sets of prints would be compared by the appropriate subdivision of each agency, with the print records retained by each agency. The FBI would then send a report of its comparisons to the Department of State Police. Within 10 days of receiving the FBI's report the department would be required to send copies of the results of both fingerprint comparisons to the county sheriff that took the fingerprints and to the concealed weapon licensing board for the county where the applicant resides. The FBI would be required to return the fingerprints to the department and the department would be required to destroy the prints immediately, unless the comparison report wasn't received within 30 days after the application was completed. If the fingerprint comparison was not received by the board within 30 days, the board would be required to issue the applicant a temporary license. In such cases, the temporary license would expire after 180 days, or as soon as the fingerprint report was received.

Licenses. Subject to the receipt of the fingerprinting results, the concealed weapon licensing board would

be required to issue a license to any applicant who had properly submitted an application and whose application indicated that he or she was eligible to have a license within 30 business days after proper submission of the application. The board could also contact the references provided by the applicant.

The board would be allowed to investigate an applicant, including, where possible, contacting his or her local police department, provided that the investigation was restricted only to an applicant's eligibility, and the investigation would end after that determination was made. The board could also contact references provided by the applicant. The board could also require the applicant to appear before the board at a mutually agreed upon time for a conference. The applicant's failure or refusal to appear for such a conference, without good reason, would be grounds for denial of a license.

A full license would be valid for five years and could be renewed in the same manner as the original license. However, a license renewal would be subject to lower fees and would not require fingerprints. In order to renew a license after January 1, 2000, a license holder would be required to present a signed statement to the board certifying that he or she had completed no less than three hours of review of the training required for initial licensing since receiving the license, including firing range time in the six months immediately preceding the renewal application.

A person who applied for a license to carry a concealed pistol for the first time before September 30, 1999 would have to complete firearm safety training (see below). A person who was licensed as of that date would be eligible for a renewal license, regardless of whether that license was restricted or not.

Concealed Pistol Licensee Decal. A license would contain the license holder's name, address, and physical description, as well as the license's effective dates, and any restrictions. The license would authorize the license holder to carry a pistol, concealed on or about his or her person, or in a vehicle (concealed or otherwise) throughout Michigan. The licensing board would be required to place a concealed pistol licensee decal, provided by the secretary of state, on a driver's license at the time it was issued. Anyone who removed or intentionally defaced a concealed pistol licensee decal on a license while the licensee was licensed to carry a concealed pistol would be guilty of a misdemeanor, punishable

by imprisonment for up to 93 days, a fine of up to \$100, or both.

Temporary License. An applicant could be given a temporary license under two circumstances:

- pending the issuance of a full license, if the licensing board determined that there was probable cause to believe that the applicant or his or her family would be endangered by the applicant's inability to obtain a license immediately, or if the applicant's fingerprint report was not received within 30 days. A temporary license would be issued in a form provided by the state police. The license would be unrestricted and would be valid for no more than 180 days, with the opportunity to renew the license for one additional period of no more than 180 days. The applicant would be required to surrender the temporary license to the board upon issuance or denial of the full license,
- if an applicant's fingerprint comparison was not received by the board within 30 days, the board would be required to issue the applicant a temporary license. In such cases, the temporary license would expire after 180 days, or as soon as the fingerprint report was received.

Carrying a concealed pistol. A license holder would be required to have the license in his or her possession anytime he or she was actually carrying a concealed pistol and would be required to show the license and his or her driver license or Michigan personal identification card to a police officer at the officer's request. Failure to comply with an officer's request or failure to carry one's concealed pistol license would be a state civil infraction, and the court would be required to notify the appropriate concealed weapon licensing board.

If an individual was discovered carrying a concealed weapon without a license, the weapon could be seized by a peace officer immediately without any hearing or other procedure. However, if the licensee had his or her driver's license or Michigan ID and the officer were able to verify that the individual had a license through the LEIN system, then the pistol would not be subject to forfeiture.

If the individual had no license to carry a concealed pistol, the weapon would be forfeited to the state for carrying or possessing a weapon in violation of state law. However, a license holder whose pistol was seized for failing to show his or her license to a police officer would be able to reclaim the pistol by showing

his or her license to an authorized employee of the law enforcement agency holding the weapon within 45 days of the weapon's seizure. If the weapon was not claimed within 45 days, the law enforcement agency could dispose of the weapon in the same manner as if the owner had been unlicensed.

Firearm Safety Training. An applicant would have to show that he or she had knowledge or training in the safe handling of a pistol. In order to adequately provide the required knowledge and training, a firearms safety program and instructor would have to be certified by this state or a national or state firearms training organization and provide instruction in at least the following areas: the safe use and handling of a pistol; ammunition knowledge and fundamentals of handgun shooting; handgun shooting positions; firearms and the law, including civil liability issues; avoiding criminal attack and controlling violent confrontations; and Michigan's laws regarding carrying a concealed pistol. The course would have to include at least eight hours of instruction with three hours of firing range time and provide a certificate of completion.

A person or entity that provided instruction or training would be immune from civil liability for damages to any person or property caused by the person who was trained, unless the trainer were grossly negligent.

These educational requirements would be waived for an individual licensed on or after September 30, 1999, who was applying for a license renewal, except that the applicant would have to sign and present a statement certifying completion of at least three hours review of the required training since receiving his or her license, and that the training included firing range time in the six months immediately preceding the renewal application. The education requirements would not be waived for an individual who was licensed before September 30, 1999, and who was applying for a license renewal for the first time.

Alcohol restrictions on license holders. A license holder would be prohibited from carrying a concealed pistol while he or she was under the influence of alcohol or a controlled substance or while having a bodily alcohol content (BAC) of 0.02 grams or greater per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. A peace officer who believed that a license holder was violating this prohibition could require the license holder to submit to a chemical analysis. The officer would first have to inform the license holder that he or she could refuse to

submit to the test, but if he or she did refuse his or her license could be revoked or suspended and/or the officer could get a court order to require the license holder to submit to the test. The officer would also have to inform the license holder that if he or she submitted, he or she could choose who would perform the test. If the license holder refused to submit to the test or if the test was made and the results indicated a prohibited level of alcohol, the officer would be required to promptly report the refusal or violation in writing to the concealed weapon licensing board that issued the license.

The collection and testing of blood, breath, or urine for chemical analysis would be conducted in the same manner as such specimens are collected and tested for alcohol- and drug-related driving violations under the Michigan Vehicle Code.

A license holder who was found to be in violation of these restrictions would be subject to the following penalties:

- If the licensee had a BAC of .02 or more but less than .08 grams, he or she would be guilty of a state civil infraction and could be punished by a fine of \$100. The court could also order the licensing board that had issued the individual's license to revoke the license for one year and the board would be required to comply.
- If the licensee had a BAC of .08 to .10, he or she would be guilty of a misdemeanor, punishable by imprisonment for up to 93 days, or \$100, or both. The court could order the licensing board to revoke the individual's license for up to three years, and the board would be required to comply.
- If the person had a BAC of .10 grams or more or was under the influence of alcohol, a controlled substance, or a combination of drugs and alcohol, the licensee would be guilty of a misdemeanor punishable by imprisonment for no more than 93 days and/or a fine of \$100. The court would be required to order the appropriate licensing board to revoke the individual's license permanently.

The provisions against carrying a concealed pistol while intoxicated would not prohibit a licensee with any bodily alcohol content from transporting his or her pistol in the locked trunk of his or her motor vehicle or unloaded and separated from its ammunition in a locked compartment or container if the vehicle didn't have a trunk.

Restriction on where a person could carry a concealed pistol under a license. Although an employer, including a police agency, could not prohibit an employee from either applying for and receiving a concealed weapon license or carrying a concealed weapon in compliance with such a license, an employer could prohibit an employee from carrying a concealed pistol during the course of his or her employment.

Further, a person could not carry a concealed weapon on the premises of certain institutions that posted signs saying "No concealed weapons allowed." These institutions would include churches, government buildings, theaters, sports arenas, day care centers, hospitals, bars and certain restaurants, and schools. A violation of this provision would be a misdemeanor punishable by up to 93 days imprisonment, a fine of up to \$100, or both. A second offense would be a misdemeanor punishable by one year imprisonment, a fine of up to \$500, or both. A third or subsequent offense would be a felony, punishable by up to four years in prison, a fine of up to \$2,500, or both.

Notification and reporting of crimes committed by license holders. If a license holder were charged with having committed a violent felony, felony, or specified criminal offense, the prosecuting attorney would be required to promptly notify the licensing board that had issued the license holder's license. The prosecuting attorney would also have to promptly notify the board of the disposition of the charge. If the license holder were convicted of the crime, the prosecuting attorney would be required to indicate to the board whether the crime had involved brandishing or use of a pistol, the license holder had been carrying a pistol during the commission of the crime, or if no pistol had been carried by the license holder during the commission of the crime. The state police would be required to provide a form for reporting this information.

If the concealed weapon licensing board was notified that a licensee had been charged with a felony or specified criminal offense, the board would immediately suspend the individual's license until there was a final disposition of the charge and would send notice of the suspension to the person's last known address. The notice would provide information that the individual was entitled to a prompt hearing on the suspension. The bill would specify that the individual would be entitled to 10 days notice of the hearing.

Each year the chair of the board would be required to compile and provide a report to the Department of State Police by a date determined by the director of the department. The report would contain the information reported by the prosecuting attorneys and the information provided by the courts for failure to show a license to a peace officer, refusal to submit to a chemical test as required under the bill, or having any bodily alcohol content while carrying a concealed pistol.

Denials, revocations and appeals. A license that had been issued based on an application containing a material false statement would be void from the date it was issued.

Within five business days after denying a person's application for a concealed pistol license, a concealed weapon licensing board would be required to inform the applicant in writing of the reasons for the denial and of the applicant's right to appeal the board's decision to the circuit court. The explanation of the board's decision would have to include a statement of the facts supporting the denial, and copies of any writings, photographs, records, or other documentary evidence used to support the denial.

If the concealed weapon licensing board was notified that a licensee had been charged with a felony or specified offense, the board would be required to immediately suspend the individual's license pending the final disposition of the case. Notice of the suspension would have to be sent to the licensee's last known address as indicated in the board's records. The notice would have to inform the licensee that he or she was entitled to a prompt hearing on the suspension. Upon the licensee's written request, the board would have to hold such a hearing.

A concealed weapon licensing board could revoke any license it issued if it determined that the individual was not eligible to have received the license or that the license holder had committed any violation of the act, except that a person could not have a license revoked for failing to show his or her license to a peace officer. However, if the board determined that the license holder had been found responsible for three or more civil infraction violations of the handgun licensure act, the board would be required to hold a hearing and could suspend the individual's license for no more than one year.

Except where the licensee was charged with a felony or specified crime, in order to revoke a license the

board would have to issue a written complaint and provide the license holder an opportunity for a hearing before the board. The board would be required to give the individual at least seven days notice prior to the hearing. Notice would have to be served personally or by certified mail delivered to the individual's last known address. The clerk of the board would be authorized to administer an oath to anyone who testified before the board in such a hearing.

An applicant could appeal the board's decision to deny a license, fail to issue a license, or to issue a restricted license to the circuit court for the judicial district where he or she resides. An appeal of a denial, failure to issue a license, or issuance of a restricted license would be determined by a review of the record for error. However, a hearing on an appeal would be a trial de novo (from the beginning -- of the application and qualifications, not of the process) if the licensing board's decision was based on the grounds that issuing a license would threaten the safety of the applicant or another person. Witnesses would be sworn and a verbatim record would have to be taken. If the court determined that the licensing board's decision to deny or fail to issue a license or restricted license was erroneous, it would be required to order the licensing board to issue one. If the court reversed a decision of the board that denied a license, it would have to order the board to pay the applicant's actual costs and actual attorney fees for the appeal; and if the court affirmed a board denial for a license, it would have to order the applicant to pay the board's actual costs and actual attorney fees for the appeal.

Concealed weapon license data bank and annual report. The Department of State Police would be required to use information from concealed weapon licensing applications to create and maintain a computerized data base to keep track of who applied for licenses to carry concealed weapons. Information in the data base would be confidential and would not be subject to Freedom of Information Act (FOIA) provisions. The data base would contain only the following information about each applicant:

- The names, addresses and county of residence of all applicants.
- Where applicable, the concealed weapon license number, its expiration date, and any restriction on a license issued to a person under the age of 21 for use during his or her employment.

- If the applicant had been denied a license after the effective date of the bill, the reasons for that denial. An explanation of why a license had been denied would be deleted from the data base if the individual were later issued a license.

- A statement of all criminal charges pending and convictions against the applicant during the license period.

- A statement of all civil infractions of the handgun licensure act pending or obtained against the applicant during the course of the license period.

In addition, the data base would contain the following information regarding the behavior of licensees, categorized by offense:

- The number convicted or found responsible for civil infractions of the handgun licensure act or for criminal violations, including the number of crimes in each category that had involved the brandishing or use of a pistol, carrying a pistol during the commission of a crime, and the number where the license holder had not used a pistol during the commission of the crime.

- The number that had criminal charges pending, dismissed, and findings of not responsible or not guilty.

The information contained in the data base would be entered into the LEIN and would only be released for the purposes of the act or for law enforcement purposes. The state police would be required to file an annual report with the Secretary of the Senate and the Clerk of the House of Representatives. The report would have to contain all of the following information for each county concealed weapon licensing board:

- The number of applications received, licenses issued, licenses denied, licenses revoked, and the number of applications pending at the time of the report.

- The categories for the denials and categories for revocation.

- The mean and median amount of time and the longest and shortest times taken by the FBI to supply the fingerprint comparison report (this could be derived from a statistically significant sample).

- The costs incurred per permit in each county.

Repealers. House Bill 4530 would repeal current provisions concerning concealed weapons license fees, concealed weapon licensing boards, forfeiture of firearms, and the waiver of renewal fees under the handgun licensure act for retired police officers.

House Bills 4532 and 4537 would amend various acts, including the Penal Code, to delete current restrictions on transporting firearms. House Bills 4533, 4534, 4535, 4538, and 4545 would amend various acts to conform to the provisions of House Bill 4530. House Bills 4533, 4538, and 4545 would amend various acts to exempt certain information concerning concealed weapon licenses from provisions of the Open Meeting Act and the Freedom of Information Act, and to establish a fund to reimburse county prosecuting attorneys for expenses involving firearm crimes. The bills are each tie-barred to House Bill 4530 and would take effect on September 30, 1999.

Transportation of Firearms. Currently, under Part 435 of the Natural Resources and Environmental Protection Act (NREPA), which regulates hunting and fishing licenses, a person may "carry, transport, or possess" a hunting weapon without owning a hunting license while going to and from certain activities, such as target practice or trap or skeet shooting grounds, if the weapons are either in a case or the trunk of a car, or are unloaded or unstrung. House Bill 4537 would amend the NREPA (MCL 324.43513) to delete the requirement that the individual be conveying the weapon to a specific place. Instead, the bill would specify that a person could transport or possess (the bill would delete "carry" from these provisions) these types of weapons in a vehicle, without a hunting license, provided that the firearm was unloaded in both barrel and magazine, or the bow or crossbow was unstrung and enclosed in a case, and in each case the weapon was carried in the vehicle's trunk. If a vehicle had no trunk, the weapon would have to be in a location that was not readily accessible to the occupants of the vehicle. The act also specifies currently that, regardless of whether it is open hunting season or whether the person has a license, a hunting weapon may also be carried, transported, possess, or discharged if the person is not engaged in hunting but is engaged in target practice, the person is -- or is accompanied by -- the owner of the property, and if not remuneration is paid to the property owner for the activities. House Bill 4537 would delete "transport" from these provisions and would specify that they would not apply to a person who is hunting as provided by law.

Currently, under Section 231a of the Michigan Penal Code (MCL 750.231a), a person carrying an unloaded pistol or antique firearm, which is wrapped or in a container, and is in the trunk of a vehicle, is excluded from the current prohibition against carrying a concealed weapon under certain circumstances, including if the person is going to or from a hunting or target shooting area or an antique firearm demonstration or sale; if the person has a valid hunting license, or proof of valid membership in a pistol shooting-range facility; or if the person is going from the place of purchase or from a place of repair to his or her home or place of business, or is moving goods from one place of abode or business to another. House Bill 4532 would amend the code to specify that any person could carry an unloaded pistol or antique firearm provided that it was unloaded, in a wrapper or container, and in the trunk of a vehicle.

Disposal of Forfeited Firearms. House Bills 4534 and 4535 would amend the Michigan Penal Code (MCL 750.239) to provide for the disposition of firearms that had been forfeited under the provisions of House Bill 4530. House Bill 4534 would amend Section 239 of the code to specify that a concealed pistol carried in violation of the code would be subject to the forfeiture provisions of the firearms act (MCL 28.425g). House Bill 4535 would also amend Section 239 of the code to specify that the director of the Department of State Police, or his or her designee, could conduct one or more public auctions to sell forfeited firearms to persons who were legally qualified to own them. (Note: Both bills would amend the same section of the code)

Other Provisions. House Bills 4533, 4538, and 4545 would amend various acts to exempt certain information concerning concealed weapon licenses from provisions of the Open Meetings Act and the Freedom of Information Act, and to establish a fund to reimburse county prosecuting attorneys for expenses involving firearm crimes.

House Bill 4533 would amend the handgun licensure act (28.434) to establish a Firearm Law Enforcement Fund, from which reimbursements would be made to county prosecuting attorneys for the expenses incurred in prosecuting crimes involving the unlawful possession, use, or distribution of firearms.

House Bill 4538 would amend the Open Meetings Act (MCL 15.268) to expand the list of conditions under which a public body may meet in closed session to include consideration of information in an application

to carry a concealed pistol that concerns the applicant's mental health history, if requested by the applicant.

House Bill 4545 would amend the Freedom of Information Act (MCL 15.243) to exempt the name, address, and telephone number appearing on a license, permit, application, or registration relating to an individual's possession, use, or control of a firearm from disclosure as a public record.

BACKGROUND INFORMATION:

Under Michigan's current system, each of the 83 county concealed weapon licensing boards is made up of the county prosecuting attorney, the county sheriff, and the director of the Department of State Police, or their authorized representatives. The prosecuting attorney or his or her representative is the chairperson of the board. The board is required to meet at least once per month and at other times at the call of the chair. These boards have the exclusive authority to grant an applicant a license to carry a concealed pistol on their person within the rules provided by state law.

In order to receive a license or permit to carry a concealed weapon (CCW license or permit) a person must fill out and submit an application to the county sheriff for the county where the applicant resides. The application forms require general information about the applicant and the applicant must indicate his or her reasons for needing a CCW permit and sign the application under oath. Depending upon where the applicant resides, the completed application form must be approved by the applicant's local chief of police or township supervisor. In such cases, if the application is not approved the applicant has ten days to appeal the objection in writing to the licensing board.

In addition, the applicant must have two sets of fingerprints taken by the local police or county sheriff; one set is checked by the state police while the other is sent to the FBI. Both sets are checked against existing records and reports are sent to the county clerk. The board is prohibited from issuing a license unless it receives a report from the state police and the FBI indicating that the comparisons of the fingerprints do not show that the applicant was convicted of or confined for a felony during the eight years preceding the application. A temporary permit for a period of not more than 30 days may be issued while waiting for the comparison reports. The Department of State Police retains the fingerprint cards.

Upon receiving the application and the fingerprint reports, the board notifies the applicant of the time and date of the board's meeting at which the applicant is to appear. At the meeting, the board reviews the application and the fingerprint report, and interviews the applicant. After the applicant's qualifications are reviewed and the interview is completed, the board votes on the request. A majority is required for approval. Restrictions as the board deems necessary may be placed upon the license. There are generally three types of licenses: target, range, and hunting permits allowing the licensee to carry a pistol to and from shooting sites; home, bank, and business permits allowing the licensee to carry a pistol during the course of employment; and general carry permits allowing a licensee to carry a pistol without restrictions or with only limited restrictions.

A licensing board is prohibited from issuing a license to anyone who: is under the age of 18, is not a United States citizen, or has resided in the state for less than six months. In addition, the applicant cannot have been convicted of a felony in Michigan or elsewhere during the preceding eight years, or be subject to an order or disposition entered into the Law Enforcement Information Network (LEIN) system for any of the following:

- involuntary commitment under the Mental Health Code,
- a finding of legal incapacity under the Revised Probate Code,
- a domestic violence or anti-stalking restraining order,
- a condition of bail that prohibits handgun ownership, or
- a finding of not guilty by reason of insanity.

In addition, the board must find that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons for having a license to carry a concealed weapon, and is a suitable person to have such a license.

The current fee for a license is \$10, which is paid only if the license is approved. Three dollars go to the state treasurer, while the other seven dollars go to the county's general fund. A license is valid for three years and can be renewed by filing a new application and paying the \$10 fee.

After receiving a license, the licensee is required to carry his or her license on his or her person while carrying a concealed weapon and must show the license to a police officer at the officer's request. The license itself contains identifying information, including a thumb print of the licensee and a list of any carrying restrictions. A pistol carried in violation of the act is subject to seizure and forfeiture.

A license may be revoked by the board upon notification from a magistrate that the license holder has been convicted of violating any provision of the license, or has been convicted of a felony. The board may also revoke a license when it determines that the reasons for granting the license have ceased to exist or that the license holder is unfit to carry a concealed pistol. A license may not be revoked without a written complaint and hearing by the board with at least seven days' notice to the licensee by personal service or registered mail to his or her last known address.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 4530 would result in an indeterminate increase in state costs and revenues. The Department of State Police would incur costs to enforce the regulations specified under the bill. In addition, approximately \$112,000 in costs would be incurred as follows:

*\$60,000 to upgrade the department's computerized database to process and store CCW license application records,

*Operating costs for the database: \$40,000 annually for one additional FTE position, and \$12,000 in annual maintenance costs.

In addition, costs would be incurred for each applicant: Based on the experience of other states that have adopted "shall-issue" legislation in recent years, the HFA estimates that there would be 25,000 to 100,000 applicants for CCW licenses in the first year. Each applicant would have to submit fingerprints to county local gun boards for delivery to the FBI and the DSP for background checks. The HFA estimates that the \$39 fee would offset the cost of processing each set of fingerprints. Between \$975,000 and \$3.9 million would be received in fees.

The HFA estimates that House Bill 4532, 4533, 4534, 4537, 4538, and 4545 would have no fiscal impact.

The HFA says that House Bill 4535 would result in indeterminate revenue to the state from auctions at which forfeited firearms would be sold.

(Analyses dated 4-23-99 and 5-12-99)

ARGUMENTS:

For:

The bills are needed to eliminate the current arbitrary and capricious system of issuing concealed weapon licenses. Under the current system, approval of an application for a permit can often depend on who you know on the gun board rather than any objective grounds. Many supporters of the bill assert that in some counties the applications of deserving people have been rejected for no good reason, while the applications of former police officers and judges or others with close ties to the members of the gun board are routinely granted. In addition, applicants are required to bear the burden of showing that they should be granted a license and most people whose applications are denied are never told why the application was not approved, nor are they given an opportunity to contest the board's decision. This process is entirely different from any other licensing process. It should be changed to place the burden on the government rather than the citizen and to create a more uniform, and therefore more fair, basis for deciding who should be granted a license.

The bills will assure that every Michigan citizen has the same equal, fair, and impartial opportunity to obtain a CCW permit. Law-abiding citizens would know before applying what criteria they needed to meet in order to receive a license. If the license was denied, a citizen would have the right to know why it was denied and could appeal the denial and have a court hear and decide whether or not the application should have been approved. As with all other licenses, the government would have the burden of proving that its denial of the license was for a valid reason. The bills are a vast improvement over the current process, creating a system that is objective and uniform throughout the state, placing the burden of proof on the government, giving citizens fair warning about the criteria to be met, and allowing citizens due process and a right to appeal the decision of the board.

For:

One of the best means of self protection is to own a gun, and an even better means is to carry a gun on

one's person. While a gun in the home can be used to deter, scare off, or, if necessary, wound or kill intruders, it is of little help when a person is away from homes. Without a CCW permit, people are forced to put themselves at risk whenever they leave their homes. However, allowing more honest citizens to carry guns benefits not only those citizens who are armed but also serves to protect those who choose not to carry a gun. Criminals are less likely to engage in criminal activity where the risk has increased that the intended victim might have a gun.

According to some studies, confrontations with criminals where the would-be victim has a gun are more likely to end with would-be attacker fleeing than with shots being fired. Further, those who resist attempted robberies or rape with a gun are half as likely as their unarmed counterparts to be injured.

In 1996 only nine states allowed their citizens to carry concealed weapons. Currently, though, there are 31 states that allow citizens to carry concealed weapons. Many of these states have seen their crime rates drop significantly during this time period. According to a University of Chicago study, concealed handgun laws reduced murder by 8.5 percent and severe assault by 7 percent from 1977 to 1992.

Response:

The University of Chicago study fails to take into account that, of the states included in the study, only Florida had a significant drop in its crime rate. Furthermore, the study also fails to note that overall crime rates have dropped during the time period of the study. Finally, conclusions drawn by the study are contradicted by the fact that during the same time period murder rates also fell dramatically in places with very strict concealed carry laws, like Boston, New York, and Los Angeles.

Against:

The bills stem from the philosophy that any law abiding citizen should be able to carry a concealed weapon. However, according to testimony presented to the House Conservation and Outdoor Recreation Committee by representatives from the Office of Attorney General, recent polls indicate that the concept of arming people on demand is *not* supported by a majority of Michigan adults. Moreover, one consequence of the bills could be that an easy availability of guns in purses, pockets, and in glove boxes would lead to more guns being lost or stolen, and more children being intentionally and accidentally victimized by them. This is especially frightening

when one considers that, even with current restrictions, firearms are the third leading cause of death for children between the ages of five and fifteen.

The testimony also included the results of a survey of students conducted by *USA Today*, which reported that nearly one million students had carried a gun to school during the 1997-98 school year, and that 51 percent of the students had threatened to harm a teacher and 63 percent another student. If the survey is accurate, then it is reasonable to believe that young people who see a parent put a pistol in his pocket or her purse would see no reason why they, too, could not protect themselves by carrying a gun. Once it becomes generally acceptable that everyone may carry a concealed weapon, not having a permit could be a mere technicality to an adolescent.

The testimony also notes that the nation's murder rate is at a 22-year low, the crime rate has dropped for the past six years, and Department of Justice statistics show a significant decrease in youth gun violence in the U.S. in recent years. In fact, this decrease coincides with the passage of the 1993 Brady Handgun Violence Prevention Act, or "Brady Law." Conversely, states with liberal gun laws experienced a significantly smaller drop in the crime rate between 1996 and 1997. Citing Federal Bureau of Investigation (FBI) uniform crime reports, the testimony noted that the 29 states that had liberal CCW laws at that time had a crime rate decrease of 2.1 percent, in comparison with 4.4 percent for the states with strict CCW laws; and the rate of violent crime for states with liberal CCW laws decreased by three percent, versus 4.9 percent in states with strict laws. In addition, according to the testimony, the three states with the most liberal gun laws -- Louisiana, Nevada, and Alaska -- had the country's highest firearm fatalities in during 1996.

It would appear that, as noted in the testimony, the bills are attempting to fix a system that isn't broken. In fact, in recognition of the fact that strict CCW laws are effective, voters in Missouri have recently rejected efforts to pass a bill similar to House Bill 4530. Similarly, governors in Ohio and Colorado have recently promised to veto any CCW bills that are presented to them.

Against:

In an April 28, 1999, letter directed to members of the Oakland Medical Society encouraging opposition to the bills, Dr. Barbara Meyer Lucas, Chair of the

Public Health Committee of the Wayne County Medical Society, makes note of the following:

- it is estimated that handguns are present in one out of four homes in the U.S.,
- more than half of handgun owners report that they keep the guns unlocked at home; and many report keeping guns loaded and readily available,
- approximately 1.2 million latchkey children have access to guns when they come home from school,
- in a 1993 national survey, 59 percent of students in grades 6 through 12 reported that they knew where to get a gun if they needed it; and one-third of these said they could get a gun within an hour,
- 5,264 children age 16 and under were charged with carrying a concealed weapon in Wayne County between 1990 and 1998,
- 102 people die in the U.S. from gunshot wounds, including 15 children and teens under the age of 20, on an average day,
- a gun in the home increases the risk of domestic homicide threefold,
- for every instance in which a gun at home is used to kill in self-defense, 43 fatal shootings of family members or friends occur in suicides, non-justifiable homicides, and accidents.

Against:

As written, the bills contain several provisions that alarm the Michigan Press Association (MPA). For example, under House Bill 4545, information on a CCW license application or permit would be exempt from disclosure as a public record under the provisions of the Freedom of Information Act (FOIA). The MPA notes that this would prevent the public from knowing whether or not the new licensing process was effective or not. This is of special importance since House Bill 4350 contains a "catch-all" provision that would allow CCW licensing boards to deny a permit for various reasons. Members of the press should be allowed to hear this information so that the public can be informed. (The MPA also notes that the press was the first entity to point out that there were problems with current licensing restrictions.)

Response:

Information on a CCW license application or permit should be exempt from disclosure under FOIA. The

bills have been introduced as a means of allowing law-abiding citizens to protect themselves against criminals. Therefore, it makes no sense to give criminals open access to records that would let them know who was -- and who was not -- carrying concealed weapons and possibly use the information to commit crimes.

Rebuttal:

It is extremely unlikely that a criminal would fill out a FOIA request to find out if a person owned a concealed weapon, since he or she would then be leaving a trail of evidence if the information were used to commit a crime.

Against:

The current CCW permit should be retained. The reason there are different standards from one county to another is because the need is different from one county to another. The current system allows for local control over who gets to carry a concealed weapon in that county. Worse, the bills, although ameliorated by some training requirements and other restrictions, will make Michigan a "shall issue" state. The gun boards will be required to issue a concealed pistol license to anyone who meets the criteria set forth in the bill. The current requirement that a person seeking a license show some need for the license is far safer for everyone and serves to limit the possession of such licenses to those who can prove a degree of need.

The proliferation of gun ownership will also, in spite of the training requirements, increase the risk of accidental shootings. Although the eight-hour training requirement would be an improvement if those provisions stood alone, it should be noted that members of the police force receive years of firearms training and accidents still happen; imagine the potential for increased accidents with large numbers of persons carrying concealed weapons who have only the required eight hours of training.

Furthermore, if enacted, the bills will simply lead to proliferation of guns on the streets, and an "old west" mentality where every argument is "solved" by the use of a gun. According to studies in Texas, where laws similar to those proposed in the bills have already been enacted, out of the 151,433 people who were issued concealed weapon licenses, 946 were arrested -- 263 for felonies. Of the 683 misdemeanor arrests, 194 were weapons-related charges and 215 were for driving while intoxicated. Family violence was

involved in 42 of the arrests -- one for murder, one for attempted murder and seven for aggravated assault with a deadly weapon. The experiences in Texas and no doubt in other states clearly show that requiring the

issuance of a CCW license increases the risk that licensees will not only include law abiding citizens.

Response:

The Texas study fails to take into account a number of factors. First, of the 946 arrests, nearly 30 percent resulted in dropped charges or acquittals. Second, 20 percent of the weapons-related offenses for which license holders were arrested were for failure to have their license in their possession. Therefore, the numbers are somewhat exaggerated; a better comparison would have been to look at the number of convictions. Furthermore, many of the more severe crimes cited did not involve the use of a weapon, nor did many of the crimes involve activities that could be realistically described as an abuse of the privileges of the license. Therefore, most of the criminal activity described really has no bearing on Texas' concealed weapon licensing policy.

Rebuttal:

To dismiss the findings of the report as irrelevant, because the crimes committed by the possessors of CCW licenses have not as yet been random shootings or other gun violence, is illogical. The crimes are significant when weighing the reasonableness of adopting a "shall issue" policy for providing concealed weapons licenses. Supporters of more liberal policies for carrying concealed weapons often support their arguments by asserting that all they wish to do is allow law abiding citizens to carry guns. Unfortunately, the Texas study shows that without further precautions, "shall issue" laws result in a fairly large number of not-so-law-abiding citizens being given licenses. Even though none of these less-than-law-abiding licensees has gone on a rampage with his or her concealed weapon, the fact remains that clearly the "shall issue" process allows for concealed weapons licenses to be put into the hands of people who do not obey the laws, thus putting the general public at greater risk.

Response:

Even so, the results of the study, when taken in context, show that the criminal activity of persons with concealed weapons permits is an extremely small portion of the overall number of crimes committed. For example, of the 1,477 murders, only six involved concealed weapons holders; of 8,376 forcible rapes, only 18 were committed by CCW licensees; and of 80,613 aggravated assaults, only 234 were committed by CCW licensees.

Against:

The "shall issue" provisions, along with the *de novo* standard of review, would require the gun board to prove to the circuit court that the license was properly denied. Proving the propriety of the board's decision at a *de novo* hearing would certainly involve more time and expense for prosecutors, circuit courts, and local police than is required under the current system and, without funding from the state, could impose an unfunded mandate in violation of the provisions of Article 9, Section 29 of the state constitution. In addition, several other provisions may also create unfunded mandates, although to a lesser extent -- for example, the requirements that the local police and sheriff departments distribute "concealed weapon application kits", and that the board immediately give unsuccessful applicants a written explanation of the denial.

These provisions require new activities or increase the level of activity for the local units of government without providing an appropriation. House Bill 4533, which would establish a Firearm Law Enforcement Fund, should require that money from the fund be provided to local units of government to reduce these costs.

Response:

As written, House Bill 4533 is overly vague. The bill specifies only that deposits into the proposed fund "may be received from any source." There is no guarantee that any fund will be available to compensate either county prosecuting attorneys' expenses or local units of government.

POSITIONS:

The Michigan Rifle and Pistol Association supports the bills. (5-12-99)

The Michigan Coalition for Responsible Gun Owners (MCRGO) supports the bills. (5-17-99)

The Prosecuting Attorneys Association of Michigan (PAAM) opposes the bills. Moreover, should the legislation be enacted, PAAM would request that prosecuting attorneys be removed from gun licensing boards. (5-17-99)

The Department of State Police opposes the "shall issue" provisions of House Bill 3540. (5-17-99)

The Michigan Catholic Conference (MCC) opposes the bills. (5-13-99)

The Michigan Partnership to Prevent Gun Violence (MPPGV) opposes the bills. (5-17-99)

The Michigan Press Association (MPA) opposes House Bill 4545. (5-17-99)

Analyst: R. Young

The Michigan Fraternal Order of Police does not support the bills as written. (5-17-99)

■ 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.