



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

TRANSPORTATION OF WEAPONS

House Bill 5026 (Substitute H-2) First Analysis (10-29-01)

Sponsor: Rep. Steve Vear
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Except in certain limited circumstances, the Michigan Penal Code prohibits a person who does not possess a concealed weapons permit from carrying an antique firearm or a pistol in a vehicle. Under current law, a person is allowed to carry an unloaded antique firearm in a wrapper or container in the trunk of the vehicle while en route to or from a hunting a shooting area, or a function involving the exhibition, demonstration, or sale of antique firearms. In addition, a person may carry an unloaded pistol in a wrapper or container in the trunk of a vehicle, while possessing a valid Michigan hunting license or proof of valid membership in an organization having pistol shooting range facilities, and while en route to or from a hunting or target shooting range. Finally, a person may also carry an unloaded pistol in a wrapper or container in the trunk of the person's vehicle from the place of purchase to his or her home or place of business, or to a repair shop, or while moving goods from one residence or business to another residence or business. If a person's vehicle does not have a trunk, then the unloaded pistol, in a wrapper or container, may be carried in the passenger compartment of the vehicle in such a manner that it is not readily accessible to the vehicle's occupants.

It is asserted that the language of current law is vague and confusing, and places otherwise law-abiding citizens at risk of violating the law. Under current law, a pistol must be carried in a wrapper or container, but the law does not prescribe any requirements for a wrapper or container. Legislation has been introduced to clarify existing law and to clarify current exemptions for carrying a weapon in a vehicle.

THE CONTENT OF THE BILL:

House Bill 5026 would amend the Michigan Penal Code to remove the travel restrictions for a person carrying an antique firearm or pistol without a concealed weapons permit, if the antique firearm or pistol was in a closed case or container designed for

the storage of firearms, was unloaded, and, if a pistol, if it had been inspected as required by law and if the person transporting the pistol was carrying it for a lawful purpose.

MCL 750.231a

BACKGROUND INFORMATION

Previous legislation. House Bill 5026 is similar to House Bill 4532, which was part of the concealed weapons permit package of the 1999-2000 session. In its final form, the bill passed the House 75 to 25, and passed the Senate 36 to 0. Governor Engler vetoed the bill on January 2, 2001.

House Bill 4532 would have lifted the travel restrictions for a person carrying an antique firearm or pistol. Under the bill, a person carrying an antique firearm or pistol without a concealed weapons permit would have been required to keep the firearm unloaded and stored in a wrapper or container in the trunk of the vehicle, or in the passenger compartment and not readily accessible to the vehicle's occupants if there were no trunk. The bill did not have language requiring that the pistol to be carried for a lawful purpose.

In his veto message, Governor Engler stated that, as written, House Bill 4532 would allow a person to carry an unloaded pistol in a wrapper or container in the trunk of a vehicle for any reason. Furthermore, the bill could allow a person of any age and for any reason to carry an unloaded pistol in the passenger compartment of a vehicle that did not have a trunk if it was not readily accessible to the vehicle's occupants. Governor Engler stated that the term "readily accessible" was not defined and was ambiguous at best. More importantly, the governor stated, the bill would have deleted the requirement that a pistol be carried only for explicit lawful purposes. This would allow potential criminals to

House Bill 5026 (10-29-01)

lawfully transport a weapon to the scene of a crime, according to the governor.

Court of Appeals ruling. Recently, the court of appeals ruled that a person who transports a handgun in his or her trunk without a concealed weapons permit can be prosecuted. In *People v. Jeffrey Dale Wilson* (Docket number 229080), the court ruled that the defendant knowingly placed two long guns, two handguns, and several rounds of ammunition, in the trunk of his car. The court asserted that though the weapons were not on the defendant, or adjacent to his body, he did place them in the trunk of the vehicle, of which he was the sole occupant, and he possessed the key to the trunk. The court said that though there are no definite rules that determine what constitutes carrying a concealed weapon, the state supreme court has ruled that, generally, that determination is based on accessibility or proximity of the weapon to the person; the person's awareness that the weapon was in the vehicle; the person's possession of related items (i.e. ammunition) connecting him or her to the weapon; the person's ownership or operation of the vehicle; and the length of time the person drove or operated the vehicle. The court of appeals further held that if a person could never be said to be guilty of carrying a concealed weapon in a vehicle unless that weapon was immediately accessible (such as within an arm's length), the exceptions to MCL 750.277 found in MCL 750.231a would be unnecessary.

Penalty for violation. Under the Michigan Penal Code, carrying a firearm or other dangerous weapon without a permit is a felony punishable by imprisonment for up to five years, a fine of up to \$2,500, or both.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, violation of the penal code's restrictions on pistols in vehicles is a felony punishable by up to five years in prison, a fine not exceeding \$2,500, or both. However, assuming that prosecutions due to failure to meet the conditions being deleted by the bill are rare, the bill would have no significant fiscal impact on the state or local units of government. (10-25-01)

ARGUMENTS:

For:

The bill would clarify and strengthen language regarding the storage of an unloaded pistol or antique firearm that is transported in the trunk of a vehicle.

Current language requires that the pistol or antique firearm be stored in a "wrapper" or "container." These terms are unclear; seemingly nearly any sort of means to store the weapon would suffice under current law. The bill clearly states that an antique firearm or pistol would be required to be stored in a closed case or container designed for the storage of firearms.

Further, current law requires that a person transporting a pistol without a concealed weapons permit do so to or from a hunting or shooting area and while possessing a valid state hunting license or membership with an organization that provides target shooting facilities. However, there are a great number of target shooting areas in the state that do not require memberships. So, if a person is en route to or from one of these facilities, and doesn't have a hunting license, he or she would be committing a felony and could lose the pistol indefinitely, in addition to any possible jail time and/or a fine.

Response:

In order to accomplish the bill's purpose, it would also be necessary to amend MCL 28.432a, a provision of the concealed carry weapon (CCW) permit law enacted in 2000, which contains similar travel restrictions on carrying a weapon in a vehicle without a CCW permit.

Against:

Some people believe that this bill would allow any person who is not able to obtain a CCW permit to still carry a concealed weapon in a vehicle. Current exemptions that allow a person to carry a concealed weapon without a permit are designed to ensure that a person possesses a weapon legally. If these restrictions were to be removed, and a person was allowed to carry a weapon for any lawful reason, it is believed that a person would not need a concealed weapons permit. Furthermore, if there are problems in existing law, exemptions should be added rather than replacing the current travel restrictions with sweeping language that allow a person to carry a concealed weapon in a vehicle, whatever the reason.

Against:

According to the Michigan State Police Uniform Crime Report, during the last three years, there have been over 18,000 suspects arrested for a weapons offense, many of which were for unlawfully carrying a pistol in an automobile. This shows that current law has gone a long way in preventing potential crimes. Current provisions should not be relaxed to allow more potential criminals to lawfully carry a concealed weapon.

Response:

The current law is very ambiguous in determining what constitutes carrying a concealed weapon illegally. The travel restrictions are generally construed to mean the most direct route. Under this practice, a person would violate the law, if he or she were coming from a shooting range and stopped, say, at a convenience store. How would a law enforcement officer distinguish between a person who stops at a convenience store and happens to have a pistol in the trunk, and a person who intends to rob the store? The bill is designed to protect otherwise law-abiding citizens from unintentionally committing a felony. The bill contains language requiring that the pistol be carried for a lawful purpose, which will ensure that potential criminals cannot legally carry a pistol with the intent to commit a crime.

POSITIONS:

The Michigan Coalition for Responsible Gun Owners supports the bill. (10-26-01)

The Michigan United Conservation Clubs supports the bill. (10-25-01)

The Michigan Rifle and Pistol Association supports the bill. (10-29-01)

The Michigan Partnership to Prevent Gun Violence opposes the bill. (10-29-01)

The Michigan Prosecuting Attorneys Association opposes the bill. (10-29-01)

The Michigan Fraternal Order of Police opposes the bill. (10-29-01)

Analyst: M. Wolf

■ 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.