

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

FIREARMS: Possession of a firearm that shoots shotgun shells, has not been modified from a
FIREARMS ACT: shotgun, and has a barrel length of less than 18 inches, and an overall length of
MICHIGAN PENAL CODE: less than 26 inches

SHORT-BARRELED SHOTGUN:

A person in Michigan may lawfully possess a weapon that fires shotgun shells; has not been constructed from a modified shotgun; has an overall length of less than 26 inches and a barrel length of less than 18 inches; and is not designed or intended to be fired from the shoulder, if the person complies with the purchase and registration requirements for owning a pistol set forth in the Firearms Act, 1929 PA 372, MCL 28.421 *et seq.*

Opinion No. 7253

October 26, 2010

Honorable Phillip Pavlov
State Representative
The Capitol
Lansing, MI 48909

You ask whether a person may legally own a weapon that fires shotgun shells; was not constructed from a modified shotgun; has an overall length of less than 26 inches and a barrel length of less than 18 inches; and is registered as a pistol.

Answering your question requires addressing two initial issues. The first is whether the weapon you have described is an unlawful short-barreled shotgun. MCL 750.224b(1) provides that "[a] person shall not manufacture, sell, offer for sale, or possess a short-barreled shotgun or short-barreled rifle." Violation of this prohibition is a felony punishable by up to five years

imprisonment or a fine of up to \$42,500. MCL 750.224b(2).¹ Short-barreled shotgun is defined in MCL 750.222(i) as:

[A] *shotgun* having 1 or more barrels less than 18 inches in length or a weapon made from a *shotgun*, whether by alteration, modification, or otherwise, if the weapon as modified has an overall length of less than 26 inches. [Emphasis added.]

The term "shotgun" is defined as "a firearm designed or redesigned, made or remade, and *intended to be fired from the shoulder* and designed or redesigned and made or remade to use the energy of the explosive in a fixed *shotgun shell* to fire through a smooth bore either a number of ball shot or a single projectile for each single function of the trigger." MCL 750.222(h) (emphasis added).

The primary goal of statutory interpretation is to give effect to the intent of the Legislature as expressed in the plain language of the statute. *Brown v Detroit Mayor*, 478 Mich 589, 593; 734 NW2d 514 (2007); *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). "[I]f the language of the statute is clear and unambiguous, no interpretation is necessary and the court must follow the clear wording of the statute." *American Alternative Ins Co v Farmers Ins Exchange*, 470 Mich 28, 30; 679 NW2d 306 (2004).

Based on the plain language of the definitions quoted above, an illegal short-barreled shotgun is either a firearm: (1) designed or intended to be fired from the shoulder and having a barrel length of less than 18 inches; or (2) modified from a shotgun to be less than 26 inches in overall length. MCL 750.222(i) and 750.222(h); *People v Walker*, 166 Mich App 299, 301; 420

¹ MCL 750.224b(3) exempts from the prohibition short-barreled shotguns that have been deemed by the United States Secretary of Treasury to be a "curio, relic, antique, museum piece, or collector's item" and not likely to be used as a weapon, and the owner has registered the weapon as a pistol in accordance with MCL 28.422 and 28.422a.

NW2d 194 (1988). A number of unmodified weapons fire shotgun shells, have barrel lengths of less than 18 inches, but are not designed or intended to be fired from the shoulder, and therefore do not fall within the statutory definition of "short-barreled shotgun."² It is, however, illegal to possess a weapon with a barrel length of less than 18 inches or an overall length of less than 26 inches created by modifying a shotgun originally designed or intended to be fired from the shoulder.

The second issue is whether a weapon that fires shotgun shells but does not meet the definition of a shotgun, and which has a barrel length of less than 18 inches and an overall length of less than 26 inches, may be possessed in Michigan. In other words, if such a weapon is not a shotgun, how should it be classified for purposes of ownership in Michigan.

MCL 750.222(e) defines a "pistol" as "a loaded or unloaded *firearm* that is 30 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals itself as a firearm." (Emphasis added.) "Firearm" is defined as "a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air." MCL 750.222(d).

Based on the plain language of these definitions, the weapon described in your request is plainly a "firearm" since it is a weapon that projects or fires shotgun shells. It also falls within the definition of "pistol" because it is a firearm with an overall length of less than 30 inches. The weapon is not designed or intended to be fired from the shoulder and is concealable. This further supports a conclusion that the weapon is a pistol under Michigan law.

² An example of such a weapon is the "Super-Shorty" manufactured by Serbu Firearms, Inc. The company describes the weapon as a short 12-gauge pump shotgun available with pistol grips (its overall length is 16.5 inches), and markets the firearm as being concealable. Its overall design reveals that it is not designed or intended to be fired from the shoulder. See <<http://www.serbu.com/top/superShorty.php>> (accessed October 20, 2010).

As a pistol, the weapon you describe may not be owned or lawfully possessed unless the requirements of the Firearms Act, 1929 PA 372, MCL 28.421 *et seq*, are met. Under that Act, "a person shall not purchase, carry, possess, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section." MCL 28.422(1).³

It is my opinion, therefore, that a person in Michigan may lawfully possess a weapon that fires shotgun shells; has not been constructed from a modified shotgun; has an overall length of less than 26 inches and a barrel length of less than 18 inches; and is not designed or intended to be fired from the shoulder, if the person complies with the purchase and registration requirements for owning a pistol set forth in the Firearms Act, 1929 PA 372, MCL 28.421 *et seq*.

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Attorney General

³ The federal government treats pistols with a smooth barrel as an "any other weapon" (AOW), rather than a pistol. 26 USC 5845(e). However, Michigan law makes no such distinction over barrel rifling. Thus, for federal purposes the weapon is taxed as an AOW, while for state purposes it is a pistol.