

INHERITED PISTOLS

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Senate Bill 225 as reported without amendment

Senate Bill 226 as reported without amendment

Sponsor: Sen. Mike Shirkey

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 10-27-15

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Acts 200 and 201 of 2015)

SUMMARY:

Senate Bill 225 would revise provisions of the Handgun Licensure Law pertaining to the transfer of a pistol by inheritance. Senate Bill 226 amends the sentencing guidelines in the Code of Criminal Procedure to revise citations regarding forging a pistol license application and making false statements on a pistol sales record.

Currently, Section 2 of the licensure law generally prohibits a person from purchasing, carrying, possessing, or transporting a pistol in Michigan without first obtaining a license for the pistol, and outlines the requirements and procedures for licensure. Section 2 states that it *does not prevent the transfer of ownership of a pistol that is inherited if the license to purchase is approved by the commissioner or chief of police, sheriff, or authorized deputy, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol.* The bill would delete the italicized text.

Instead, Senate Bill 225 specifies that Section 2 does not prevent the transfer of ownership of pistols to an heir or devisee, whether by a testamentary bequest (will) or by the law of intestacy (no will) regardless of whether the pistol is registered with the state.

A person inheriting a pistol would have to obtain a license as required under the act within 30 days of taking physical possession of the pistol. The license may be signed by a next of kin of the decedent (person who died) or the person authorized to dispose of property under the Estates and Protected Individuals Code (hereinafter "authorized person"); this includes when the next of kin *is* the person inheriting the pistol.

If not qualified for a pistol license under the act, the heir or devisee may direct the next of kin or authorized person to dispose of the pistol in a lawful manner and that the heir or devisee considers appropriate. The authorized person would not be required to obtain a pistol license for the temporary lawful possession of the pistol while in the process of disposing of the pistol under the will or laws of intestacy.

A law enforcement agency could not seize or confiscate a pistol that is being transferred under the bill unless that heir or devisee does not qualify for a pistol license and the next of kin or authorized person is unable to retain temporary possession of the pistol or find alternative lawful storage. If the pistol were seized or confiscated, the heir or devisee, although not qualified to obtain a pistol license, would still retain ownership interest in the

pistol and, within 30 days of being notified of the seizure or confiscation, may file in a court to direct the law enforcement agency to lawfully transfer, or otherwise dispose of, the pistol.

A pistol seized under the bill could not be destroyed, sold, or used while in possession of the seizing entity or its agents until 30 days after the heir or devisee had been notified of the seizure and no legal action regarding the lawful possession or ownership of the seized pistol had been filed in court and was pending.

"Devisee" and "heir" would mean those terms as defined in Sections 1103 and 1104, respectively, of the Estates and Protected Individuals Code.

The bill would take effect 90 days after enactment.

Senate Bill 226 makes technical revisions to citations pertaining to forgery on pistol license applications and making false statements on a pistol sales record within the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.11b).

BRIEF DISCUSSION OF THE ISSUES:

Reportedly, though Michigan law allows for the transfer of ownership of a handgun after the owner dies, some find the process confusing. Moreover, if the rightful heir inheriting the pistol is not qualified to obtain a pistol license, the gun is apparently confiscated by the local law enforcement agency and melted down or otherwise disposed of. Others are confused as to what to do when cleaning out a deceased relative's home and a pistol is found but no evidence of prior registration.

Senate Bill 225 addresses these concerns by simplifying the process of how to register or otherwise transfer ownership of an inherited handgun, whether there a will existed or not. A pistol that was never registered, as is often the case with older guns, will be treated the same as inheriting a previously registered one– the heir can simply fill out a License to Purchase and put the name of the next of kin or person authorized to dispose of the deceased person's estate under "seller" or use his or her own name if that person is the next of kin. The bill also provides a process by which a person who is ineligible under the law to own or possess a firearm can retain title to an inherited pistol (albeit not possession) while finding a suitable individual to whom to sell or transfer the pistol, even if the pistol had been confiscated by a law enforcement agency. The bills are expected to make the process of registering inherited pistols easier for the person inheriting the pistol, the person disposing of the decedent's estate, and the local law enforcement agency.

FISCAL IMPACT:

Senate Bill 225 would have a nominal fiscal impact on local law enforcement agencies to the extent that the bill provides alternative means for an ineligible heir or devisee to legally dispose of a pistol, which would likely reduce the number of pistols confiscated and auctioned off by local law enforcement agencies.

Senate Bill 226 has no fiscal implications for state or local governments.

POSITIONS:

Michigan Open Carry indicated support for the bill. (10-20-15)

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