

MODIFY PENALTY FOR CERTAIN VIOLATIONS BY HOLDER OF EXPIRED CONCEALED PISTOL LICENSE

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House Bill 4434 (H-1) as reported from committee

Sponsor: Rep. Matt Hall

1st Committee: Military, Veterans and Homeland Security

2nd Committee: Judiciary

Complete to 5-22-19

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

BRIEF SUMMARY: House Bill 4434 would amend the Michigan Penal Code to establish a civil fine, instead of the current felony penalty, for carrying a concealed pistol on an expired concealed pistol license (CPL) if the license had expired within the previous year, and to make a second or subsequent such violation a misdemeanor.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of offenders who would be assigned a civil fine instead of convicted of a felony or a misdemeanor, and the number of new misdemeanor convictions under the bill. (For a detailed discussion, see **Fiscal Information**, below.)

THE APPARENT PROBLEM:

A CPL allows a person to carry a concealed pistol (with some restrictions) on his or her person and also in a vehicle whether the pistol is concealed or not. Similarly to a driver license, a CPL expires on the holder's birthday, but, depending on the date of issue, may be valid for four to five years. Just as people sometimes forget to renew their driver licenses, so a person may forget to renew his or her CPL. Carrying a concealed pistol after the CPL expires can result in a felony conviction with a prison sentence of up to five years and a fine that can be as high as \$2,500, or both. Some believe that this penalty is excessive for an act that is due to forgetfulness rather than criminal intent to skirt the law. It has been suggested that a lesser penalty apply if the license had only recently expired.

THE CONTENT OF THE BILL:

House Bill 4434 would amend the Michigan Penal Code to establish a civil fine, instead of the current felony penalty, for carrying a concealed pistol on an expired concealed pistol license (CPL) if the license had expired within the previous year, and to make a second or subsequent such violation a misdemeanor.

Currently under the Penal Code, an individual is prohibited from publicly carrying a pistol concealed on or about his or her person or, whether concealed or not, in a vehicle he or she is operating or riding in without a CPL. Even if licensed, he or she cannot carry the pistol in a place or manner inconsistent with any license restrictions. A violation is a felony punishable by imprisonment for up to five years or a fine of up to \$2,500, or both.

Under the bill, a CPL holder who carried a pistol in a vehicle or concealed on his or her person after the license expired would be subject to a civil fine of \$330, instead of the felony penalty described above, if all of the following conditions were met:

- The CPL expired not more than one year before the date of the violation.
- The person was eligible to obtain a CPL under section 5b of 1927 PA 372, the handgun licensure act.
- It was the person's first violation during the one-year period described above. [The period described above is a period of "not more than one year," counting backward from the violation.]

If, within 60 business days after the violation, the person obtained a renewal license, he or she would not be subject to the civil fine.

A CPL holder who carried a pistol in a vehicle or concealed on his or her person after the license expired would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of \$500, or both, if all the following conditions were met:

- The CPL expired not more than one year before the date of the violation.
- The person was eligible to obtain a CPL under section 5b of 1927 PA 372, the handgun licensure act.
- It was the person's second or subsequent violation during the one-year period described above. [The period described above is a period of "not more than one year," counting backward from the violation.]

MCL 750.227

FISCAL INFORMATION:

House Bill 4434 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of offenders who would be assigned a civil fine instead of convicted of a felony or a misdemeanor, and the number of new misdemeanor convictions under the bill. Fewer felony convictions would result in reduced costs for the state correctional system. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. If fewer felony convictions resulted, there would be a corresponding decrease in penal fine revenues. This would decrease funding available for local libraries, which are the constitutionally designated recipients of those revenues.

The state could see an increase in civil fine revenue, which is typically deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision, and how the costs are financed, vary by jurisdiction. An

increase in misdemeanor convictions would mean an increase in penal fine revenues. This would increase funding for local libraries.

Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs.

ARGUMENTS:

For:

Proponents argue that the bill would establish a more reasonable penalty for when a CPL holder forgets to renew his or her license and continues carrying a concealed pistol on his or her person or in his or her vehicle. Currently, even carrying the day after the license expired can result in a five-year prison sentence. As a convicted felon, the person would then lose his or her right to possess any firearm for the rest of his or her life. This means that an otherwise law-abiding citizen could never hunt again, nor be able to have a gun in the home or carry a gun for personal protection. A conviction could also result in loss of employment or housing and difficulties finding either in the future. For those aliens who have legal residency, being convicted of a criminal offense can be grounds for deportation. Proponents of the bill argue that this punishment is too steep for missing a deadline, and that the penalties should be scaled to better fit the circumstances they are intended to address.

For:

Proponents also note that the current law allows a lot of prosecutorial discretion regarding how to charge a violation, and that this has created a patchwork of penalties across the state, as both the level of enforcement and prosecutorial decisions regarding how to treat a violation vary from region to region and county to county. In addition to creating more reasonable penalties for the situation addressed, they argue, the bill would also establish greater consistency in applying those penalties to all citizens of the state.

Against:

Critics argue that carrying a concealed pistol should not be taken lightly, and that CPL holders should be held to a higher level of responsibility. The one-year period, coupled with immunity from even the civil fine if the license was renewed within 60 business days of the violation, means that a person could go for over fourteen months without a valid license. Though the felony penalty may be excessive when the intent is not to break a law, the solution offered by the bill seems too lenient in light of the seriousness of carrying a deadly weapon in public. Moreover, county clerks are required to send notices to CPL holders within three to six months before a license expires that the expiration date is approaching.

Response:

With how busy a person's life can get, it is easy to forget to check, even with getting a reminder from a county clerk, when the CPL is expiring. Furthermore, the address to which a county clerk sends a reminder notice is generally the one the clerk has on file from when the CPL was issued or renewed five years before. There's no established process for keeping the addresses current, so if the CPL holder has moved within those five years and not taken steps to notify the clerk of his or her new address, there is no guarantee that he or she will even get the notice at all.

Against:

Opponents of the bill argue that a key part of the CPL renewal process is establishing that the CPL holder still meets the requirements necessary to be eligible for a CPL. The background check conducted upon renewal is a way to make sure that a license holder has not been convicted of a disqualifying crime during the five-year licensure period. Critics argue that, even though most expired CPL holders may have simply missed a deadline, to reduce the penalties for expired licensees could allow or encourage people to carry concealed pistols who should not under the law be allowed to do so.

Response:

The bill's proponents note that its reduced penalties would apply only to a person with an expired CPL who is still eligible to obtain one. Any disqualifying crimes during that five-year period would have been reported, and the bill would not apply to that person.

POSITIONS:

Representatives of the following entities testified in support of the bill:

- Freedom Firearms and Calhoun County Gun Owners Association (5-14-19)
- Michigan Gun Owners (5-14-19)
- Great Lakes Gun Rights (4-30-19)
- Michigan Coalition for Responsible Gun Owners (4-30-19)
- Michigan Open Carry (5-14-19)

The following entities indicated support for the bill (4-30-19):

- National Rifle Association
- Military Order of the Purple Heart

Representatives of the following entities testified in opposition to the bill (5-14-19):

- Michigan State Police
- Moms Demand Action for Gun Sense in America

The following entities indicated opposition to the bill:

- American Association of University Women (5-21-19)
- Everytown for Gun Safety (5-14-19)
- League of Women Voters (5-21-19)

Legislative Analysts: E. Best
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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.