

## TRANSPORTATION OF WEAPONS

House Bill 5026 as enrolled  
Public Act 82 of 2002  
Second Analysis (6-26-02)

**Sponsor: Rep. Steve Vear**  
**House Committee: Conservation and  
Outdoor Recreation**  
**Senate Committee: Hunting, Fishing, and  
Forestry**

### ***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 or 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 travel restrictions found in current law are rather limited and onerous, while the storage requirements are vague and confusing, thereby placing otherwise law-abiding citizens at risk of committing a felony. 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 current exemptions for carrying a weapon in a vehicle.

### ***THE CONTENT OF THE BILL:***

House Bill 5026 would amend provisions in Michigan Penal Code concerning restrictions on carrying an antique firearm or a pistol in a vehicle without a concealed weapons permit.

Current law requires that an antique firearm be unloaded and carried in a wrapper or container in the trunk of a vehicle. The bill specifies that an antique firearm would have to be carried in a closed case or container that is designed for the storage of a firearm in the trunk of the vehicle.

The bill would allow a person to transport, *for a lawful purpose*, a pistol that is licensed, pursuant to section 2 of Public Act 372 of 1972 (MCL 28.422), to the owner or operator of the motor vehicle. The bill also would require that the pistol be in a closed case or container designed for the storage of firearms in the trunk of a vehicle. Under the act, if the vehicle does not have a trunk, the pistol is required to be carried in such a manner that it is not be readily accessible to the occupants of the vehicle. In addition, the bill would delete a provision that requires the person to possess a valid state hunting license or membership in an organization having pistol shooting range facilities. The bill would retain a provision that requires the pistol be unloaded.

The bill would add the definition of "lawful purpose" and define it to mean 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 abode or place of business to another.

- While transporting a licensed pistol en route to or from a law enforcement agency for the purpose of having a safety inspection performed on the pistol as is required under section 9 of Public Act 372 of 1927 (MCL 28.429), or for the purpose of having a law enforcement official take possession of the weapon.
- While en route to or from an abode or place of business and a gun show or place of purchase or sale.
- While en route to or from an abode to a public shooting facility or public land where the pistol is to be used as is permitted by law, regulation, rule, or local ordinance.
- While en route to or from an abode to a private property location where the pistol is to be used as is permitted by law, regulation, rule, or local ordinance.

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

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:**

Fiscal information is not available.

### **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.

Rather than simply deleting the travel restrictions, as the original bill would have done, which some viewed as allowing a person to carry for seemingly any reason, the bill adds several other lawful purposes for carrying a weapon without a permit. Recognizing the fact that the current restrictions do not necessarily cover all situations, the bill would add several allowable reasons to carry a concealed weapon without a permit. Some of the additional reasons include traveling to or from a law enforcement agency to have the agency inspect the pistol or take possession of it, and traveling to or from an abode to private property location to a private property location where the pistol is to be used as is permitted by law.

***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:***

The bill deviates from its original intent. As passed by the House, the bill would have deleted the travel restrictions on a person carrying a concealed weapon without a permit. Instead, the House-passed version of the bill would have allowed a person to carry a concealed weapon without a permit as long as, among other conditions, it was for a lawful purpose. That version of the bill did not attempt to define "lawful purpose", for good reason. These restrictions were removed in the first place because many felt that these provisions could potentially place otherwise law-abiding citizens in jeopardy of unknowingly committing a felony. 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 the store and happens to have a pistol in the trunk, and a person who intends to rob the store? The bill does not explicitly state that the person would not necessarily take the most direct route. The definition of "lawful purpose" in the enrolled version of the bill simply reinstates the very travel restrictions that were removed in the original bill. As a result, the bill fails to adequately protect these responsible gun owners.

***Response:***

By removing the travel restrictions, as the House-passed version had done, some people felt that the bill would allow any person who is not able to obtain a CCW permit to still carry a concealed weapon in a vehicle. The exemptions provided in current law, and those under the bill's definition of "lawful purpose", are designed to ensure that a person possess a weapon legally. If these restrictions were removed, and no explicit definition of "lawful purpose" was in place, a person could carry a concealed weapon without a permit to do so for any reason. This would potentially allow criminals to lawfully carry a pistol to the scene of a crime.

Furthermore, 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.

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.