

**SUBSTITUTE FOR
HOUSE BILL NO. 4003**

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 227 (MCL 750.227), as amended by 1986 PA 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 227. (1) A person shall not carry a dagger, dirk,
2 stiletto, a double-edged nonfolding stabbing instrument of any
3 length, or any other dangerous weapon, except a hunting knife
4 adapted and carried as such, concealed on or about his or her
5 person, or whether concealed or otherwise in any vehicle operated
6 or occupied by the person, except in his or her dwelling house,
7 place of business, or on other land possessed by the person.

8 (2) A person shall not carry a pistol concealed on or about
9 his or her person, or, whether concealed or otherwise, in a vehicle

1 operated or occupied by the person, except in his or her dwelling
2 house, place of business, or on other land possessed by the person,
3 without a license to carry the pistol as provided by law and if
4 licensed, shall not carry the pistol in a place or manner
5 inconsistent with any restrictions upon such license.

6 (3) ~~A-Except as otherwise provided in subsection (4),~~ a person
7 who violates this section is guilty of a felony ~~punishable by~~
8 imprisonment for not more than 5 years ~~or by~~ a fine of not more
9 than \$2,500.00.

10 (4) **A person who violates subsection (2) is responsible for a**
11 **state civil infraction and is subject to a civil fine of \$330.00 if**
12 **all of the following apply:**

13 (a) **The person's concealed pistol license issued under section**
14 **5b of 1927 PA 372, MCL 28.425b, expired not more than 1 year before**
15 **the date of the violation.**

16 (b) **The person is eligible to obtain a concealed pistol**
17 **license under section 5b of 1927 PA 372, MCL 28.425b.**

18 (5) **A state civil infraction issued under subsection (4) does**
19 **not authorize a peace officer to seize and retain a firearm in**
20 **connection with the state civil infraction.**

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

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House Bill 4003 (proposed substitute H-1)

Sponsor: Rep. Matt Hall

1st Committee: Military, Veterans and Homeland Security

2nd Committee: Judiciary

Complete to 10-4-21

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

SUMMARY:

House Bill 4003 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 if the license had expired within the previous year.

Currently under the act, an individual who does not have a CPL 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 riding in or operating. Even if licensed, he or she cannot carry a 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 CPL 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 one year or less 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.
- If stopped by a peace officer, the person informed the officer that he or she had or has a CPL.

Finally, a person arrested, instead of being issued an appearance ticket, for the violation described above would not have a claim for damages against a peace officer or law enforcement agency if the officer made a good-faith effort to determine whether the person was eligible to obtain a CPL.

MCL 750.227

THE APPARENT PROBLEM:

A concealed pistol license (CPL) allows a person to carry a concealed pistol (with some restrictions) on his person and also in a vehicle whether the pistol is concealed or not. Similarly to a driver's license, a CPL expires on the holder's birthday, but, depending on the date of issue, a CPL may be valid for four to five years. Just as people sometimes forget to renew their driver's licenses, a person may forget to renew his 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 a circumstance that is often due to forgetfulness rather than a criminal intent to skirt the law. Legislation has been offered to apply a lesser penalty for a license that had expired recently.

THE CONTENT OF THE BILL:

Currently under the act, an individual who does not have a CPL is prohibited from publicly carrying a pistol concealed on or about his person or, whether concealed or not, in a vehicle he is riding in or operating. Even if licensed, he cannot carry a 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 person after the CPL 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 one year or less 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.

Finally, a person arrested for the violation described above (instead of being issued an appearance ticket) would not have a claim for damages against a peace officer or law enforcement agency if the officer made a good-faith effort to determine whether the person was eligible to obtain a CPL.

MCL 750.227

FISCAL INFORMATION:

House Bill 4003 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 under provision of the bill. Fewer felony convictions would result in reduced costs for the state correctional system. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any decrease

■ 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.

in penal fine revenues 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 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. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs.

The bill would not have a significant fiscal impact on the Department of State Police or local law enforcement agencies.

ARGUMENTS:

For:

Proponents argue that the bill would establish a more reasonable penalty for when a CPL holder forgets to renew his license (including if the clerk's office doesn't have an updated address to send a reminder to) and continues carrying a concealed pistol on his person or in his vehicle. Currently, even carrying the day after a license expires can result in a five-year prison sentence. As a convicted felon, the person would then lose his right to possess any firearm for the rest of his life. This means that an otherwise law-abiding citizen could never hunt again or be able to have a gun in the home or carry one for personal protection. A conviction also could result in loss of employment or housing and difficulties finding either in the future. For non-citizens 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 individuals who are eligible to renew a CPL yet miss a deadline, and that the penalties should be scaled to better fit the circumstances they are intended to address.

Proponents also say that prosecutorial discretion regarding how to charge a violation has created a patchwork of penalties across the state, as both the level of enforcement and decisions on 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, the bill would establish greater consistency in applying those penalties to all citizens of the state.

Against:

Critics of the bill 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 bill would allow a person to go for 12 months without having a valid license. Although the felony penalty may be excessive when the intent is not to break the law, the solution offered by the bill seems too lenient in light of the seriousness of carrying a deadly weapon in public.

POSITIONS:

Representatives of the following entities testified in support of the bill (9-21-21):

- Michigan Open Carry
- Great Lakes Gun Rights

The following entities indicated support for the bill:

- Michigan State Police (10-5-21)
- Michigan Coalition for Responsible Gun Owners (9-21-21)
- Michigan Gun Owners, Inc. (9-21-21)
- National Rifle Association, Institute for Legislative Action (10-5-21)

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