

GRACE PERIOD FOR LICENSING INHERITED PISTOL

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House Bill 4569 (Substitute H-1)

Sponsor: Rep. Rick Jones

Committee: Tourism, Outdoor Recreation and Natural Resources

Complete to 6-16-09

A SUMMARY OF HOUSE BILL 4569 (SUBSTITUTE H-1)

Generally speaking, the bill allows a person who inherits a pistol or receives it under a will a 10-day grace period after taking actual physical possession of it to apply for a license to keep it as his or her own or to transfer it to someone else.

With numerous exceptions, including one for holders of a concealed pistol license (CPL), no person may purchase, carry, possess, or transport a pistol in Michigan without having first obtained a license for it under Michigan's handgun licensure law (MCL 28.422). Although this license is often called a license *to purchase*, it is also required when a pistol is received as a gift or inheritance.

Currently, when someone without a CPL inherits a pistol, he or she is supposed to obtain *a license to purchase* from the local licensing authority before taking possession of the pistol. The application must be signed under oath and a background check is performed on the applicant before the license is issued. Once the weapon is obtained, information about it, such as manufacturer, caliber, type of weapon, and serial number, are added to the license, and two copies of the license are required to be returned to the licensing authority within 10 days of the acquisition. According to the statute, the requirement of a license "does not prevent the transfer of ownership of pistols that are inherited if the license to purchase is approved by the commissioner or chief of police, sheriff, or their authorized deputies, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol." MCL 28.422(7)

If the person inheriting a weapon is a CPL holder, he or she does not need a purchase license before acquiring the pistol, but must fill out the sales record required under MCL 24.422a within 10 days of the acquisition.

House Bill 4569 would amend Public Act 372 to amend the rules that apply when someone obtains actual physical possession of a pistol through a testamentary disposition (generally speaking, a will) or the laws of descent and distribution (the inheritance rules that apply when someone dies intestate or without a will).¹ Under the bill, someone who

¹Instead of or in addition to wills, some people set up revocable living trusts or other types of trusts to distribute their property after their death without going through probate. The bill as written would arguably not apply to a pistol distributed under the terms of such a trust.

obtains actual physical possession of a pistol in this way would have 10 days in which he or she could transfer ownership of the pistol to himself or herself or to another person. To do so, all of the following would have to apply:

- The person to whom ownership is to be transferred is not otherwise prohibited from possessing a pistol.
- The license to purchase is approved by the police commissioner, police chief, county sheriff, or by his or her designated representative within that law enforcement agency.
- The personal representative of the estate or the next of kin having legal authority to dispose of the pistol signs the license to purchase as the seller.

In addition, the bill provides that someone who obtained possession of a pistol through a testamentary disposition or law of descent and distribution before January 7, 2009 could apply for a license for it until December 31, 2009.

BACKGROUND INFORMATION:

State requirements for receiving a license to purchase a pistol. The state handgun licensure law (MCL 28.422) establishes the following eligibility requirements for receiving a license to purchase a pistol:

- The law enforcement official issuing the license must not have probable cause to believe that the applicant would be a threat to himself or herself or to others or would commit an offense with the pistol that would violate a federal or a state law.
- The person must not be subject to any of the following types of orders (issued after notice and an opportunity for a hearing) that are entered into the law enforcement information network (LEIN):
 - **Involuntary mental health hospitalization or treatment** under Section 464a of the Mental Health Code (MCL 330.1464a).
 - **A finding of legal incapacity** under Section 5107 of the Estates and Protected Individuals Code (MCL 700.5107), or a predecessor statute.
 - **Personal protection orders, including orders applying to persons with a CPL license and law enforcement and corrections officers** under Section 2950 of the Revised Judicature Act of 1961 (MCL 600.2950).
 - **Personal protection orders related to stalking, including orders applying to persons with a CPL license and law enforcement and corrections officers** under Section 2950a of the Revised Judicature Act of 1961 (MCL 600.2950a).

- **Personal protection orders in divorce cases** under Section 14 of 1846 RS 84 (MCL 552.14.)
- The person must be **18 years of age or older** (if the seller is federally licensed the person must be at least 21).
- The person must be a **citizen** of the United States.
- The person must be a **legal resident of Michigan**. (A person with any of the following is considered a legal resident of Michigan: (1) a valid Michigan driver license or official state personal identification card; (2) a lawful Michigan voter registration card; (3) a home of record in Michigan (although on active military duty elsewhere); or (4) a permanent military assignment in Michigan (even if the person's home of record is outside of Michigan).
- ***A felony charge or other criminal charge listed in Section 5b cannot be pending*** against the person at the time of application. Criminal charges listed in Section 5b include:
 - Failing to stop when involved in a personal injury accident.
 - Operating a motor vehicle, ORV, vessel, snowmobile, railroad locomotive or aircraft under the influence.
 - Operating a commercial vehicle with alcohol content.
 - Reckless driving.
 - Operating with a suspended license.
 - Hindering persons performing official weights and measures duties.
 - Displaying sexually explicit matter to minors.
 - Assault or domestic assault.
 - Breaking and entering.
 - Fourth-degree child abuse.
 - Soliciting a child for immoral purposes.
 - Vulnerable adult abuse.
 - Solicitation to commit a felony.
 - Impersonating a peace officer or medical examiner.
 - Illegal sale of firearm or ammunition.
 - Illegal use or sale of self-defense spray.
 - Improper transportation of a loaded firearm.
 - Unlawful possession of a controlled substance.
 - Failure to have a pistol inspected (as was previously required by MCL 750.228, which was recently repealed).
 - Accepting a pistol in pawn.
 - Failure to register the purchase of a firearm or a firearm component.
 - Improperly obtaining a pistol, making a false statement on an application to purchase a pistol, or using false identification to purchase a pistol.
 - Intentionally aiming or discharging a firearm without malice.
 - Possessing a firearm on prohibited premises.

- Brandishing a firearm in public.
 - Possession of a firearm by an individual less than 18 years of age.
 - Violating a weapon-free school zone.
 - Setting a spring gun or other device.
 - Possessing a firearm while under the influence of intoxicating liquor or a drug.
 - Indecent exposure.
 - Stalking.
 - Fourth degree criminal sexual conduct.
 - Reckless, careless, or negligent use of a firearm resulting in injury, death, or property damage or reckless discharge of a firearm.
 - Refusal of a commercial vehicle operator to submit to chemical test.
 - Ignition interlock device reporting violation or circumvention.
 - Disorderly person.
 - Embezzlement; false pretenses with intent to defraud; larceny; second-degree retail fraud; larceny from a vacant building; larceny by conversion; and larceny by defrauding lessor.
 - Malicious destruction of property or real property; receiving stolen property; malicious use of telephones.
- **The person cannot be prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under Section 224f of the Michigan Penal Code (MCL 750.224f).** This statute prohibits persons convicted of a felony from possessing a firearm for three years (five years with respect to certain felonies) after completing all terms of their sentencing and parole.
 - **The person cannot have been adjudged insane in Michigan or elsewhere** (unless the person's sanity has been adjudged restored by subsequent court order).
 - **The person cannot be under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.**
 - **The person cannot have been adjudged legally incapacitated in Michigan or elsewhere** (unless the person's legal capacity has been adjudged restored by subsequent court order).
 - **The person must correctly answer 70 percent or more of the questions on a basic pistol safety review questionnaire given by the licensing authority.** If the person fails the test, the licensing authority must tell the person what questions he or she got wrong, and allow the person to try again (up to two times per day) until he or she passes it.
 - **The person must sign an application for license under oath on a form provided by the State Police.** A copy of this form can be found online at:

[www.mspta.net/Forms/Application&LicensetoPurchaseAPistol\(RI-10\).pdf](http://www.mspta.net/Forms/Application&LicensetoPurchaseAPistol(RI-10).pdf)

- In addition, under MCL 28.426, a purchase license cannot be issued unless the issuing agency has determined both of the following (1) that the applicant is not prohibited under federal law from possessing or transporting a firearm as determined through the national instant criminal background check system (NICS); and (2) if the applicant is not a United States citizen, the applicant is not an illegal alien or a nonimmigrant alien, as verified through the United States immigration and customs enforcement databases.

FISCAL IMPACT:

This bill would have no fiscal impact on the state or on local units of government.

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■ 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.