Legislative Analysis

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

CONCEALED PISTOL LICENSE
RECORDS: PROVIDE CONFIDENTIALITY

House Bill 5217 (Substitute H-1)
Sponsor: Rep. Scott Hummel
Committee: Judiciary

First Analysis (5-23-06)

BRIEF SUMMARY: The bill would make the name, address, and birth date of an applicant for a concealed pistol license confidential and not subject to FOIA requests.

FISCAL IMPACT: The bill would have no fiscal impact on state government but indeterminate fiscal impact on local governments, as they might experience some administrative costs for providing lists of qualified instructors and for furnishing a copy of the applicant's application (for which they could charge a reasonable fee).

THE APPARENT PROBLEM:

An applicant for a concealed pistol license must include with the application statements authorizing the Concealed Weapons Licensing Board to assess medical and mental health records to be used in the board's determination whether the applicant meets the criteria to carry a concealed pistol. Statutory provisions clearly mandate these records and any personal identifying information associated with those records to be kept confidential and that they are not subject to disclosure under the Freedom of Information Act (FOIA).

An application for a concealed pistol license also contains the applicant's legal name, date of birth, and address, but the provision in statute requiring this information does not specifically prohibit disclosure under FOIA. The result is some county clerks have released the names, birthdates, and addresses of handgun owners to those submitting a FOIA request.

Yet, in a 1999 court case, the Michigan Supreme Court upheld a trial court's decision that requests by the public to the Department of State Police (DSP) to assess names, addresses, and phone numbers of persons who had been issued pistol safety certificates were "a clearly unwarranted invasion of privacy." In its ruling, the Supreme Court held that "gun ownership is information 'of a personal nature'" and that disclosure of that information constitutes an invasion of privacy. The court also stated that the FOIA provision that allows a public body to refuse to disclose as a public record under the act information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy applied in this circumstance. (*Mager* v *Department of State Police*, 460 MICH 134)

Some gun owners fear that the disclosure of their names, addresses, and dates of birth puts them at risk for home invasion by criminals seeking to steal handguns and for

identity theft. They have requested that the act regulating gun ownership be amended to incorporate the decision in *Mager* that all information relating to gun ownership be exempt from disclosure under FOIA.

THE CONTENT OF THE BILL:

The bill would amend Public Act 372 of 1927 which regulates buying and selling firearms. Currently, the application to obtain a license to carry a concealed pistol that is submitted to the Concealed Weapon Licensing Board must contain the applicant's legal name, date of birth, and the address of his or her primary residence. If the applicant lives in a city, village, or township with a police department, the name of the police department must also be included.

House Bill 5217 would specify that the above information as received on an application for a concealed pistol license would not be subject to disclosure under the Freedom of Information Act and could not be disclosed to any person except for purposes of the act or for law enforcement purposes. In addition, an applicant or an individual licensed under the act to carry a concealed pistol could be furnished with a copy of his or her application upon request and payment of a reasonable fee. Furthermore, the bill would specify that the Concealed Weapon Licensing Board would not be prohibited from making public and distributing to the public at no cost lists of individuals who are certified as qualified instructors as prescribed under Section 5j of the act. Lastly, the bill would make numerous changes of a technical or editorial nature.

MCL 28.425b

ARGUMENTS:

For:

Even though the *Mager* court in 1999 clearly said that gun ownership is personal information and should be protected from disclosure under FOIA, some county clerks have continued to release the names, addresses, and birth dates of hand gun owners. Some feel that this makes them a target for break-ins and having their identity stolen. In addition, some use the information for mass mailings to garner support for their own political agendas. Proponents of the bill would like the law changed to reflect the *Mager* decision and to keep the fact that they own a gun personal and protected.

Against:

Opponents of the bill believe that under some circumstances, the public has right to know who may be carrying a concealed pistol. For example, in domestic violence situations, custody disputes, or neighbor-to-neighbor disputes, one party may need to ascertain, for their own safety, if the other party may be carrying a gun. Therefore, public disclosure rights should be discretionary, not a complete seal, as the bill would do.

POSITIONS:

The Shooters Alliance for Firearms Rights supports the bill. (5-10-06)

The Great Lakes Shooting Sports Association supports the bill. (5-10-06)

A representative of the Michigan Press Association testified in opposition to the bill. (5-10-06)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Jan Wisniewski

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.