

Legislative Analysis



LICENSING OF FIREARMS

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<http://www.house.mi.gov/hfa>

House Bill 4138 as introduced
Sponsor: Rep. Jaime Churches

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

House Bill 4142 as introduced
Sponsor: Rep. Brenda Carter

House Bill 4143 as introduced
Sponsor: Rep. Kristian C. Grant

Committee: Judiciary
Complete to 3-8-23

SUMMARY:

House Bill 4138 would amend 1927 PA 372, now known as the handgun licensure act, to apply several of its provisions to firearms, rather than only to pistols as currently provided. House Bill 4142 would amend the Michigan Penal Code to replace *pistol* with *firearm* in several provisions establishing penalties for violations of section 2 of the handgun licensure act. House Bill 4143 would revise the sentencing guidelines for felony offenses under the handgun licensure act that currently apply to pistols to instead apply to firearms.

House Bill 4138 would amend the handgun licensure act to expand many provisions to apply not just to *pistols*, but to all *firearms*. The bill also would make other changes, many of which are editorial revisions that do not make a substantive change.

Firearm means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.

Pistol means a loaded or unloaded firearm that is 26 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals it as a firearm.

Section 2: Purchases of firearms

Section 2 of the act currently, with some exceptions, prohibits a person from purchasing, carrying, possessing, or transporting a **pistol** in Michigan without first having obtained a license for the **pistol** from local law enforcement. This is commonly referred to as a “purchase license.” Such a license is void unless used within 30 days after it is issued. A local law enforcement agency is required to issue a purchase license to a qualified individual unless the agency has probable cause to believe that the applicant would be a threat to themselves or other individuals or would commit an offense with the **pistol** that would violate a state or federal law.

The bill would replace **pistol** in this provision with **firearm** (which includes both pistols and long guns such as rifles and shotguns). Under the bill, a person could not purchase, carry, possess, or transport a **firearm** in Michigan without first obtaining a license for the **firearm**.

The bill also would amend the following existing provisions in section 2 to apply to **firearms** instead of just **pistols**, except as noted:

- An individual on leave from active duty with the Armed Forces of the U.S. or discharged from active duty who brings a **firearm** into the state would be required to obtain a license for the **firearm** within 30 days after arriving in the state.
- The appropriate city, township, or village police department (or, in some cases, the sheriff's department) that currently issues purchase licenses would continue to do so in the same manner, but the purchase license would now be issued to purchase, carry, possess, or transport a **firearm** (not just a pistol).
- In determining the eligibility of an applicant for a purchase license for a **firearm** based on age, an applicant would have to be at least 18 years old, but would have to be at least 21 years of age if the **firearm** is a **pistol** and the *seller* is a federally licensed firearms dealer. (*Seller* is defined in the act as a person who sells or gives a **pistol** to another person.)
- A licensing authority would still issue a purchase license in triplicate, but the license would be to purchase, carry, possess, or transport a **firearm** (not just a pistol).
- If an individual purchases or otherwise acquires a **firearm**, the *seller* is required to fill out the requisite license forms. (*Seller* is defined in the act as a person who sells or gives a **pistol** to another person.) The *purchaser* would have to sign their name indicating the purchase or other acquisition of the **firearm**. (*Purchaser* is defined in the act as a person who receives a **pistol** from another person by purchase or gift.) If the firearm is a **pistol**, the purchaser would still return one copy of the license to the licensing authority within 10 days after the date the pistol is purchased or acquired. The responsibilities of the licensing authority after receiving the license copy for a purchase or acquisition of a pistol would remain the same as currently provided.
- Section 2 would not apply to the purchase of **firearms** (instead of only pistols) from wholesalers by dealers regularly engaged in the business of selling **firearms** at retail, or to the sale, barter, or exchange of **firearms** kept as relics or curios not made for modern ammunition or permanently deactivated.
- The bill would continue to provide that section 2 does not prevent the transfer of ownership of **pistols** to an heir or devisee regardless of whether the **pistol** is registered with the state. However, the bill then requires a person who has inherited a **firearm** (not just a pistol) to obtain a license within 30 days after taking physical possession of the **firearm**. All other current provisions pertaining to an inherited pistol would apply to **firearms**.
- Currently, a nonresident of Michigan is not required to obtain a purchase license under section 2 if certain conditions are met. The bill would replace all references to a **pistol** with **firearm** in these provisions. One of the conditions is that the nonresident be licensed in their state of residence to purchase, carry, or transport a **pistol** (which would be replaced with **firearm**). The nonresident must present that license upon the demand of a police officer. Failure to do so is a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$100, or both. Since the bill is expanding applicability of the requirement for a nonresident to have a license that applies to **firearms** (which would include both pistols and long guns), the penalty for noncompliance would appear to also apply to an offense involving failure to produce a license that would pertain to both a pistol or a long gun.
- Currently, section 2 does not apply to an individual who is younger than the minimum age to possess a **pistol** (21 years of age) if certain conditions are met. The bill would

replace references to a **pistol** with **firearm** in these provisions (applicable to those younger than 18 for a firearm or younger than 21 for a pistol). In addition, under the bill, the exemption from obtaining a purchase license would apply if either of the following conditions is met:

- The individual is not otherwise prohibited from possessing that **firearm** and all of the following apply:
 - The individual is at a target range.
 - The individual possesses the **firearm** for the purpose of target practice or instruction in the safe use of a **firearm**.
 - The individual is in the physical presence and under the direct supervision of their parent, guardian, or an individual at least 21 years old, who is authorized by the parent or guardian, and who has successfully completed a **pistol** safety training course or class meeting certain requirements for a pistol safety training course and has received a certificate of completion.
 - The owner of firearm is physically present.
- The individual is not otherwise prohibited from possessing that **firearm** and the individual possesses the **firearm** for the purpose of hunting.
- The act currently exempts from section 2 an individual who meets certain specified conditions. The bill would replace references in those conditions to **pistol** with **firearm** as follows:
 - The individual is not otherwise prohibited from possessing a **firearm**.
 - The individual is at a recognized target range or shooting facility.
 - The individual possesses the **firearm** for the purpose of target practice or instruction in the safe use of a **firearm**.
 - The owner of the **firearm** is physically present and supervising the use of the **firearm**.

Section 2a: Exemptions from section 2

Currently, section 2a exempts certain individuals from the requirement to obtain a purchase license under section 2 to purchase, carry, possess, use, or transport a **pistol**. The bill would replace **pistol** with **firearm** in these provisions. The list includes an individual who holds a concealed pistol license (CPL), with some exceptions; a federally licensed firearms dealer; and an individual currently employed as a police officer who is licensed or certified under the Michigan Commission on Law Enforcement Standards (MCOLES) Act. The bill would also exempt an individual purchasing a **firearm** other than a **pistol** who has a federal national instant criminal background check performed by a federally licensed firearms dealer not more than five days before the purchase. Further, the bill would delete a provision exempting an individual who purchases a **pistol** from a federally licensed dealer in compliance with 18 USC 922(t).¹

Currently, if an individual described above (CPL holder, federally licensed firearms dealer, or employed police officer who is MCOLES-certified) purchases or otherwise acquires a **pistol**, the seller is required to complete a record in triplicate that includes certain information. The bill would replace **pistol** with **firearm**.

¹ See <https://www.law.cornell.edu/uscode/text/18/922>

Currently, if the purchaser is not a CPL holder, federally licensed firearms dealer, or police officer as described above, the record must include the dealer license number of the federally licensed firearms dealer *who is selling the pistol*. The bill would replace the italicized text with “that performed the federal national instant criminal background check.”

If the **firearm** being acquired is a **pistol**, the purchaser must send a copy of the record to the appropriate local law enforcement where the purchaser resides within 10 days of the purchase or acquisition as is currently required.

Miscellaneous provisions expanded to apply to firearms

The bill also would amend the following existing provisions in section 2a to apply to **firearms** instead of just **pistols**:

- Currently, if an entry into the Law Enforcement Information Network (LEIN) of a disposition or of certain orders as listed in section 2, such as being the subject of a personal protection order regarding domestic violence, disqualifies an individual from obtaining a purchase license, written notice must be sent by the Department of State Police to the individual that includes a statement that the individual cannot obtain a license to purchase a **pistol** or obtain a CPL until the order or disposition is removed from LEIN. The bill would replace **pistol** with **firearm**.
- Currently, the requirement to obtain a purchase license under section 2 does not apply to a police or correctional agency of the United States, Michigan, or any subdivision of Michigan; the U.S. Army, Air Force, Navy, or Marine Corps; an organization authorized by law to purchase or receive weapons from the U.S. or Michigan; the National Guard, U.S. Armed Forces Reserves, or other duly authorized military organization; or a member of any of these entities or organizations for a **pistol** while engaged in the course of that member’s duties with that entity or while going to or returning from those duties. The bill would replace **pistol** with **firearm**.
- Currently, the act also exempts from the requirement to obtain a purchase license the regular and ordinary possession and transportation of a **pistol** as merchandise by an authorized agent of a person licensed to manufacture **firearms** or a licensed dealer. The bill would replace **pistol** with **firearm**.
- Currently, a law enforcement agency that seizes or otherwise comes into possession of a firearm or a part of firearm subject to disposal under the act may—instead of sending it for disposal—retain it for certain listed purposes. Under the bill, a law enforcement agency that sells or trades any **pistol** to a licensed dealer or retains any **pistol** must complete a record of the transaction. The bill would replace **pistol** with **firearm**.

MCL 28.422 et seq.

House Bill 4142 would amend the Michigan Penal Code to revise provisions that prescribe criminal penalties for violations of section 2 of the handgun licensure act. The bill would change references from “pistols” to “firearms” in provisions that describe violations of the handgun licensure act. The bill would not change the penalties themselves. (Note that *pistol* and *firearm* have the same meanings as in HB 4138.)

Violations of section 2 of the handgun licensure act

Currently under these provisions:

- A person who knowingly sells a **pistol** without complying with section 2 of the handgun licensure act is guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$100, or both.
- A person who obtains a **pistol** in violation of the handgun licensure act is guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$100, or both.
- A person who intentionally makes a material false statement on an application for a license to purchase a **pistol** under the handgun licensure act is guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.

House Bill 4142 would replace **pistol** with **firearm** in these provisions. It would not revise the penalties for a violation.

MCL 750.223 and 750.232a

House Bill 4143 would amend sentencing guidelines within the Code of Criminal Procedure. Currently, the guidelines contain the maximum term of imprisonment that may be imposed for a conviction for forgery on a *pistol* license application (four years), a false statement on a *pistol* sales record (four years), and a false statement in a *pistol* application (four years). The bill would replace *pistol* with **firearm** to comport with the revisions proposed by House Bill 4138. In addition, the bill would delete several guidelines rendered obsolete because the underlying criminal offenses referenced have previously been repealed.

MCL 777.11b and MCL 777.16m

House Bills 4142 and 4143 cannot take effect unless HB 4138 is also enacted.

FISCAL IMPACT:

House Bill 4138 would have significant fiscal implications for the Department of State Police (MSP) and local and county law enforcement agencies. Initial estimates indicate that an expenditure of approximately \$200,000 would be necessary for technical changes to the MiPistol IT system, which is a database used by both MSP and local law enforcement agencies. Additional costs may be incurred by local and county law enforcement agencies for increased volumes of firearms licensing, but the magnitude of the costs is currently indeterminate.

The bill also would have an indeterminate fiscal impact on the state and on local units of government that would depend on the number of individuals held responsible for a civil infraction and ordered to pay a fine. Because the bill does not specify where the revenue from a civil fine would be dedicated, it is assumed the majority of the revenue would increase funding for public and county law libraries, and a small portion of the revenue would be deposited into the state 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. Local units could incur additional costs depending on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables

such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

House Bill 4142 would have an indeterminate fiscal impact on the state and on local units of government. An individual who knowingly sells or obtains a firearm without complying with 1927 PA 372 would be guilty of a misdemeanor. An individual who intentionally makes a false statement on an application for a license to purchase a firearm would be guilty of a felony. The number of misdemeanor and felony convictions that would result under provisions of the bill is not known. New misdemeanor convictions would result in increased costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

House Bill 4143 is a companion bill to HB 4142 and amends sentencing guidelines to include forgery on firearm licenses, false statements on firearm sales records, and false statements on firearm applications. The bill would not have a direct fiscal impact on the state or on local units of government.

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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.